

Dated 3 July. 2025

ROSSENDALE BOROUGH COUNCIL

and

TRACEY JAYNE CONNOR

and

NATIONAL COUNTIES BUILDING SOCIETY

and

M.C.I DEVELOPMENTS LIMITED

A PLANNING OBLIGATION BY AGREEMENT  
SECTION 106 TOWN AND COUNTRY PLANNING  
ACT 1990

Relating to Land South of Hardman Avenue,  
Rawenstall, Rossendale

ward  
hadaway

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THIS AGREEMENT is made 3. July

2025

**Between**

- (1) **ROSSENDALE BOROUGH COUNCIL** of Futures Park, Bacup, OL13 0BB ("the Council");
- (2) **TRACEY JAYNE CONNOR** of Carr Barn Cottage, Hardman Avenue, Rossendale, BB4 6BB ("the Owner");
- (3) **NATIONAL COUNTIES BUILDING SOCIETY** (Company Number: 02074388) whose registered office is at 30 Church Street, Epsom, Surrey, KT17 4QF ("the Mortgagee"); and
- (4) **M.C.I DEVELOPMENTS LIMITED** (Company Number: 07542476) whose registered office is at The Waterfront, Lakeside Boulevard, Doncaster, England, DN4 5PL ("the Developer").

**1. Recitals**

- 1.1. The Council is the local planning authority for the purposes of the Act for the area within which the Site is located.
- 1.2. The Owner is the freehold owner of the Site which is registered at the Land Registry under part of title number LA578207 and part of title number LA692054. David Alan Connor died on 5 December 2023 and Tracey Jayne Connor (Tracey Jayne Griffiths) was appointed as administrator of his estate by letters of administration issued on 16 May 2024.
- 1.3. The Mortgagee is mortgagee under a legal charge dated 29 June 2021 affecting the Site.
- 1.4. The Developer has submitted the Application to the Council for planning permission for the Development.
- 1.5. The Application was refused by the Council on 29 August 2024 and is now the subject of the Appeal under section 78 of the Act.
- 1.6. The Owner has agreed to enter into this Agreement so as to create planning obligations in favour of the Council pursuant to Section 106 of the Act and to be bound and to observe and perform the covenants hereinafter contained if Planning Permission is granted on Appeal and the said obligations are a requirement of the Decision Letter.

**2. Definitions and interpretation**

**2.1. Definitions**

<b>"the Act"</b>	means the Town & Country Planning Act 1990 (as amended) or any statute amending or modifying repealing or re-enacting the same for the time being in force.
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<b>"Affordable Housing"</b>	Affordable Rented Housing and Shared Ownership Housing for Occupation of an Approved Person in Housing Need.
<b>"the Affordable Housing Mix"</b>	<p>means the following mix of Affordable Housing Units:</p> <ul style="list-style-type: none"> <li>a) Thirteen (13) Dwellings as Affordable Rented Units; and</li> <li>b) Thirty One (31) Dwellings as Shared Ownership Units</li> </ul> <p>to be located in the positions shown on Plan 1 with each Dwelling to have the number of bedrooms that it is labelled with or otherwise agreed between the Parties.</p>
<b>"Affordable Housing Provider (AHP)"</b>	means a Registered Provider, registered social landlord or a housing association or similar organisation registered in accordance with section 80 of the Housing and Regeneration Act 2008 or if such bodies cease to exist or are superseded the equivalent body whose main objectives included the provision of Affordable Housing and to whom the Affordable Housing Units may be transferred as approved by the Council in writing (such approval not to be unreasonably withheld or delayed).
<b>"Affordable Housing Units"</b>	means the forty four (44) Dwellings to be erected on the Site and used for Affordable Housing in accordance with the Affordable Housing Mix, the Affordable Housing Scheme and pursuant to the Planning Permission or as may otherwise be agreed in writing with the Council and the term "Affordable Housing Unit" shall be construed accordingly.
<b>"Affordable Housing Scheme"</b>	means a scheme for the provision of Affordable Housing which should include a plan or plans showing the plot number, location, plot boundaries and layout and including a program and timetable for the provision of Affordable Housing Units.
<b>"Affordable Rented Housing"</b>	means Affordable Housing let by an Affordable Housing Provider at a rent equal to or less than 80% of the market value for rent in the area inclusive of any service charge or equivalent (being the rent which that Dwelling would secure in the open market as between a willing lessor and a willing lessee acting as arm's length) calculated using RICS approved valuation methods.
<b>"Affordable Rented Units"</b>	means the Affordable Housing Units to be provided as Affordable Rented Housing.
<b>"Appeal"</b>	means the appeal lodged in respect of the refusal by the Council of the Application and given the appeal reference APP/B2355/W/25/3361545.

<b>"the Application"</b>	means the application for full planning permission numbered 2023/0462 for the demolition of the existing buildings and the erection of 44 dwellings, creation of a new vehicular access off Hardman Avenue, along with landscaping, public open space, drainage and all other associated works.
<b>"Approved Person"</b>	means a person who meets the criteria set out in Part 1 or Part 2 of the Forth Schedule (as applicable) and "Approved Persons" shall be construed accordingly.
<b>"the Borough"</b>	means the Borough of Rossendale.
<b>"Built Sports Facilities Contribution"</b>	means a sum of £22,176 (twenty two thousand, one hundred and seventy six pounds) (calculated as £504 (five hundred and four pounds) per Dwelling) to be paid by the Owner to the Council, towards built sports facilities.
<b>"Bus Service Contribution"</b>	means a sum of £20,000 (twenty thousand pounds) to be paid by the Owner to the Council, to support the running of bus service 12.
<b>"Chargee"</b>	means any mortgagee or charge or any receiver (including an administrative receiver) appointed by such mortgagee or charge or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a <b>"Receiver"</b> ) or any persons or bodies deriving title through such mortgagee or charge of Receiver of part or all of the Affordable Housing Units.
<b>"Commence"</b>	means the carrying out of a material operation as defined by section 56 (4) of the Act (excluding for the purposes of this Agreement and for no other purpose any Preparatory Operation) on the Site in accordance with the Planning Permission and the expression "Commencement" shall have a corresponding meaning.
<b>"Commencement Date"</b>	means the date of the Commencement of the Development.
<b>"Communal Area"</b>	means the on-site landscaping and open space shown on Plan 2
<b>"Construct"</b>	means build in accordance with the Planning Permission and this Agreement.
<b>"Contributions"</b>	means the Built Sports Facilities Contribution, the Bus Services Contribution, the Offsite Public Open Space

	Contribution and the Offsite Playing Pitch and Outdoor Sports Contribution.
<b>"Decision Letter"</b>	means the Inspector's letter setting out their reasons for his/her decision to allow the Appeal or in the event of recovery of the Appeal by the Secretary of State the decision letter of the Secretary of State.
<b>"Development"</b>	means the development proposed in the Application.
<b>"Dwelling"</b>	means a residential dwelling (including a house, apartment, bungalow or maisonette) to be constructed on the Site as authorised in accordance with the Planning Permission and "Dwellings" shall be construed accordingly.
<b>"Homes England"</b>	means the Homes and Communities Agency (which trades as Homes England) or any body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating provision of Affordable Housing or if such body ceases to exist or is superseded the equivalent or successor body.
<b>"Housing Authority"</b>	means Rossendale Borough Council.
<b>"Housing Need"</b>	means living in unsuitable housing conditions and/or being unable to afford suitable housing within the Borough at open market prices.
<b>"Inspector"</b>	means the inspector appointed by the Secretary of State to determine the Appeal.
<b>"Interest"</b>	means interest at the rate of 3 per cent above the base lending rate of the Bank of England from time to time unless where otherwise expressly stated herein.
<b>"Market Unit"</b>	means a dwelling to be sold on the open market and the expression "Market Units" shall be construed accordingly.
<b>"Market Value Notice"</b>	means a notice to the Council giving the Open Market Value of the proposed Affordable Rented Units.
<b>"Monitoring Fee (Commuted Sums)"</b>	means the sum of £890.12 (eight hundred and ninety pounds and twelve pence) Index Linked to be paid in accordance with clause 10.1 of this Agreement towards the Council's costs in monitoring and recording compliance with payment of the Contributions (save for the Bus Services Contribution).

<b>"Monitoring Fee (Communal Areas)"</b>	means the sum of £1232 (one thousand two hundred and thirty two pounds) Index Linked to be paid in accordance with clause 10.2 of this Agreement towards the Council's costs in monitoring and recording compliance with the obligations relating to the Communal Area in this Agreement.
<b>"Monitoring Fee (Affordable Housing)"</b>	means the sum of £1232 (one thousand two hundred and thirty two pounds) Index Linked in accordance with clause 10.3 of this Agreement towards the Council's costs in monitoring and recording compliance with the obligations relating to Affordable Housing in this Agreement.
<b>"Net Sales Proceeds"</b>	means the amount received by the Owner in respect of the sale of the relevant Affordable Housing Unit on the open market (or, if higher, the Open Market Value of such Dwelling on the assumption that the requirement to use the Dwelling as an Affordable Housing Unit does not apply) less the reasonable cost of construction of such Dwelling.
<b>"Occupation"</b>	means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction , fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly.
<b>"Offsite Public Open Space Contribution"</b>	means a sum of £ £31,504 (fifty six thousand, one hundred and eighty eight pounds) (calculated as £716 (seven hundred and sixteen pounds) per Dwelling) to be paid by the Owner to the Council, towards offsite public open space provision and/or improvement.
<b>"Offsite Playing Pitch and Outdoor Sports Contribution"</b>	means a sum of £35,332 (thirty five thousand, three hundred and thirty two pounds) (calculated as £803 (eight hundred and three pounds) per Dwelling) to be paid by the Owner to the Council, towards offsite playing pitch or outdoor sports provision and/or improvement.
<b>"Open Market Value"</b>	means the open market value as assessed by a Valuer in accordance with the RICS Valuation - Professional Standards (as applicable at the date of assessment or any such replacement guidance issued by the Royal Institution of Chartered Surveyors) and agreed between the Council and the Owner as being the open market value of an Affordable Housing Unit, being the price at which the sale of an interest in the Affordable Housing

	<p>Unit would have been completed unconditionally for cash consideration on the date of the valuation assuming:</p> <p>(a) a willing seller;</p> <p>(b) that any restrictions imposed on the Dwelling by reason of this Agreement are disregarded;</p> <p>(c) that there are no restrictions as to the persons who may occupy the Affordable Housing Unit or to whom a transfer or lease may be granted or assigned; and</p> <p>(d) that both parties to the transaction had acted knowledgeably prudently and without compulsion.</p>
<b>"Parties"</b>	means the parties to this Agreement and the word "Party" shall mean any one of them.
<b>"Plan 1"</b>	means the plan attached at Appendix 1.
<b>"Plan 2"</b>	means the plan attached at Appendix 2.
<b>"Planning Permission"</b>	means the full planning permission (as may be amended or varied from time to time) granted pursuant to the Appeal.
<b>"Practical Completion"</b>	means the practical completion of the Development or specified part as evidenced by the issue of a certificate of practical completion by the architect or project manager.
<b>"Preparatory Operation"</b>	means a material operation as specified in Section 56(4) of the Act provided that the term "material operation" in Section 56(4) shall not for the purposes of this Agreement include operations in connection with site clearance, demolition, ground stabilisation, archaeological investigation, investigation for the purpose of assessing contamination, removal of contamination, remediation work , ecology survey or works, environmental investigation, site and soil surveys diversion and laying of Services, earthworks and the erection of means of enclosure for the purposes of site security and/or display of notices or advertisements, exploratory boreholes and any dug works, matters and operations to enable any of the foregoing to take place.
<b>"Protected Tenant"</b>	<p>means any tenant or owner (or its successors) who either:</p> <p>a) has exercised the right to acquire the dwelling of which he is a tenant pursuant to section 16 of the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent</p>



	<p>contractual right) in respect of a particular rented Affordable Housing Unit;</p> <p>b) has exercised any statutory right to buy the dwelling of which he is a tenant pursuant to Part V of the Housing Act 1985 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular rented Affordable Housing Unit;</p> <p>c) (in respect of a Shared Ownership Unit) has Staircased to 100% of the equity in that Dwelling; or</p> <p>d) any successor in title to any of a-c above.</p>
<b>"Registered Provider"</b>	means any registered provider of social housing as defined under the Housing and Regeneration Act 2008 with the Regulator of Social Housing and has not been removed from the Register or other body approved by Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Council.
<b>"RPIX"</b>	means the Retail Prices Index excluding Mortgage Interest Payments (RPIX) published by the Office for National Statistics each month and if such index ceases to exist such other similar index as the Council shall specify to the Owner in writing.
<b>"Secretary of State"</b>	The Secretary of State for Levelling Up, Housing and Communities or other minister of other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Act.
<b>"Services"</b>	means all the media and apparatus for the supply and removal of water, sewerage, gas and electricity.
<b>"Shared Ownership Housing"</b>	housing where a lease is granted of a Dwelling where the lessee purchases a percentage of the equity (subject to the initial equity share of a shared ownership lease being restricted to between 25% and 75% equity share) with the lessee paying a rent to the Affordable Housing Provider in respect of the remaining equity share in the property, the documentation for which will follow Homes England's model lease with the rent payable calculated at no more than 2.75% of the value of the unsold equity in the Dwelling. The lessee will have the option to Staircase so as to increase their equity share in the Affordable Housing Unit up to 100% and acquire the freehold or long leasehold interest (as

	appropriate) or such other successor bodies model form of lease.
<b>"Shared Ownership Units"</b>	the Affordable Housing Units to be provided as Shared Ownership Housing.
<b>"Site"</b>	means the land against which this Agreement may be enforced shown edged red on Plan 1 and as more particularly described in the First Schedule.
<b>"Tenancy"</b>	is an assured tenancy where the Affordable Housing Unit is occupied by the individual household as their only or principle home by way of a lease.
<b>"Working Day"</b>	means any day on which the clearing banks in the City of London are (or would be but for strike, lockout, or other stoppage affecting such banks generally) open during banking hours Monday to Friday (inclusive) excluding

- 2.2. The expressions "the Council", "the Owner", "the Mortgagee" and "the Developer" shall where the context admits includes their successors in title and assigns (and in the case of the Council the successor to its statutory functions) and those deriving title under each of them.
- 2.3. Words importing one gender shall be construed as including any gender and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. Words importing the singular shall be construed as importing the plural and vice versa.
- 2.5. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.6. The clause and the paragraph headings in the body of this Agreement and in the Schedules do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 2.7. Reference made to any clause paragraph or schedule, or recital context is a reference to a clause paragraph or schedule or recital in this Agreement.
- 2.8. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

### 3. **Legal Effect**

- 3.1. This Agreement is a planning obligation and is made pursuant to section 106 of the Act and the obligations contained in this Agreement are planning obligations enforceable by the Council for the purposes of that section insofar as they fall within

the terms of sub-section 106(1) and with the intention that they bind the interests held by those persons in the Site and their respective successors and assigns.

- 3.2. Insofar as any of the covenants contained in this Agreement are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other enabling powers with the intention that the obligations contained herein are planning obligations for the purposes of the provisions in respect of the Site which may be enforced by the Council against the Owner.
- 3.3. In the event that the Inspector grants Planning Permission but expressly states in her Appeal Decision that any planning obligation (or part thereof) contained in this Agreement:
  - 3.3.1. is not a material planning consideration; or
  - 3.3.2. that no weight can be attached to the obligation in determining the Appeal; or
  - 3.3.3. otherwise fails to comply with Regulation 122 or 123 of the Community Infrastructure Levy Regulations 2010 (as amended);

then such planning obligation (or part thereof) will be null and void and severed from the remainder of this Agreement and the parties hereby agree to cooperate in respect of the drafting and negotiation of any deed of variation to this Agreement which may reasonably be required by any party in order to document the Inspector's finding.

#### 4. **Commencement**

- 4.1. This Agreement is conditional upon:
  - 4.1.1. the grant of the Planning Permission; and
  - 4.1.2. from the Commencement Date

save for the provisions of clause 7.4 (No Fetter) and 7.7 (Land Charges Registration) and 6.1 (Third Parties) and 8 (Disputes) and 8 (Legal Costs) and 7.3 (Notice) and 10 (Notices of Change in Ownership) and paragraph 1 of the Third Schedule (notice of intended Commencement of Development) which shall come into effect immediately upon completion of this Agreement.

#### 5. **Covenants and Acknowledgements**

- 5.1. The Owner hereby covenants so as to bind their interest in the Site with the Council to perform the obligations on its part specified in the Third Fourth and Fifth Schedules of this Agreement.
- 5.2. The Council hereby covenants with the Owner to perform the obligations on its part specified in the Third Fifth and Sixth Schedules of this Agreement, the Council agrees with the Owner to act reasonably properly and diligently in exercising its discretion and discharging its functions under this Agreement. In particular where any notice consent approval or authorisation agreement or other similar affirmation is required under the

terms of this Agreement, the Council will not unreasonably withhold or delay such notice consent approval authorisation agreement or other similar affirmation.

6. **Agreements and Declarations**

It is hereby agreed and declared as follows:

- 6.1. Save as provided in respect of the successors in title to the Site or any successor to the relevant statutory functions of the Council this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 6.2. This Agreement is governed by and interpreted in accordance with the Law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.
- 6.3. Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Agreement shall be deemed to have been validly served if delivered by hand or sent by pre-paid first class or recorded delivery post to the party to be served at its address herein specified or such other address as may from time to time be notified for this purpose by notice served under this Agreement and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face value it is signed on behalf of the Council by an officer or duly authorised signatory thereof.
- 6.4. Where any certificate, consent, permission, nomination or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the decision of the same shall not be unreasonably be delayed or withheld and if refused written reasons for the refusal shall be provided and any such certificate, consent, permission, nomination or other approval shall be given on behalf of the Council by the Head of Planning;

7. **Release**

- 7.1. No person shall be liable for breach of a covenant, condition, restriction or obligation contained in this Agreement after it shall have parted with all interest in the Site or that part of the Site in respect of which such breach occurred but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest; or if it is
- 7.2. This Agreement shall not be enforceable against:
  - 7.2.1. Owner-occupiers or tenants of any Market Units or any mortgagee or charge of an owner-occupier of a Market Unit or any receiver appointed by such a mortgagee;
  - 7.2.2. a Protected Tenant or against those deriving title there from and any mortgagee or chargee of a Protected Tenant or any receiver appointed by such a mortgagee;
  - 7.2.3. any statutory undertaker, service company or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services;

- 7.2.4. the relevant highway authority to whom any part of the Site is disposed of for the purposes of adoption of any roads and/or footpaths and or/cycle ways to be constructed on the Site;
  - 7.2.5. a local authority or other statutory body to whom any part of the Site is disposed of for use as public open space or any other public amenity area pursuant to a planning agreement or otherwise;
  - 7.2.6. any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.
- 7.3. Save in respect of the obligations in Part 2 of the Third Schedule and the Fourth Schedule of this Agreement shall not be enforceable against:
- 7.3.1. owner-occupiers or tenants of any Affordable Housing Units constructed pursuant to the Planning Permission or against those deriving title therefrom;
  - 7.3.2. any purchaser of an individual Affordable Housing Unit from a mortgagee or chargee pursuant to any default by an individual mortgagor of an Affordable Housing Unit or any person deriving title from that individual mortgagor or purchaser; or
  - 7.3.3. any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver **PROVIDED THAT:**
    - 7.3.3.1. such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
    - 7.3.3.2. if such disposal has not completed within the three (3) month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the obligations in Part 2 of the Third Schedule and the Fourth Schedule of this Agreement which provisions shall determine absolutely.

- 7.4. Nothing in this Agreement restricts or is intended to restrict the exercise at any time by the Council of any of their statutory functions or discretions, rights, powers, duties or obligations in relation to any part of the Site or otherwise.
- 7.5. If the Planning Permission shall expire before the Commencement Date or shall at any time be quashed, revoked, otherwise withdrawn or it is, without the consent of the Owner, modified by any statutory procedure the provisions of this Agreement shall forthwith determine and cease to have effect (insofar only as they have not already been complied with) and any Local Land Charge registered pursuant to clause 7.7 shall be cancelled as soon as reasonably practicable.
- 7.6. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 7.7. This Agreement shall upon completion be registered by the Council as a Local Land Charge.
- 7.8. If any sum due under this Agreement shall remain unpaid after the same has become due (without prejudice to any other right of the parties to this Agreement) Interest shall be paid thereon by the defaulting party to the other party from the date the sum becomes due to the date of actual receipt of the payment by the receiving party.
- 7.9. No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default.
- 7.10. If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 7.11. Nothing in this Agreement shall be construed as granting planning permission or any other approval consent or permission required from the Council in exercise of any other statutory function.
- 7.12. In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of such application references to the Planning Permission in this Agreement shall be to the new planning permission granted pursuant to Section 73 of the Act as well and this Agreement shall apply to and remain in full force in respect of that new planning permission (and the original Planning Permission) without the need for a further agreement to be entered into pursuant to Section 106 of the Act.

## **8. Disputes**

- 8.1. Unless and to the extent not specified otherwise in this Agreement any dispute (save for any disputes as to matters of law) which has been identified in writing by one party to another and which has not been resolved within 20 Working Days (or such lesser period as may be agreed between the parties) of the date of receipt by the other party of such written notice may be referred at the insistence of any party to an **Expert** appointed jointly by the parties or in default of agreement within 10 Working Days after

either party has given to the other a written request requiring the appointment of the expert by the President for the time being of the Royal Institution of Chartered Surveyors for disputes relating to land or valuation matters, the President of the Royal Town Planning Institute for planning and design matters or in the case of any other dispute the President of the Bar Council.

- 8.2. The Expert shall have at least 10 years post qualification experience in the area of the dispute in question.
- 8.3. The Expert shall act as an expert and not as an arbitrator and the decision of the Expert shall be final and binding upon the parties (except where there is a manifest error and/or on a matter of law) and the following provisions shall apply to the Expert.
- 8.4. The charges and expenses of the Expert shall be borne between the parties in such proportions as the Expert may direct.
- 8.5. The Expert shall give each of the parties an opportunity to make representations to him before making his decision which he shall make available to the other parties on request.
- 8.6. The Expert shall be entitled to obtain opinions from others if he so wishes.
- 8.7. The Expert shall make his decision on valuation matters within the range of any representations made by the parties.
- 8.8. The Expert shall comply with any time limits or other directions agreed by the parties on or before his appointment.
- 8.9. If the Expert is unable or unwilling to accept his appointment or to carry out his functions then either party may apply for a replacement to be appointed in his place and this procedure may be repeated as often as necessary.
- 8.10. The decision of the Expert must be given in writing setting out the reasons behind such decision.
- 8.11. If the parties fail to agree as to the nature of the difference or question then a decision as to the nature of such difference or question shall be referred to a solicitor of at least ten (10) years post qualification experience in the same manner and the same terms as set out in clauses 7.1 to 7.11 inclusive who shall determine which type of professional should be appointed in relation to such matter.
- 8.12. The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

## **9. Legal Costs**

- 9.1. The Developer agrees to pay to the Council on the date hereof the sum of £800 as a contribution towards the reasonable legal costs incurred by the Council in the negotiation preparation and execution of this Deed.

10. **Monitoring Fees**

- 10.1. The Owner shall pay 50% of the Monitoring Fee (Commuted Sums) to the Council prior to first Occupation and the remaining 50% of the Monitoring Fee (Commuted Sums) prior to the Occupation of the 22<sup>nd</sup> Dwelling on the Site.
- 10.2. The Owner shall pay the Monitoring Fee (Communal Areas) to the Council prior to first Occupation of the Site.
- 10.3. The Owner shall pay the Monitoring Fee (Affordable Housing) to the Council on the date of Practical Completion.

11. **Notice of Change in Ownership**

- 11.1. The Owner agrees with the Council that until all obligations under this Deed have been discharged to give the Council notice of any change in ownership of any of their legal interests in the Site and the creation of any new legal interests by them on the Site within 15 Working Days of the occurrence of such change or creation and such notice shall give details of the transferee's full name and registered office (if a company) or usual address together with the area of the Site or relevant unit of occupation by reference to a plan **PROVIDED THAT** this obligation shall not apply to a sale or disposal of an individual Dwelling or to the disposal of part of the Site to a Statutory Undertaker for the purposes of its undertaking or to the grant of an agricultural or farm business or similar tenancy.

12. **Mortgagee's Consent**

- 12.1. The Mortgagee acknowledges that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the covenants and obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement **PROVIDED THAT** the Mortgagee shall otherwise have no liability under this Deed unless it has taken possession of or otherwise seeks to exercise a power of sale in respect of the Site (or any part thereof) in which case it too will be bound by the obligations in this Agreement as if it were a person deriving title from the Owner.

13. **Developer's Consent**

- 13.1. The Developer consents to its interest in the Site being bound hereby and covenants with the Council that upon acquiring a freehold or leasehold interest in the Site it will be subject to the obligations in this Agreement as a person deriving title thereto **PROVIDED THAT** it shall have no liability unless (save in respect of clause 9 above) and until it acquires the freehold or a leasehold interest in the Site.

14. **Indexation**

- 14.1. Any Contributions referred to in the Fifth Schedule shall be increased by an amount equivalent to the increase in the RPIX from the date hereof until the date on which such sum is paid.



15. **VAT**

- 15.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

16. **Delivery**

- 16.1. The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

17. **Counterparts**

- 17.1. This Agreement may be executed by the parties in counterpart, each of which so executed and delivered shall be an original, but all of which shall constitute one and the same agreement.

18. **Notices**

Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or in the case of the Council sent to the Head of Planning at both [planning@rossendalebc.gov.uk](mailto:planning@rossendalebc.gov.uk) and [s106@rossendalebc.gov.uk](mailto:s106@rossendalebc.gov.uk).

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

### **First Schedule – The Site**

The registered freehold land lying to the south of Hardman Avenue, Rawtenstall, Rossendale being part of the land registered at the Land Registry under Title Number LA578207 part of the land registered at the Land Registry under Title Number LA692054 and as shown edged red on Plan 1.

### **Second Schedule – Description of the Development**

Full planning permission for the demolition of the existing buildings and the erection of 44 dwellings, creation of a new vehicular access off Hardman Avenue, along with landscaping, public open space, drainage and all other associated works.

Application No: 2023/0462

### **Third Schedule – Affordable Housing**

The Owner hereby covenants with the Council as follows:

#### **Part 1**

1. To provide the Council with notice of the proposed Commencement Date prior to the Commencement of Development.
2. Prior to the Commencement Date to submit to the Council for approval (such approval not to be unreasonable withheld or delayed) the Affordable Housing Scheme comprising the Affordable Housing Mix.
3. Prior to the Commencement Date to submit to the Council for approval the Market Value Notice and the Council shall confirm within fifteen (15) Working Days of receipt of the Market Value Notice whether it approves the valuations (such approval not to be unreasonably withheld or delayed), failing which the valuations provided in accordance with this paragraph shall be deemed to be approved by the Council.
4. The Owner covenants with the Council not to Commence Development of any part of the Site unless a notice pursuant to paragraph 1 above has been served on the Council and the Affordable Housing Scheme has been approved and the valuations pursuant to the Market Value Notice have been approved or deemed approved in accordance with paragraph 3.

#### **Part 2**

##### **A. Construction of the Affordable Housing Units**

1. To Construct the Affordable Housing Units in accordance with the Affordable Housing Scheme, Planning Permission and as more particularly set out in this Agreement.
2. The Owner shall serve notice on the Council within fifteen (15) Working Days of Practical Completion of each of the Affordable Housing Units (for the avoidance of doubt Practical Completion of the Affordable Housing Units shall not be achieved unless all the Services are connected and operating insofar as they serve the Affordable Housing Units and the Affordable Housing Units are safely accessible by both vehicles and pedestrians).

##### **B. Transfer of the Affordable Housing Units**

1. The Owner shall use all reasonable endeavours to enter into a contract to dispose of the freehold interest in all the Affordable Housing Units to one Affordable Housing Provider (with preference being given to Affordable Housing Providers who operate in and/or are local to the Borough) unless otherwise agreed in writing with the Council.
2. The Owner shall use reasonable endeavours to agree with the Council the identity of the Affordable Housing Provider to which the Affordable Housing Units are to be

transferred and the Council shall respond to any request for such agreement within twenty one (21) Working Days.

3. The agreement to dispose of any of the Affordable Housing Units to the Affordable Housing Provider must impose (inter alia) the following or equivalent terms:
  - 3.1. a restrictive covenant by the Affordable Housing Provider not to use the Affordable Housing Units other than for Occupation by Approved Persons in Housing Need for residential purposes and in accordance with the terms of this Agreement; and
  - 3.2. that the transfer of the Affordable Housing Units to the Affordable Housing Provider be free from any ground rent or encumbrances save for any existing encumbrances and such rights reservations and covenants as are necessary to enable the Owner to develop the Site in accordance with the Planning Permission and shall grant to the relevant Affordable Housing Provider such rights and covenants as are necessary to enable it to provide and beneficially use and enjoy the Affordable Housing Units; and
  - 3.3. the Owner shall not require the relevant Affordable Housing Provider to meet any of the Owner's legal or other conveyancing costs.
4. The Owner shall provide confirmation to the Council that an agreement for the transfer of the Affordable Housing Units to an Affordable Housing Provider has been entered into within ten (10) Working Days of it being entered into.
5. The Shared Ownership Units shall:
  - 5.1. be marketed and made available by the Affordable Housing Provider as Shared Ownership Units (as determined by the Affordable Housing Scheme);
  - 5.2. meet the lease requirements in the definition of Shared Ownership Housing;
  - 5.3. be sold (by way of the grant of a lease) by the Affordable Housing Provider to Approved Persons;
  - 5.4. require (insofar as it is legally possible to do so) each Approved Person who acquires a Shared Ownership Unit to enter into an obligation in the document affecting the relevant disposal to occupy it as that person's sole or main residence; and
  - 5.5. remain as Affordable Housing in perpetuity; and
  - 5.6. be let via B-with-us or any subsequent Choice Based Lettings partnership that the Council is a member of from time to time.
6. The Affordable Rented Units shall:
  - 6.1. be marketed and made available by the Affordable Housing Provider as Affordable Rented Housing (as determined by the Affordable Housing Scheme);
  - 6.2. be granted on a Tenancy;
  - 6.3. be let by the Affordable Housing Provider to Approved Persons;
  - 6.4. remain as Affordable Housing in perpetuity; and

6.5. be let via B-with-us or any subsequent Choice Based Lettings partnership that the Council is a member of from time to time.

7. Subject to compliance with paragraph 1 above, in the event the Owner has either:

7.1. not been able to identify an Affordable Housing Provider which is acceptable to the Council in accordance with this Schedule and which is ready willing and able to exchange unconditional contracts on commercially acceptable terms to the Owner for the purchase of all of the Affordable Housing Units; or

7.2. has identified an acceptable Affordable Housing Provider which was ready willing and able to exchange unconditional contracts for the purchase of the all of the Affordable Housing Units but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Affordable Housing Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider)

in either case within six (6) months of the date of this Agreement then, the Owner may at any time following the 6-month period referred to notify the Council that they have not exchanged contracts with an Affordable Housing Provider for the disposal of all of the Affordable Housing Units together with evidence of how it is complied with paragraph 1 above and the Council shall then (subject to the Council being satisfied that the Owner has complied with paragraph 1 above and in the event that the Council is not so satisfied the time periods in paragraph 1 shall begin to run for a further six months after which a new notice under this paragraph 7 may then be served if the necessary conditions are satisfied) use reasonable endeavours to identify a suitable Affordable Housing Provider which is ready able and willing to exchange contracts for the purchase of all of the Affordable Housing Units (or such as remain unsold) and the provisions of the paragraph 8 of this Schedule shall apply.

8. In the event that either:

8.1. the Council have not been able to identify an Affordable Housing Provider which is ready willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units from the Owner; or

8.2. the Council had identified an Affordable Housing Provider which is ready and willing and able to exchange unconditional contracts for the purchase of all of the Affordable Housing Units from the Owner but such Affordable Housing Provider withdraw(s) from the transaction or otherwise indicates that it is unlikely that it is able or willing to purchase all of the Affordable Housing Units (including where contracts have been exchanged but not completed due to the default of the Affordable Housing Provider)

in either case within six (6) months of the date upon which the Owner notified the Council under paragraph 7 then the provisions of the paragraph 9 of this Schedule shall apply.

9. If an Affordable Housing Provider has not been identified to take a transfer of the Affordable Housing Units in compliance with paragraphs 7 and 8 of this Schedule then the Council and the Owner (both acting reasonably) shall seek to agree an appropriate alternative scheme for providing Affordable Housing for Occupation by Approved Persons in Housing Need or as appropriate payment of a commuted sum for the

provision of alternative Affordable Housing within the administrative area of the Council.

10. Where the Owner and the Council are not able to reach agreement in accordance with paragraph 9 above within one month of the Owner submitting such evidence, the Owner shall be entitled to dispose of the Affordable Housing Unit as an Market Unit, free from the restrictions within this Agreement, subject to payment to the Council of 55% of the Net Sales Proceeds for the Affordable Rented Units and 40% of the Net Sales Proceeds for the Shared Ownership Units to the Council as a commuted sum (subject to the Council having first agreed the Net Sales Proceeds figure with the Owner for the relevant Dwelling prior to such disposal) within 5 Working Days of legal completion, for the provision of alternative Affordable Housing within the administrative area of the Council (**Affordable Housing Commuted Sum**).

## **Fourth Schedule – Parts 1 and 2**

### **Part 1 - Eligibility for the Shared Ownership Units**

1. An Approved Person should meet the following eligibility criteria for the Shared Ownership Units:
  - 1.1. applicants must have a local connection with the area in which they are seeking to live;
  - 1.2. applicants must be deemed to be in need of financial assistance to purchase a property on the open market;
  - 1.3. applicants must be able to demonstrate a housing need for a property type.
2. For the avoidance of doubt local connection means (not in order of priority):
  - 2.1. applicants who have previously had their only or principal home in the Borough for 6 out of the last 12 months or 3 out of the last 5 years; or
  - 2.2. applicants who for a period of 12 months prior to proposed Occupation of an Affordable Housing Unit had their principal place of work within the Borough ; or
  - 2.3. applicants who have immediately prior to the proposed Occupation of an Affordable Housing Unit one or more of their parents children or siblings living within the Borough for a continuous period of five years.
3. Applicants will be assessed on their current housing need.
4. The Affordable Housing Unit must be the applicants sole or principal home.
5. Applicants will only be authorised to proceed with the tenancy/lease (as applicable) after meeting the criteria above. Applicants will normally only be permitted to occupy Affordable Housing Units with an excess of one bedroom for their current housing need, however discretion may be showed where it is reasonable to expect a household's need increase.
6. Provided Always that notwithstanding the above the Council and Affordable Housing Provider may agree between themselves any amendment to the eligibility criteria set out in this Schedule where the Council shall deem it reasonable to do so and provided further that after such amendments are applied the applicant is able to demonstrate a housing need for a property type. The applicants must use the accommodation as their main and principal residence.
7. If after the Affordable Housing Units have been marketed for 6 months there is no interest from applicants who comply with paragraphs 1 and 2 applicants who are ordinarily resident within the Borough can be considered as well as applicants who can demonstrate a need for affordable housing.



## Part 2 – Eligibility for the Affordable Rented Units

1. An Approved Person should meet the following Eligibility Criteria for the Affordable Rented Units:
  - 1.1. applicants must be deemed to be in Housing Need;
  - 1.2. applicants must have a local connection with the area in which they are seeking to live;
  - 1.3. applicants must be able to demonstrate a housing need for a property type.
2. For the avoidance of doubt local connection means (not in order of priority):
  - 2.1. applicants who have previously had their only or principal home in the Borough for 6 out of the last 12 months or 3 out of the last 5 years; or
  - 2.2. applicants who for a period of 12 months prior to proposed Occupation of an Affordable Housing Unit had their principal place of work within the Borough ; or
  - 2.3. applicants who have immediately prior to the proposed Occupation of an Affordable Housing Unit one or more of their parents children or siblings living within the Borough for a continuous period of five years.
3. For the avoidance of doubt applicants will be assessed on their current housing need.
4. For the avoidance of doubt the Affordable Rented Units must be the applicants sole or principle home.
5. Provided always that notwithstanding the above the Council and Affordable Housing Provider may agree between themselves any amendment to the Eligibility Criteria where the Council shall deem it reasonable to do so and provided further that after such amendments are applied the applicant is able to demonstrate a housing need for a property type.
6. Upon allocation of the Affordable Rented Units for first lets and all subsequent lets the Affordable Housing Provider will confirm the details of each successful applicant detailing the criteria by which they qualify and the property address allocated to them and send this information to the Council.

### **Fifth Schedule – Additional Owner Covenants**

The Owner covenants with the Council that:

1. it shall, prior to first Occupation, submit to the Council a plan for the management and maintenance of the Communal Area to be approved by the Council (acting reasonably and such approval shall not be unreasonably withheld or denied).
2. the Development shall not be Occupied until the plan referred to at paragraph 1 of this Schedule has been approved by the Council (**Communal Area Plan**).
3. It shall reasonably and properly maintain the Communal Area in perpetuity in accordance with the Communal Area Plan and the Owner shall levy a service charge from the owners and/or occupiers of the Dwellings in respect of such management and maintenance.
4. in the event that the Owner fails to comply with the objectives of the covenants set out in paragraph 3 of this Schedule (in respect of the ongoing maintenance and management of the Communal Area) the Owner acknowledges that the Council may serve notice on the Owner detailing any works that it considers to be reasonably required to manage and maintain the Communal Area (the **Default Notice**) setting out the period within which the Owner must undertake and complete such works. The Owner shall comply with the requirements in the Default Notice.
5. in the event that the Owner fails to comply with the requirements in the Default Notice by the end of the Notice Period the Owner grants the Council licence to access the Communal Area with workmen, plant and machinery to carry out the works required to remedy the default and in such circumstances the Owner covenants to pay to the Council on demand the Council's reasonable costs incurred (plus Interest) in carrying out such works, from the date of issue of a demand for payment by the Council to the Owner.
6. it shall allow the Council to have access to the Site at all reasonable times to monitor compliance with the covenants in this Schedule and that it will provide the Council with such information as the Council shall request from time to time to verify or check such compliance.
7. The Owner shall pay to the Council a monitoring fee of £1,000 in respect of the monitoring of the obligations at paragraphs 1— 5 of this Schedule on the Commencement Date.

#### **8. Payment of the Contributions**

8.1 The Owner will pay the Contributions in the following instalments:

8.1.1 50% of the value of the aggregate sum of the Contributions shall be paid prior to the 1<sup>st</sup> Occupation of any Dwelling;

8.1.2 and the remaining 50% of the value of the aggregate sum of the Contributions shall be paid prior to the Occupation of the 22<sup>nd</sup> Dwelling.

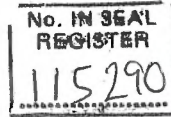
8.2 The Contributions shall be subject to indexation in accordance with clause 14.

#### **Sixth Schedule– The Council's Covenants**

1. To apply the Contributions and Affordable Housing Sum received from the Owner for the purposes set out in this Agreement.
2. In the event that either any of the Contributions or Affordable Housing Commuted Sum has not been expended in accordance with the provisions in this Agreement (and money shall be deemed to have been expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt by the Council of such sum plus interest accrued the Council shall repay the sum of any of the unspent Contributions or the sum of any of the unspent Affordable Housing Commuted Sum to either the party that paid either the Contributions or Affordable Housing Commuted sum or its nominee
3. When requested in writing the Council shall provide written confirmation of the discharge of obligations contained in this Agreement once the Council is satisfied (acting reasonably) that such obligations have been performed.
4. To provide the Payer such evidence as the payer may reasonably require to confirm the expenditure of the sums paid by the payer under this agreement.

IN WITNESS whereof the Council, the Owner and the Developer have executed this Agreement as a Deed the date and year first before written.

**EXECUTED AS A DEED** by the  
**ROSSENDALE BOROUGH COUNCIL**



By affixing its common seal in the Presence of:



SIGNED as a deed by  
**TRACEY JAYNE CONNOR**

in the presence of:

Witness Signature:

Witness Name (in caps):

Witness Address:

Witness Occupation:

**EXECUTED** as a deed by affixing the Common Seal  
of **NATIONAL COUNTIES BUILDING SOCIETY** by order  
of the Board of Directors in the presence of:

By authority of the Board of Directors

EXECUTED as a deed by  
**M.C.I DEVELOPMENTS LIMITED**

By a Director

in the presence of:

Witness Signature:

Witness Name (in caps):

Witness Address:

Witness Occupation:

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Appendix 1 – Plan 1





ACCOMMODATION SCHEDULE									
Housetype	Number	SqM	SqFt	Bed Nos.	Total SqFt	Mid	End	Det	Total
LOCKWOOD	16	69	747	2	11952	0	16	0	16
HAWKRIDGE M4(2)	10	77	829	3	8290	0	10	0	10
SALTBURN SP	7	90	988	3	6778	0	7	0	7
CONISTON SP	2	80	858	3	1716	0	2	0	2
KENTMERE	5	72	773	3	3865	0	5	0	5
LEADMILL B	2	48	514	1	1028	0	2	0	2
LEADMILL A	2	45	487	1	974	0	2	0	2
TOTAL	44				34601				44
Nett Area	2.63	Acres							
Coverage	13,156	SqFt/Acre							
Density	16.7	UPA							

#### KEY

- Site Boundary
- Retained Land Boundary
- Existing Water Course (6m easement)
- Existing Wall & Water Outfall (6m easement)
- Existing Pond
- Retained Trees
- Public Open Space
- Existing Public Right of Way
- Diverted Public Right of Way
- Water Butt

AD	02.05.24	JG	Plot 14 parking arrangements amended to accommodate landscaping strip to screen Lock + Land retaining wall
AC	09.04.24	JG	Water butt added to each plot with RWMP handed accordingly. Pests area to plots 34 and 41-44 proposed to accommodate water butt
AB	31.01.24	JG	PRCW provided with clearly defined 2m min. Bin collection point moved adjacent to turning head.
AA	08.01.24	JG	Adopted turning head added to plots 35-40 to accommodate 12m minimum reverse distance for refuse vehicles. Private turning head to plots 41-42 omitted.
Z	04.01.24	JG	Substation not required - confirmed by M/J advice.
Y	03.01.24	JG	Updated in response to Head of Planning comments. Plots 1-10 moved 3m South to address the Officer's concerns regarding the privacy of 150-164 Hardman Avenue. Highway reconfigured to suit. Frontage parking reduced with cycle parking introduced to plots 15, 16 & 17. Proposed retaining walls and steps shown with reference to the external works plan.
X	14.12.23	JG	Cycle stores added to layout.
W	04.12.23	JG	External works overlay updated. Plot numbers added to parking bays. Bin storage clash with External Works wall amended to Plot 11. House type hatch added to plots.
V	10.11.23	JG	EXTERNAL WORKS ADDED TO DRAWING

REV	DATE	DRAWN	DESCRIPTION	ARCH CHECK	END CHECK
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MCI

A RELPMOAT HOMES COMPANY

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Wigan, WN3 6PR  
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web: www.mcidevelopments.com  
email: info@mcidevelopments.com

PROJECT				
HARDMAN AVE, RAWTENSTALL				
DRN BY	JG	SCALE	1:500 @ A2	JOB REF
DATE	02.01.24	096	MCI-096-DR-A-500	REV
				AD

Appendix 2 – Plan 2



