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| **DATED: day of 2020****PLANNING OBLIGATION BY UNILATERAL UNDERTAKING (AS A DEED) UNDER SECTION 106 OF THE** **TOWN AND COUNTRY PLANNING ACT 1990**  |
| relating to development of land between 185 & 195 Mains Lane, Singleton, Poulton-Le-Fylde, FY6 7LB (Ref: 18/0726) |
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|   **CARRINGTON GROUP MAINS LANE LIMITED**   **Highways England Company Limited**  **SHAWBROOK BANK LIMITED** **To** **FYLDE BOROUGH COUNCIL** |
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|  | **DATED: day of 2020** |
|  | **PARTIES**  |
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|  | **CARRINGTON GROUP MAINS LANE LIMITED** (Co. Reg. No. 09979055**)**, a company incorporated in England and Wales whose registered office is c/o Williamson & Croft LLP, 81, King Street, Manchester, England, M2 4AH (“the Owner”); and |
|  | **Highways England Company Limited** (Co. Reg. No. **09346363)**, a company incorporated in England and Wales whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1 4LZ (“Highways England”); and |
|  | **SHAWBROOK BANK LIMITED** (Co. Reg. No. 388466), a company incorporated in England and Wales whose registered office is at Lutea House, Warley Hill Business Park, The Drive, Great Warley, Brentwood, Essex CM13 3BE (“the Mortgagee”) |
|   | Each a “party” and together the “parties” |

**INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. Highways England is a highway authority, appointed pursuant to the Appointment of a Strategic Highways Company Order 2015, that operates, maintains and improves motorways and major A roads in England.
3. The Owner is the freehold owner of the Site.
4. The Mortgagee is the registered proprietor of a charge over the site dated 23 December 2019.
5. The Council granted the Discharge of Conditions Consent on 28 May 2019.
6. The Planning Inspectorate granted the Planning Permission on 6 November 2017.
7. The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to comply with the ongoing requirements of condition 12 on the Planning Permission and to secure the planning obligations contained in this Deed.
8. The parties hereto consider that the restrictions and obligations contained in this Deed serve planning purposes, are material to the Planning Permission and to the Discharge of Conditions and comply with the statutory tests as set out in the Community Infrastructure Levy Regulations 2010.

**NOW THIS DEED WITNESSES as follows**:

**OPERATIVE PART**

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

“Act” the Town and Country Planning Act 1990

“Application” the application for the discharge of planning conditions (included on planning permission reference: 16/1006) submitted to the Council for the Development and allocated reference number 18/0726

“Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly

“Council” Fylde Borough Council of the Town Hall, Lytham St Annes, Lancashire FY8 1LW

“Development” the development of the Site pursuant to the Planning Permission

“Development Consent Order

(DCO)” means the Development Consent Order granted by the Secretary of State for Transport on 9 April 2020 subject to requirements, a draft of which is set out in the X Schedule

 “Discharge of Conditions Consent” the decision granted by the Council in accordance with the Application, specifically “the discharge of conditions 7 (access onto A585), 9 (levels), 11 (surface water drainage scheme), 15 (tree protection), 19 (maintenance of open space and amenity landscaping), 20 (ecological management plan) AND 21 (internal noise) of planning permission 16/1006”

“Drainage System” means:

1. the network of surface water and foul sewers within the Development; and
2. the attenuation pond and associated flow control manhole; and
3. the foul water package treatment plant; and
4. drain pipes, chambers and the swale ditch forming the Development’s drainage outfall to a proposed bypass ditch.

“Drainage System Management

Plan” means the Plan attached at Schedule X of this Deed which forms the basis of the document submitted with the Application to the Council (the Surface and Foul Water Design Statement) that ensures the quality and volume of drainage discharge is as indicated within the same

“Dwelling/s” the dwellings to be provided pursuant to the Planning Permission

 “New Road” means that route as detailed within Highways the Development Consent Order and specifically that part of the A585 Windy Harbour to Skippol Bypass route that crosses part of the Development in the position as illustrated on the approved plans for the Development Consent Order

“Occupation” and “Occupied” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Plan” the plan annexed hereto showing the location of the Site edged red

“Planning Permission” the planning permission subject to conditions granted by The Planning Inspectorate pursuant to the Application reference 16/1006 (a draft of which is set out in the Second Schedule)

“Residents Management

Company” means a body incorporated to carry out the long term management and maintenance of the Drainage System in accordance with the Drainage System Management Plan

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| “Site”   | the land described in the First Schedule |

“Working Day” any day other than Saturday and Sunday and any bank holiday

**2 CONSTRUCTION OF THIS DEED**

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 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 against each individually unless there is an express provision otherwise.

2.5 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.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and Highways England, the successors to their statutory functions.

**3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

**4 CONDITIONALITY**

 This Deed is conditional upon:

* 1. the New Road being part of the Site in the relevant position as outlined in the DCO;

* 1. the Commencement of Development; and
	2. Condition 12 on the Planning Permission being discharged by the Council (to the extent that it can be, save for those parts of the condition that are subject to on-going compliance by the Owner)

save for the provisions of Clauses 4, 16 and 17 which shall come into effect immediately upon completion of this Deed.

**5 THE OWNER’S COVENANTS**

 The Owner covenants with the Council and Highways England as set out in the Third Schedule.

**6 THE COUNCIL AND HIGHWAYS ENGLAND’S COVENANTS**

The Council and Highways England covenant with the Owner as set out in the Fourth Schedule.

**7** **MISCELLANEOUS**

7.1 Not used.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from Highways England under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of Highways England by its employees and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party in accordance with clause 18.

7.5 This Deed is provided on the condition that following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

7.7 This Deed is provided on the condition that it shall cease to have effect (insofar only as it has not already been complied with) if either i) the Planning Permission, ii) the Discharge of Conditions Consent, iii) the discharge of condition 12 on the Planning Permission or iv) the Development Consent Order shall be quashed, revoked or otherwise withdrawn or any of the aforementioned are modified by any statutory procedure or expire prior to the Commencement of Development.

7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.9 Nothing in this Deed 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 Deed.

7.10 This Deed shall not be enforceable against:

7.10.1 owner-occupiers or tenants of the Dwellings or any of their respective successors in title or chargees; or

7.10.2 any statutory undertaker after the transfer to it of statutory apparatus and any land within the Site upon or in which that statutory apparatus is situated; and

7.10.5 for the avoidance of doubt any successors in title of the above.

**8 WAIVER**

No waiver (whether expressed or implied) by the parties of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the relevant party from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 **MORTGAGEE’S CONSENT**

9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**10 CHANGE IN OWNERSHIP**

10.1 The Owner will give the Council and Highways England written notice within 5 working days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee’s full name and registered office (if a company) or usual address (if not) together with the area of the Site purchased by reference to a plan and the consideration for the transaction provided that this clause shall not apply to any change in Ownership arising from the sale or lease of a Dwelling or the transfer of land to a statutory undertaker when otherwise the provisions for notices in the Third Schedule shall apply.

**11 NOT USED**

**12 NOT USED**.

**13 VAT**

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

**14 DISPUTE PROVISIONS**

14.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either party to the President for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

**15 NOT USED**.**16 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales.

**17 DELIVERY**

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.

**18 NOTICES**

18.1 All notices, demands or other written communications to or from the Owner, the Council and Highways England in relation to this Deed shall be deemed to have been properly given or made if sent by either an email acknowledged as received, first class recorded delivery letter to the Owner, the Council or County Council, as appropriate, at the address specified at the beginning of this Deed or such address as the relevant party may notify to the other parties from time to time.

18.2 Any notices, demands or other written communication in relation to this Deed shall be deemed to have been served:

 18.2.1 if by email or hand, upon delivery;

 18.2.2 if by first class recorded delivery, 48 hours after delivery of the notice, request,

 demand or other written communication in to the postal system.

PROVIDED THAT if a notice, demand or other written communication is served after 4pm on a Working Day or on a day that is not a Working Day, needs to be treated as having been served on the next Working Day.

**IN WITNESS** whereof the parties hereto have executed and delivered this document as a Deed on the day and year first before written.

**FIRST SCHEDULE**

**Details of the Owner’s Title**

Land at between 185 & 195 Mains Lane, Singleton, Poulton-Le-Fylde, FY6 7LB, comprising part of registered title number *LAN17956*.

**second schedule**

**Form of notice of planning permission**

**THird schedule**

Part 1 - **The Owner’s Covenants with the Council**

**Payment & Notice**

The Owner Covenants with the Council:

1. That

Commencement of Development has occurred.

1. Prior to the Occupation of all of the Dwellings to set up and constitute the Residents Management Company, the terms of reference and constitution of such to first be agreed with the Council and thereafter to provide full details of the same to Highways England.
2. That it will ensure that the Residents’ Management Company will i) derive title from the Owner and ii) enter into any agreements as may be reasonably required by Highways England to ensure that the covenants within this Schedule are performed.

Part 2 - **The Owner’s Covenants with the Council and Highways England**

**Step In**

The Owner Covenants that:

1. If the Residents Management Company does not manage or maintain the Drainage System in accordance with the Drainage System Management Plan then:

4.1 PROVIDED THAT the Council, or Highways England as the case may be, shall first have given the Residents Management Company notice in writing specifying:

 4.1.1 the extent and nature of any failure to manage or maintain; and

4.1.2 the reasonable steps required to be taken to comply with the previously approved details for the Drainage System as included in the Drainage System Management Plan;

4.1.3 the reasonable timescale within which the Residential Management Company should undertake such steps with such reasonable timescale not to be specified as less than twenty one (21) days; and

4.2 if the Residents Management Company shall have materially failed to comply with the terms of the notice referred to in paragraph 2.1 above, or any subsequent notice varying the steps to be taken or the time period in which these steps are to be taken, then the Residents Management Company will permit the Council, or Highways England as the case may be, to enter on to those areas of the Site reasonably required to access the Drainage System and carry out the maintenance of the Drainage System in accordance with any of the approved and applicable details within the Drainage System Management Plan.

5. The Owner further covenants that in the event of an emergency, to be determined at the absolute discretion of Highways England or the Council, Highways England or the Council as the case may be shall be permitted to enter on to those areas of the Site reasonably required to access the Drainage System without notice and carry out any necessary repair or maintenance of the Drainage System in accordance with any of the approved and applicable details within the Drainage System Management Plan.

6. In the event that Highways England, or the Council as the case may be, enter on to those areas of the Site reasonably required to access the Drainage System and carry out the maintenance or repair of the Drainage System in accordance with any of the approved and applicable details within the Drainage System Management Plan, then the Residents Management Company will reimburse Highways England, or the Council as the case may be, for any reasonable and properly incurred costs upon the provision of evidence which shall include but not be limited to the provision of itemised invoices.

**fourth SCHEDULE**

**Council’s Covenants**

This Deed is provided on the condition that at the written request of the Owner but at no cost to the Owner, the Council and Highways England shall provide written confirmation of the discharge of the respective obligations contained in this Deed when satisfied that such obligations have been performed.

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| Executed as a deed by | ) | *Seal:* |
| **HIGHWAYS ENGLAND COMPANYLIMITED**  | ) |  |
| by affixing their common seal in the | ) |  |
| presence of: | ) |  |
|  |  | ………………………………………Authorised Signatory |
|  |  | ……………………………………… |
|  |  | Authorised Signatory |

Execution by Owner and Highways England [and Mortgagee]