

DATED

2026

- (1) CUMBERLAND COUNCIL
 - (2) WHITEHAVEN DEVELOPMENTS LIMITED
 - (3) PERSIMMON HOMES LIMITED
-

PLANNING OBLIGATION

by Deed of agreement under Section 106 of the Town and Country Planning Act 1990
relating to Land at Former Marchon Chemical Factory, High Road, Whitehaven

Clare Liddle
Chief Legal Officer Cumberland Council
Cumbria House
117 Botchergate
Carlisle
CA1 1RD

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	(E(A,B,C,E,F), F2(A) and ancillary infrastructure with all matters reserved other than access under reference number 4/21/2432/0F1.
"Commencement"	<p>means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) in respect of the Planning Permission or Reserved Matters Application (as appropriate) is begun save that irrespective of the provisions of Section 56(4) of the 1990 Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development for the purposes of this Deed only:</p> <ul style="list-style-type: none"> i. trial holes or other operations to establish the ground conditions; ii. archaeological investigations; iii. any works of demolition or site clearance; iv. any structural planting or landscaping works; v. ecological or natural conservation works; vi. construction of boundary fencing or hoardings vii. construction of access or highway works viii. remediation of contamination <p>and the term "Commence" and "Commences " shall be construed accordingly.</p>
"Contributions"	means the "English Coastal Path Upgrade Contribution", "High Road Active Travel Measures Contribution", "Mirehouse Rd / St Bees Rd Junction Contribution" and the "Travel Plan Monitoring Fee".
"Development"	means the development of the Development Land in accordance with the Planning Permission.
"Development Land"	means the land known as Land lying to the West of High Road, Whitehaven and Marchon Works, Kells, Whitehaven edged in red on Plan 1 attached to this Deed at Schedule 5 with the drawing number MWH.CP.311.2 and for the avoidance of doubt includes both the Full Phases(s) and the Outline Phase(s).
"District"	means the administrative district of the Council.
"Disposal"	means the sale or transfer of the freehold or the grant of a lease underlease or tenancy or the assignment of a lease underlease or tenancy and reference to "Dispose" shall be construed accordingly

	and for the sake of clarity the term "Disposal" and "Dispose" shall not include the creation of mortgages or charges.
"Dwellings"	means the Residential Units that may be built on the Development Land pursuant to the Planning Permission and reference to "Dwelling" shall mean any of the Dwellings.
"Full Phase(s)"	means the initial phase(s) of works on the Development Land shown edged in blue for identification on the Plan 2 numbered MWH.MPLP.01 and attached to this Deed at Schedule 6 where the works which are permitted in full shall take place.
"Interest"	means interest at 4% (four per cent) above the base lending rate of National Westminster Bank plc from time to time.
"Material Interest"	means a registered legal interest which is either a freehold estate or a leasehold interest, the lease term of which is equal to seven years or more.
"Occupation"	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; and "Occupy" , "Occupier" and "Occupied" shall be construed accordingly.
"Open Market Dwellings"	means the Dwellings to be constructed on the Development Land pursuant to the Outline Planning Permission excluding the Affordable Dwellings and reference to "Open Market Dwelling" shall be construed accordingly.
"Outline Phase(s)"	means the phase(s) of works on the Development Land shown edged in red for identification on the Plan 2 numbered MWH.MPLP.01 and attached to this Deed at Schedule 6 where the works permitted in outline only shall take place.
"Plan 1"	means the attached location plan at Schedule 5 to identify the Development Land.
"Plan 2"	means the attached plan at Schedule 6 showing the the Development to be permitted in full edged in red and the Development permitted in outline only edged in blue.
"Planning Permission"	means the planning permission granted pursuant to the Application.
"Price Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors

	or any successor organisation as at the date the Contributions become payable respectively.
"Reserved Matters Application"	means any reserved matters application to be made for the mix of Dwellings, appearance, landscaping, and layout and scale of the development in accordance with the outline element of the Planning Permission and reference to "Reserved Matters Applications" shall be construed accordingly.
"the Specialist"	means an independent chartered surveyor qualified to act as an expert having not less than ten years' professional experience in relation to developments in the nature of the Development and the Revised Reserved Matters Development and where possible property in the same locality as the Development Land.
"Working Day"	means any day from Monday to Friday inclusive which is not Christmas Day, a statutory holiday or a day between Christmas Day and New Year's Day.

2. CONSTRUCTION IN THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and words denoting persons extend to include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.3 References to any party in this Deed shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act.
- 2.4 Where a party includes more than one person any obligations of that party shall be joint and several 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, 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 An obligation on a party not to do something includes an obligation not to cause, permit or suffer the doing of that act or thing

2.7 Any obligation by any party to do something shall be deemed to include an obligation to procure the doing of that act or thing.

2.8 A reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule contained in this Deed.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the 1990 Act, Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 1972 and all other powers so enabling.

3.2 The covenants, obligations and restrictions in this Deed (in so far as they are capable) are planning obligations for the purposes of s.106 of the 1990 Act.

3.3 No person shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed:-

3.3.1 occurring after he or it has parted with his or its interest in the Development Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);

3.3.2 if he shall be an owner occupier, tenant or chargee of any of the Open Market Dwellings or a purchaser of an individual Open Market Dwelling;

3.3.3 if it is a statutory undertaker or other person who acquires any part of the Development Land or an interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services; or

4. CONDITIONALITY

4.1 Save for clauses 1-4 (inclusive) and clauses 7 – 15 (inclusive) which shall take from effect from the date of this Deed the remainder of the covenants contained in this Deed are conditional and shall take effect from the grant of the Planning Permission.

4.2 If the Planning Permission is quashed or is revoked or otherwise withdrawn, or (without the consent of the Owner) it is modified by any statutory procedure or expires before the Commencement of Development this Deed shall cease to have effect.

5. THE OWNERS' COVENANTS

5.1 The Owner covenants with the Council so as to bind its interests in the Development Land to comply with the planning obligations in Schedule 1, Schedule 2 and Schedule 3 to this Deed.

6. THE COUNCIL'S COVENANTS

6.1 The Council covenants with the Owners as set out in Schedule 4 of this Deed.

7. LEGAL COSTS

7.1 The Owner shall pay to the Council upon the date of this Deed its reasonable and proper legal fees incurred for the preparation of this Deed costs of £2,500.00 for the negotiation of this Deed.

8. NOTICE

8.1 Any notice or other communication given or made under this Deed shall be in writing (which for this purpose shall not include email) and shall be delivered personally or sent by first class post to the address of the addressee specified in clause 8.2 this Deed.

8.2 Subject to clause 8.2.3, the contact details for each party are:

8.2.1 For the Owner:

Address: 183 St. Vincent Street, 1st Floor, Glasgow, G2 5QD

Name: c/o NPL Group (UK) Ltd,

8.2.2 For the Council:

Address: Planning Services, Thriving Places, Cumberland Council, Civic Centre, Rickergate, Carlisle CA3 8QG

8.2.3 For the Developer:

Address: Persimmon House, Lancaster Business Park, Caton Road, Lancaster, LA1 3RQ

Name: Stuart Binks

8.3 A party may give notice of a change to its name, address or relevant address for the purposes of this clause provided that such notification shall only be effective on:

8.3.1 The date specified in the notification as the date on which the date the change is to take place; or

8.3.2 If no date is specified or the date specified is less than five (5) Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery;

8.4.2 if sent by post, on the second Working Day after posting; or

8.4.3 if sent by recorded delivery, at the time delivery was signed for.

8.5 If notice, demand or any other communication is served after 4.00pm on a Working Day or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

9. MISCELLANEOUS

9.1 The Deed is a local land charge and shall be registered as such.

9.2 The provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from the terms of this Deed.

9.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Development Land in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.

9.4 If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.

9.5 The provisions of this Deed shall be of no effect until this Deed has been dated.

9.6 The Owner agrees with the Council to give the Council written notice of any Disposal of the Development Land (or part of it) occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees full name and registered office (if a company or usual address if not) together with the area of the Development Land or unit of occupation acquired by reference to a plan PROVIDED THAT the requirement in this clause 9.6 to provide written notice shall not apply on the Disposal of an individual Dwelling;

9.7 If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.

9.8 Any sum referred to in this Deed (save for the Travel Plan Monitoring Fee) shall be increased by an amount equivalent to the increase in the Price Index from the date hereof until the date on which such sum is actually paid.

10. FETTER OF DISCRETION

10.1 Nothing contained or implied in this Deed shall fetter, prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions and responsibilities as a local authority.

11. DETERMINATION OF DISPUTE

11.1 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with the subject matter of this Deed or

any failure to agree upon any matter may be referred in accordance with clause 11.2 to the determination of a Specialist.

- 11.2 Any reference to a Specialist in accordance with clause 11.1 shall be to a reputable chartered surveyor unconnected to any of the parties hereto and experienced in commercial development matters who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Specialist shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error) and if the parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Specialist shall act as an expert pursuant to the terms of this clause 11.2 then each of the parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Specialist himself) shall be paid.

12. DEVELOPER CONSENT

- 12.1 The Developer consents to the covenants in this Deed and acknowledges and agrees that on becoming an owner of the Development Land or any part thereof (whether pursuant to any of the agreements referred to at Recital (C) or otherwise) it shall be bound by the Owners' covenants restrictions stipulations and obligations contained within this Agreement (in relation to the part only which it takes a transfer of) as a successor in title to the Owners and, for the avoidance of doubt, the Developer shall be deemed to have become an owner of the Development Land on the date that any such transfer has been completed (regardless of whether or not such transfer has been registered at HM Land Registry).

13. GOVERNING LAW

- 13.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

14. SECTION 73 OF THE 1990 ACT

- 14.1 If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the Council is minded to approve such S73 Application the following shall apply:

- 14.1.1 if the Council considers that the planning obligations contained in this Deed are both sufficient and necessary to make the Development proposed by such S73 Application acceptable in planning terms then references to Planning Permission

in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further Deed to be made pursuant to section 106 of the 1990 Act; or

- 14.1.2 if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 14.1 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further Deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 14.1.1 shall be disregarded.

IN WITNESS whereof the parties hereto have executed this document as a deed and it is delivered and takes effect on that date stated at the beginning of it.

SCHEDULE 1

The Owner covenants with the Council as follows:

1. TITLE

- 1.1 That no person other than the Parties to this Deed has any material interest in the Development Land for the purposes of Section 106 of the 1990 Act.

2. NOTICE AND MONITORING

- 2.1 To give notice in writing to the Council not later than 28 days before the Commencement of Development.
- 2.2 To give notice in writing to the Council not later than 28 days before first Occupation of any part of the Development.
- 2.3 To give notice in writing to the Council upon Occupation of the final Dwelling.
- 2.4 To provide in writing to the Council (as soon as reasonably practicable following a written request made by the Council) such information as the Council reasonably requires to monitor compliance with this Deed.

SCHEDULE 2 - THE CONTRIBUTIONS

In addition to those definitions contained in clause 1.1 of this Deed, the following definitions apply to this Schedule 2:

“English Coastal Path Upgrade Contribution”	means a contribution of £65,000 (SIXTY FIVE THOUSAND POUNDS) to be applied by the Council towards the improvements to the English Coastal Path in the vicinity of the Development Land.
“High Road Active Travel Measures Contribution”	means a contribution of £80,000 (EIGHTY THOUSAND POUNDS) to be applied by the Council towards the enhancement of the active travel facilities on High Road.
“Mirehouse Rd / St Bees Rd Junction Contribution”	means a contribution of £59,600 (FIFTY NINE THOUSAND SIX HUNDRED POUNDS) to be applied by the Council towards the highway improvement works at the Mirehouse Rd / St Bees Rd Junction within the vicinity of the Development.
“Travel Plan Monitoring Fee”	means the sum of £6,600 (six thousand six hundred pounds) in respect of the costs associated with the ongoing review and monitoring of the travel plan, submitted by the Owners in accordance with the Planning Permission.

Part A

The Owner covenants with the Council to bind the Development Land in the Full Phases(s) only:

1. ENGLISH COASTAL PATH UPGRADE CONTRIBUTION

- 1.1 Prior to Occupation of the 50th (FIFTIETH) Dwelling of the Development to pay the English Coastal Path Upgrade Contribution to the Council; and
- 1.2 Not cause or permit Occupation of the 50th (FIFTIETH) Dwelling of the Development until the English Coastal Path Upgrade Contribution has been paid to the Council.

2. MIREHOUSE RD / ST BEES RD JUNCTION CONTRIBUTION

- 2.1 Prior to Occupation of the 100th (ONE HUNDREDTH) Dwelling of the Development to pay the Mirehouse Rd / St Bees Rd Junction Contribution to the Council.
- 2.2 Not cause or permit Occupation of the 100th (ONE HUNDREDTH) Dwelling of the Development until the Mirehouse Rd / St Bees Rd Junction Contribution has been paid to the Council.

3. TRAVEL PLAN MONITORING FEE

- 3.1 To pay the Travel Plan Monitoring Fee to the Council prior to the first Occupation of the Dwellings at the Development.
- 3.2 Not to cause or permit Occupation of any of the Dwellings at the Development until the Travel Plan Monitoring Fee had been paid to the Council.

Part B

The Owner covenants with the Council to bind the Development Land in the Outlines Phases(s) only:

4. FULL PHASE(S) OBLIGATIONS

- 4.1 Not to cause or permit Commencement of the Development in any Outline Phases(s) unless or until the obligations which bind the Full Phases(s) have also been fully discharged.

5. HIGH ROAD ACTIVE TRAVEL MEASURES CONTRIBUTION

- 5.1 Prior Commencement of Outline Phases(s) of the Development to pay the High Road Active Travel Measures Contribution to the Council.
- 5.2 Not to cause or permit Commencement of any of the Outline Phases(s) of the Development until the High Road Active Travel Measures Contribution has been paid to the Council.

SCHEDULE 3 - VIABILITY REAPPRAISAL PROVISIONS

Relevant definitions:

“Additional Contribution”	means the contribution payable to the Council in accordance with this schedule as a result of the Development being projected to make more profit than is currently projected as at the date of this Deed and to be used by the Council towards the provision of Affordable Housing in the District or towards the purposes of the Education Contribution.
“Affordable Housing”	means housing which is provided to eligible households whose needs are not met by the market and which meets the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices and includes provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision;
Appraisal Inputs	<p>means the actual sales values for the Development where they are known and estimated values for any future sales having regard to the historic sales values achieved for: (a) the Development; and (b) reasonable comparables from the surrounding area</p> <p>LESS</p> <ul style="list-style-type: none"> o interest costs on finance; o professional fees; o marketing and sales fees; o total financial contributions to be paid pursuant to the Section 106 Agreement for the Development as set out in Schedule 2; o actual build costs for the Development where they are known and forecast build costs where they have not yet been incurred (including any abnormal costs); o actual remediation costs for the Development where they are known and forecast remediation costs where they have not yet been incurred; o Benchmark Land Value of £2,837,500.
"Developer Profit"	means the developer profit of 18% on Gross Sales Receipts or values from Open Market Dwellings.

Commented [RP1]: Our expert has requested what is meant by gross sales receipts. Does this include extras paid for by purchasers?

Commented [RP2R1]: Seems to be now addressed below

<p>“Gross Profit”</p>	<p>means the total estimated profit for the Development as calculated in the Revised Viability Assessment, taking into account the Appraisal Inputs expressed as both a % figure and figure in pounds sterling.</p>
<p>Gross Sales Receipts</p>	<p>means the actual price that the Developer has received or will receive for the Dwelling less any incentives special offers or inducements made available to the buyer PROVIDED THAT such inducements are no more than 2% of the total receipts per Dwelling.</p>
<p>“Maximum Affordable Housing Contribution (MAHC)”</p>	<p>means a sum calculated in accordance with the following formula:</p> <p>MAHC = AHMV – TAV</p> <p>Where:</p> <p>Affordable Housing Market Value (AHMV) 10% of the Gross Sales Receipts for all Dwellings on the Development on the assumption that all Dwellings are all available for market sale.</p> <p>Affordable Housing Mix (AHM)</p> <ul style="list-style-type: none"> • 25% First Homes • 15% discounted market sales housing, starter homes or other affordable home ownership routes • 60% affordable or social rented <p>Or such other mix as is agreed in writing between the Council and the Owner PROVIDED THAT the Council has undertaken a bona fide assessment of the local housing needs prior to the Revised Viability Appraisal being carried out and such assessment clearly indicates that a change to the Affordable Housing Mix is justified.</p> <p>Total Affordable Value (TAV) A sum calculated in accordance with the following formula and with reference to the AHM</p> <p>$TAV = (RUV \times (60\%AHMV)) + (FHUV \times 25\%AHMV) + (AHUV \times 15\%AHMV)$</p> <p>Rented Unit Value (RUV) 50%</p> <p>First Homes Unit Value (FHUV) 70%</p>

	<p>Affordable Homes Ownership Unit Value (AHUV) 70%</p> <p>Worked example Assuming 100 units with an average market sales price £245,000 per dwelling:</p> <p>Gross Sales Receipts = £24,500,000 AHMV = £2,450,000 RUV 50% FHUV 70% AHUV 70% TAV = (50% £1,470,000) = £735,000 + (70% £612,500) = £428,750 + (70% £367,500) = £257,250 TAV = £1,421,000</p> <p>MAHC = £1,029,000</p>
“Maximum Education Contribution”	a sum calculated in accordance with the Council’s adopted policy for calculating such contribution in force at the date the Revised Viability Appraisal is submitted to account for mitigating the impact of the whole development on local primary and secondary education provision once the detailed number of permitted homes is calculated following submission of the Reserved Matters Application for the Outline Phases(s).
“Profit Share Adjustment”	Means dividing the Gross Profit, (in accordance with paragraph 1.4(a) of this Schedule 3) between the Council and Developer 50% and 50% respectively.
“Revised Viability Appraisal”	means a document to be submitted to the Council by the Owner on an open book basis. The appraisal shall: <ol style="list-style-type: none"> 1. assess the development which is actually being brought forward; 2. with the Appraisal Inputs as stipulated in this Deed; 3. be carried out in accordance with best practice guidance in the NPPF/PPG/RICS professional standards; 4. with the outcome of the calculation being the Gross Profit.
“Revised Viability Contribution”	means the Maximum Education Contribution and the Maximum Affordable Housing Contribution held together.
“Surplus Profit”	means the Council’s 50% share as calculated in accordance with the Profit Share Adjustment.
“Viability Appraisal”	means the Viability Assessment dated August 2025 prepared by Roger Hannah and the Viability Assessment Review Report dated November 2025 prepared by Keppie Massie.

1. The Owner covenants with the Council to bind the Development Land in the Outline Phase(s) only:
 - 1.1 For the purpose of updating the Viability Appraisal and to determine whether an Additional Contribution is due, the Owner shall at the time of submitting the Reserved Matters Application to the Council relating to the Outline Phase of the Application and prior to the Commencement of the Outline Phases(s) submit to the Council a Revised Viability Appraisal.
 - 1.2 The figures contained in the Revised Viability Assessment shall be verified by or on behalf of the Council (at the Owner's cost) and the Council shall either confirm in writing that the Revised Viability Assessment complies with the terms of this Agreement within a period of 8 weeks from the date of receipt of the Revised Viability Assessment or it shall as soon as is reasonably practicable ask for additional information to verify the figures or enter into discussion with the Owner in order to agree the figures no later than 8 weeks from the date of receipt of additional information from the Owner which the Council considers to be satisfactory.
 - 1.3 FOR THE AVOIDANCE OF DOUBT where the Council and the Owner are unable to agree the figures within 8 weeks from the date of receipt of the Revised Viability Assessment, then either party shall be entitled to serve the written notice referred to at clause 11.1 above and seek resolution by an Specialist in accordance with clause 11 but until either party serves such notice both parties shall continue to seek to reach agreement.
 - 1.4 Once the figures in the Revised Viability Assessment are either agreed or determined by an Expert
 - (a) where the Revised Viability Assessment demonstrates that the Gross Profit less the Developer Profit is a positive value then the Profit Share Adjustment shall be applied to calculate the Surplus Profit.
 - (b) where the Revised Viability Assessment demonstrates that the Gross Profit less the Developer Profit is either neutral or a negative value then the obligations in this Schedule 3 shall cease and determine.
 - 1.5 In the event that paragraph 1.4(a) of this Schedule applies, an amount equivalent to the Surplus Profit shall be paid to the Council within 28 days of the approval of the Revised Viability Assessment PROVIDED THAT such payment shall not be required to exceed the amount of the Revised Viability Contribution.

SCHEDULE 4 - THE COUNCIL'S COVENANTS

1. The Council covenants
 - 1.1 to issue the Planning Permission as soon as reasonably possible following completion of this Deed.
 - 1.2 to use or commit the Contributions as intended per the terms of this Deed.
 - 1.3 that it will pay to the payee (for this purpose not including its successors) such amount of any Contribution made by the payee to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within five years of the date of receipt by the Council (and where contributions are paid by instalment within ten years from receipt by the Council of the final instalment) of such payment together with interest at the Bank of England base rate from time to time for the period from the date of payment to the date of refund.
 - 1.4 to provide to the Owner (for this purpose not including its successors) such evidence, as the Owner (for this purpose not including its successors) shall reasonably require in order to confirm the expenditure of the Contributions paid by the Owner under this Deed.
 - 1.5 where a Revised Viability Contribution is paid pursuant to Schedule 3 paragraph 1.5 to
 - (a) confirm receipt of the Revised Viability Contribution within 5 Working Days of receipt.
 - (b) use the Revised Viability Contribution as intended in the Schedule and in such proportion to be determined by the Council for Affordable Housing and/or Education Contributions.
 - (c) pay to the payee (for this purpose not including its successors) such amount of any Revised Viability Contribution made by the payee to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within five years of the date of receipt by the Council (and where contributions are paid by instalment within ten years from receipt by the Council of the final instalment) of such payment together with interest at the Bank of England base rate from time to time for the period from the date of payment to the date of refund.

SCHEDULE 5 – PLAN 1 (DEVELOPMENT LAND)

SCHEDULE 6 - PLAN 2 (PHASES OF THE DEVELOPMENT LAND)

SCHEDULE 7 - THE DRAFT PLANNING PERMISSION

EXECUTED as a **DEED** by **CUMBERLAND**)
COUNCIL whose **COMMON SEAL** was hereunto)
affixed in the presence of:)
.....)
Authorised signatory)
.....)
Authorised signatory)

EXECUTED as a **DEED** by)
WHITEHAVEN DEVELOPMENTS LIMITED)
acting by a director,) Director
in the presence of:)

Witness:

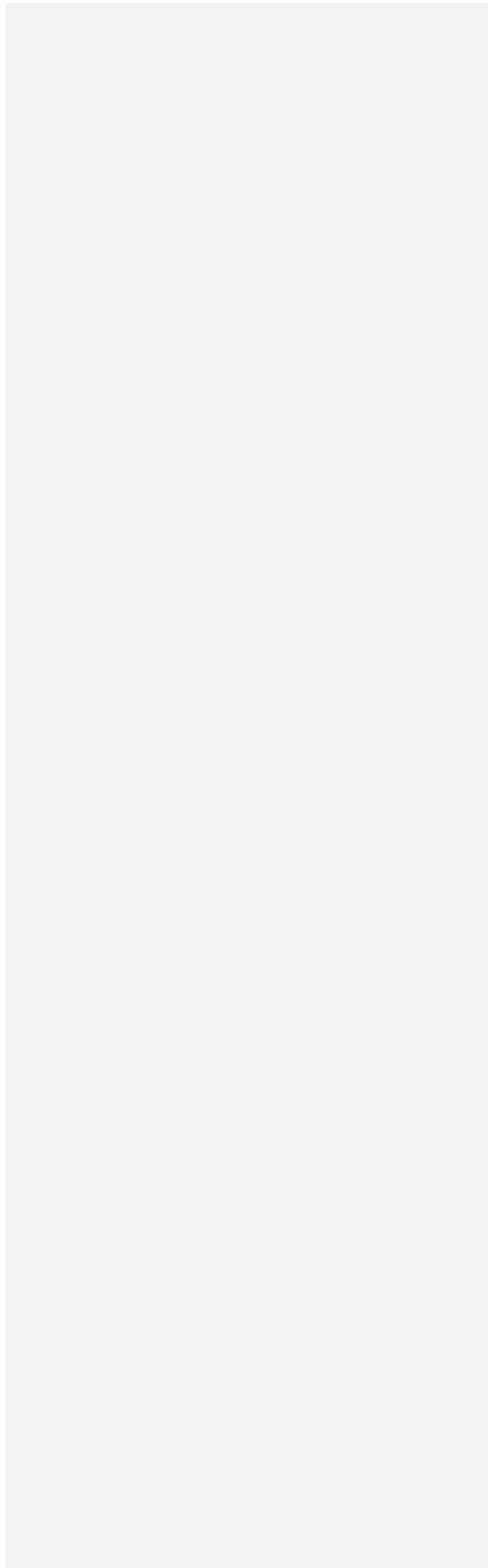
Signature

Name

Address

.....

Occupation



EXECUTED as a **DEED** by)
PERSIMMON HOMES LIMITED)
acting by its attorneys) **Attorney**
in the presence of:)

Witness:

Signature

Name

Address

.....

Occupation

)	
)
)	Attorney
)	
<u>Witness:</u>		
Signature		
Name		
Address		
.....		
Occupation		