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Title Number LA876215

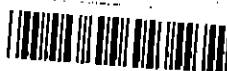
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LA876215



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THIS AGREEMENT is made on the 24th day of March 2000

BETWEEN:

- 1) THE LANCASHIRE COUNTY COUNCIL of P O Box 78 County Hall Preston
PR1 8XJ (the 'County Council')

and

- 2) PERSIMMON HOMES (NORTH WEST) LIMITED (Company Number 2080890)
whose registered office is situate at Persimmon House Fulford York YO1 4RE

and

BELLWAY HOMES LIMITED (Company Number 670176) whose registered office is
situate at Seaton Burn House Dudley Lane Seaton Burn Newcastle-upon-Tyne
NE13 6BE (the 'Developer')

WHEREAS

- A) The County Council is the owner of the Site (as hereinafter defined)
B) The County Council has accepted an offer from the Developer for the right to
develop the Site for residential purposes on the terms hereinafter appearing
C) The County Council has obtained Permission (as hereinafter defined) for a
residential development of the Site

NOW THIS DEED WITNESSETH as follows:

1. Definitions

The following terms used in this Agreement shall have the meanings assigned to
them:

'Approved Scheme of Development' shall mean that shown on the layout plans
elevations sections and other drawings describing the Developer's proposals for
the development of the Site and the Highway Works (as hereinafter defined)
approved in writing by the Local Planning Authority (as hereinafter defined) and

any amendments thereto approved by the Local Planning Authority

'Blue Land' shall mean the land and buildings shown edged blue on the Plan

'Blue Land Transfer' shall mean the Transfer of part of the Blue Land pursuant to Clause 5 of the Highway Agreement (as hereinafter defined)

'Clause' shall mean a clause in this Agreement

'County Council' shall include its successors in title

'Developer' shall include its lawful assigns

'Dwellinghouse' shall mean all buildings and structures erected on the Plots in accordance with the Approved Scheme of Development

'Second Instalment Date' shall mean the later of the 24th day of March 2001 and the date of the completion of the Blue Land Transfer

'Highway Agreement' shall mean an Agreement dated the 7th day of October 1999 and made between (1) The County Council (2) Electropac Holdings Limited and Jean Aubrey-Morin for the undertaking of development works and the transfer of land to be held for highway purposes a copy of which is annexed hereto in Appendix A

'Highway Works' shall mean the construction of the roads and footpaths on part of the Blue Land in accordance with the provisions of the Highway Agreement

'Licence Fee' shall mean the sum of Three million five hundred and twenty thousand five hundred and thirty-eight pounds (£3,520,538.00)

'Licence Period' shall mean the period from the date hereof up till and including the Third Instalment Date

'Local Planning Authority' shall mean West Lancashire District Council

'Performance Bond' shall mean the bond to be provided by the Developer in accordance with the definition set out in clause 3.5

'Permission' shall mean the Planning Permission Numbered 8/93/0686 issued by

Local Planning Authority on 2nd March 1999 relating to the construction on the Site of a residential development

'Plan' shall mean the plan annexed hereto

'Planning Acts' shall mean the enactment from time to time in force relating to Town and Country Planning including but not limited to all matters arising under the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990 with or without legislation or constraint of Planning Law

'Planning Agreement' shall mean an Agreement under Section 106 of the Town and Country Planning Act 1990 dated 2nd March 1999 and made between (1) the Local Planning Authority and (2) the County Council a copy of which is annexed hereto in Appendix B

'Planning Approval' shall mean the approval of the reserved matters required under the Permission

'Plots' shall mean the area of all or any (according to the context) of the pieces of land to be included in the Transfers of the Dwellinghouses on the Site

'Prescribed Rate' shall mean 4% above the base rate for the time being of National Westminster Bank Plc

'Reserved Matters' shall mean the Reserved Matters stipulated in the Permission

'Third Instalment Date' shall mean the later of the 24th day of March 2002 and the completion of the Blue Land Transfer

'Services' shall mean the drains and sewers and electricity gas water television and telephone pipes wires cables and installations required to facilitate the implementation of the Approved Scheme of Development

'Site' shall mean all that piece of land situate off Tanhouse Lane Upholland Skelmersdale Lancashire containing in the whole 11.230 hectares or thereabouts and shown edged red on the Plan

2. Grant of Licence and Payment of Instalments

2.1. Grant of Licence

In consideration of the Licence fee of Three million five hundred and twenty thousand five hundred and thirty eight pounds (£3,520,538.00) which shall be paid in the following instalments:-

2.1.1. the first instalment of One million pounds (less the deposit of One hundred thousand pounds having already been paid by the Developer to the County Council) ('the First Instalment') to be paid in accordance with the provisions of Clause 2.4 hereof; and

2.1.2. the balance by two further equal instalments as follows;

2.1.2.1 a second instalment of One million two hundred and sixty thousand two hundred and sixty nine pounds (£1,260,269.00) on the Second Instalment Date; and

2.1.2.2 a third instalment of One million two hundred and sixty thousand two hundred and sixty nine pounds (£1,260,269.00) on the Third Instalment Date"

the County Council hereby grants to the Developer:-

- (i) licence and authority (but subject to the rights of entry of and determination by the County Council hereinafter contained) to enter the Site on the date hereof for the duration of the Licence Period and
- (ii) in accordance with the provisions of the Highway Agreement (so far as the County Council can grant the same) the licence and authority to enter on so

much of the Blue Land as is necessary to enable it to carry out the Highway Works

for the purposes only of carrying out the Approved Scheme of Development subject to and with the benefit of the provisions of this Agreement

2.2. Extent of Licence

The licence and authority hereinbefore granted by the County Council to the Developer to enter upon the Site and the Blue Land shall extend to and include the Developer's agents sub-contractors workmen and all other persons authorised by it or them with or without all necessary materials implements office huts equipment and tools for the purpose of carrying out the Approved Scheme of Development

2.3. Liability to Interest

In the event of any of the payments reserved under this clause 2 or under any of the other provisions of this Agreement not being made within Seven days of the due date the Developer shall pay interest thereon at the Prescribed Rate from the due date to the day of payment

2.4. Payment of the first instalment of the Licence fee

The First Instalment shall be paid by the Developer to the County Council within fourteen days of the later of the approval by Electropac Holdings Limited and Jean Aubrey-Morin to the proposed layout of the roads and footpaths to be constructed on the Blue Land in accordance with the provisions of the Highway Agreement or failing such approval the determination of the proposed layout of such roads and footpaths by an independent highway engineer in accordance with Clause 3 of the Highway Agreement unless;

- 2.4.1. the Developer shall not have submitted detailed plans to Electropac Holdings Limited and Jean Aubrey-Morin in accordance with Clause 1

of the Highway Agreement within four weeks of the date of this Agreement, in which case the First Instalment shall become payable by the Developer to the County Council immediately on the expiry of that four week period; or

2.4.2. in the event of the Developer having to submit revised plans to Electropac Holdings Limited and Jean Aubrey-Morin in accordance with Clause 3 of the Highways Agreement then if the Developer shall not have submitted those revised plans to Electropac Holdings Limited and Jean Aubrey-Morin within the eight week period referred to in Clause 3 of the Highway Agreement then the First Instalment shall become payable by the Developer to the County Council immediately on the expiry of that eight week period

3. Covenants by the Developer

3.1. Highway Agreement Reserved Matters and Blue Land Transfer, Planning Agreement and Commencement of Development and Management of the Site

The Developer hereby jointly and severally covenants and agrees with the County Council

(a) Highway Agreement Reserved Matters and Blue Land Transfer

- (a) Forthwith after the date of this Agreement and at the Developer's own expense to carry out all the obligations on the part of the County Council contained mentioned or referred to in the Highway Agreement including but without limitation
- (i) To seek the approval of Electropac Holdings Limited and Jean Aubrey-Morin to the proposed lay-out of the roads and footpaths to be constructed on the Blue Land in accordance with the provisions of the Highway Agreement

- (ii) Upon receipt of the approval referred to in sub-clause 3.1 (a)(i) above to apply to the Local Planning Authority for approval of the Reserved Matters and
- (iii) Forthwith upon receipt of approval of the Reserved Matters (or earlier by agreement) to submit the written application referred to in Clause 5 of the Highway Agreement and to procure the Blue Land Transfer in the joint names of the Developer and the County Council and the County Council permits the Developer (at the Developer's sole expense) to conduct any litigation (which for the purposes of this proviso includes arbitration) in respect of any non-compliance non-observance or non-performance by Electropac Holdings Limited and Jean Aubrey-Morin of the Highway Agreement PROVIDED ALWAYS that in the event that the Developer exercises its entitlement so to do, the Developer shall keep the County Council fully notified at all times of the progress of any litigation and shall give the County Council reasonable opportunity to consider and comment upon any material decisions to be taken in respect thereto, and shall comply with any reasonable comment which the County Council shall make and shall indemnify the County Council against all liability for any actions claims demands costs charges and expenses in respect of any litigation.

(b) Planning Agreement

At the Developer's own expense to observe and perform all the outstanding obligations on the part of the County Council contained in the Planning Agreement

(c) Commencement of Work

Approved Scheme of Development

Within one month of the date of receiving approval of the Reserved Matters to

commence and diligently proceed to carry out the Highway Works and develop the Site with sound materials and good workmanship and in accordance with the requirements of the Local Planning Authority as embodied in the Approved Scheme of Development and in accordance with the Planning Approval and the requirements of the Building Regulations to the reasonable satisfaction of the County Council

(d) Maintenance of Services

At all times during the course of carrying out the Highway Works and the Approved Scheme of Development

(i) not to interfere with any existing mains services (including but without limitation) sewerage, water, gas, electricity and telecommunications and any natural flow of water

(ii) to maintain a vehicular and pedestrian access

to and from the County Council's adjoining property known as Beacon School shown edged yellow on the Plan, the remainder of the Blue Land including the Sports Hall and the adjoining land edged green on the Plan

and for the purposes of this sub-clause the expression "to maintain" shall where appropriate and necessary include the provision by the Developer of alternative routes for the said services and access

(e) Liability of Occupation

From the date of entry on the Site and during the continuance of this Agreement to pay all rates charges taxes claims assessments and other outgoings (if any) now or after the date of this Agreement chargeable against an owner or occupier of the Site or any part or parts of it remaining unsold during the period of this Agreement

(f) Nuisance

Not to do or permit or knowingly suffer anything to be done on the Site which may be or become a nuisance or annoyance or cause damage to the County Council or adjoining owners or occupiers provided that the carrying out of the Approved Scheme of Development by the Developer in a reasonable manner and in accordance with the provisions of this Agreement shall not of itself amount to a breach of this clause

(g) Road Cleanliness

For the duration of this Agreement to use all reasonable endeavours to keep all public accommodation access temporary and private roads footpaths and bridleways free from mud dirt debris and other deleterious matter deposited during the day to the reasonable satisfaction of the County Council using mechanical or other means as necessary and if necessary and reasonably required by the County Council to provide a vehicle cleaning facility within the Site of a type and in a position to be previously approved in writing by the County Council such approval not to be unreasonably withheld or delayed and use its best endeavours to ensure that all vehicles leaving the Site are clean and properly loaded provided that if there has been any breach by the Developer of its obligations under this sub-clause and the Developer has failed to remedy such breach within a reasonable period after receipt of notice in writing by the County Council requiring it to remedy such breach then the County Council shall be entitled to carry out any works necessary to secure compliance with the provisions of this clause (g) and the Developer shall forthwith on demand repay to the County Council the proper and reasonable cost of so doing which cost shall be recoverable by the County Council from the Developer as a liquidated debt

(h) Site Cleanliness

For the duration of this Agreement and upon determination of this Agreement for whatever reason take reasonable steps to ensure to the reasonable satisfaction of the County Council that the Site is in a clean and tidy condition and for that purpose to remove therefrom all materials (including debris and plant) as the County Council may reasonably require and which are not required for the development of the Site

(i) Plot Cleanliness

Notwithstanding the generality of this clause relating to the Site similarly to leave the Plots in a clean and tidy condition upon completion of their sale to individual purchasers

(j) Pegging out of Boundaries and Erection of Fencing

To peg out the undefined boundaries marked A to B to C to D on the Plan as soon as shall be reasonably practicable hereafter in the positions previously approved in writing by the County Council such approval not to be unreasonably withheld or delayed and within one month thereafter to erect and maintain a fence along the said boundaries marked A to B to C to D such fence to be a specification previously approved in writing by the County Council and/or the Local Planning Authority

(k) Provision of Parking Area

To provide a parking area within the Site for employees and contractors vehicles upon the commencement of any development works and to retain the same thereafter during the Licence Period and require such employees' and contractors' vehicles to use such area to the exclusion of any area outside the Site

(l) Provision of Storage Compound

To provide and maintain a suitable storage compound within the Site for the Developer's plant and materials

Subject in the cases of both sub-clauses (k) and (l) to the parking area and storage compound being located in a position previously approved in writing by the County Council

3.2. Topsoil

(a) Ownership

All topsoil within the Site shall be and remain the property of the County Council but the County Council agrees not to remove the topsoil or any portion thereof during the course of this Agreement without the Developer's prior approval

(b) Storage

Where in the course of its works it is necessary for the Developer to strip any topsoil which shall not be required for replacement at a later stage in the development of the Site by the Developer it shall forthwith notify the County Council in writing and if so required by the County Council shall cause the same to be removed to an area which the County Council may reasonably nominate from time to time as a topsoil compound in proximity to the Site and in the event that the County Council does not require such topsoil to be removed to an area as aforesaid then the Developer shall be entitled to deal with such topsoil in such manner as it shall think fit

(c) Use

The Developer may use such topsoil from the County Council's topsoil compound (if any) but only on the Site and for purposes connected with the development of the Site

3.3. Road and Sewer Agreements under Section 38 of the Highways Act 1980 and Section 104 of the Water Industry Act 1991

The Developer shall use its best endeavours to enter into Agreements in a form reasonably acceptable to the County Council to which the County Council will be a party as Landowner only but with the Developer providing such Bonds or other security as may be required in relation thereto

- (a) under Section 38 of the Highways Act 1980 with the highway authority or its agent to secure the adoption of all roads footpaths and street lighting to be constructed by the Developer
- (b) under Section 104 of the Water Industry Act 1991 with the appropriate statutory water company or its agents for the adoption of all sewers and drains shown on the Approved Scheme of Development

3.4. Compliance with Statutory Requirements

To be responsible for obtaining the consent of the Local Authority or the National House Building Council under the Building Regulations and any other necessary statutory or other permissions or approvals (including planning permissions) as may be required for the carrying out of the Approved Scheme of Development

3.5. Performance Bond

(a) Production of Performance Bond

Within three months of the date hereof the Developer will pay to the County Council a sum equal to 10% of the Licence Fee plus any tax or taxes properly added thereto) (the "Bond") or in lieu thereof procure the completion of a Bank or Insurance Company Bond for that amount (such Bank or Insurance Company Bond being called the "Performance Bond") to be made between the County Council the Developer and the Surety (being a bank or insurance company reasonably

satisfactory to the County Council in a form to be approved by the County Council to secure the due performance and observance of the Developer's obligations hereunder

(b) Use of Performance Bond

If the Licence hereby granted is terminated either under the terms of this Agreement or by effluxion of time before the Approved Scheme of Development is completed to the County Council's reasonable satisfaction then the County Council shall be entitled to use the Bond or the proceeds of the Performance Bond and to recoup therefrom any costs or losses reasonably incurred by the County Council in completing or securing completion of the Approved Scheme of Development

(c) Surrender of Performance Bond

When the County Council is reasonably satisfied that the Approved Scheme of Development is complete it shall either repay the Bond to the Developer or release the Surety from its obligations under the Performance Bond subject to any deductions which the County Council shall be entitled to make arising from the Developer's failure to perform and observe its obligations hereunder

3.6. Miscellaneous Covenants

The Developer hereby covenants with the County Council that the Developer shall

(a) Duty of Care of Developer's Solicitors

Procure that the Developer's solicitors undertake to the County Council the same obligations and duty of care (but no greater) as to the disposal of the Plots as they would have undertaken to the Developer had the Developer owned the Site provided that the Developer's Solicitors shall have no liability to the County Council in respect of

- (i) any breach by the Developer of its obligations contained in this Agreement and
- (ii) any inaccuracies in any deed plans prepared by the Developer unless the Developer's solicitors shall have been negligent in utilising a deed plan which it knew or should have known as incorrect

(b) Register of National House Building Council

Throughout the Licence Period be and remain on the Register of the National House Building Council or be and remain a member of such alternative body or scheme as may be approved in writing from time to time by the County Council (such approval not to be unreasonably withheld or delayed) and observe any conditions and rules of such Council body or scheme as the case may be

(c) Documentation of the National House Building Scheme

Be responsible for obtaining the current documentation of the National House Building Scheme (or such other body or scheme approved by the County Council in writing (such approval not to be unreasonably withheld or delayed) in respect of each of the Dwellinghouses constructed by it on the Site and for supplying the same to the purchaser or the purchasers solicitors (whichever shall be appropriate) and shall comply with the directions and requirements of the appropriate Council body or scheme from time to time in respect thereof

(d) Indemnity

Indemnify the County Council in respect of all losses claims demands actions or proceedings whatsoever arising out of or in the course of or by reason of the execution of the Approved Scheme of Development in respect of any breach non-performance or non-observance of any of the provisions of this Agreement including without prejudice to the generality of the foregoing any losses claims demands actions or proceedings arising as a result of the Developer supplying the

County Council with a transfer of a plot (including a plan) for sealing that is in any way inaccurate or misleading provided that the County Council shall use all reasonable endeavours

- (i) to supply appropriate details to the Developer as soon as reasonably possible after receipt of any claim which may be the subject of a claim for indemnity by the County Council of the Developer in accordance with the sub-clause
- (ii) to keep the Developer informed of all progress in connection therewith and
- (iii) not to settle or compromise any such claim without the approval in writing of the Developer (such approval not to be unreasonably withheld or delayed) and the County Council shall not be liable for any loss or damage suffered by the Developer arising from any reliance placed on information supplied by the County Council relating to preliminary site investigations and surveys

(e) Insurance

Effect and maintain at its own expense and to the reasonable satisfaction of the County Council a policy or policies of insurance in respect of:

- (i) the indemnity given in sub-clause (d) above and
- (ii) fire insurance in respect of the Dwellinghouses in the course of erection and completed but remaining unsold and public liability as the County Council shall from time to time reasonably direct and shall upon demand produce the said policies and last premium receipts for inspection by the County Council

(f) Discharge of Deleterious Matter

Not to permit any oil or grease or any deleterious objectionable dangerous poisonous or explosive matter or substance to be discharged into the ditches watercourses culverts drains or sewers on or near the Site and take all reasonable measures for ensuring that any effluent so discharged shall not be corrosive or

otherwise harmful to the said ditches watercourses culverts drains or sewers or cause any obstruction or deposit therein provided that the Developer shall not be liable for any act or omission of the purchasers of the Dwellinghouses in respect of any of the matters referred to in this sub-clause

(g) Excavation of Mines Minerals etc

Not excavate or sell or dispose of any minerals earth clay gravel chalk or sand from the Site or permit or suffer any of the same to be removed except so far as shall be necessary for the execution of the Approved Scheme of Development

(h) Approvals

To carry out and complete the Approved Scheme of Development in accordance with the Developer's proposals for the development of the Site approved by the Local Planning Authority

3.7. Works outside the Site

All works procured or carried out by the Developer outside the Site pursuant to this Agreement shall be in accordance with the Approved Scheme of Development and any other terms and conditions approved by the County Council (such approval not to be unreasonably withheld or delayed) and all such works shall be carried out in a good diligent and workmanlike manner causing as little damage and disturbance as reasonably possible and subject to the Developer making good all damage thereby caused to the satisfaction of the County Council

4. Further Indemnity

The Developer hereby further indemnifies the County Council against any actions costs claims demands or expenses or other liability made against the County Council howsoever arising due to the Developer's failure to comply with the obligations on the part of the County Council which the Developer has agreed to

undertake in this Agreement contained in the Highway Agreement and Planning Agreement

5. The County Council

For the avoidance of doubt and without prejudice to the County Council's ownership of the Site the County Council shall be entitled:

5.1. Access to the Site

to enter upon the Site to view the state and progress of the Approved Scheme of Development and for any other reasonable purpose including the repair or cleansing of any sewer drain or ditch from any adjoining land of the County Council and connecting into any sewers drains or other Services at the Site for the benefit of the adjoining land of the County Council and the repairing or maintaining of any fences adjoining the Site subject to the County Council making good any damage to the Site or the works thereon thereby occasioned to the reasonable satisfaction of the Developer and not unreasonably hindering the Developer in its development of the Site

5.2. To undertake works

In case the Developer shall execute any work or use any materials which shall in the reasonable opinion of the County Council be unsound or unfit for the purposes intended or which shall not be in accordance with the Approved Scheme of Development or any alterations or additions thereto previously approved by the County Council to require the Developer within fourteen days after the service of notice so to do to take down or uncover and remove any such work and materials and make good any such defects or omissions within such time as may be reasonable in the circumstances and upon default by the Developer the County Council shall have the right to carry out the work specified in the notice and

recover the proper and reasonable cost of so doing from the Developer as a liquidated debt

5.3. Reinstatement Works

In the event of the Developer or the Developer's servants or agents or contractors damaging or destroying any existing tree hedge or fence in or adjoining the Site or damaging any existing road pavement street-lighting sewer drain or ditch adjoining the Site to require the Developer within a reasonable period of the service of notice to do so to replace such tree hedge or fence or repair such road pavement street lighting sewer drain or ditch to the reasonable satisfaction of the County Council upon default by the Developer to carry out the work specified in such notice and to recover the proper and reasonable cost of so doing from the Developer as a liquidated debt

5.4. Ownership of Discovered Articles

Any relic article or thing whatsoever of antiquity rarity or value which may be found or discovered by the Developer in or upon or under or part of the Site or adjoining land of the County Council (subject to the rights of the Crown) shall belong to the County Council and be delivered up by the Developer to the County Council and as soon as practicable on the finding or discovery of any such relic article or thing the Developer shall give notice to the County Council and will afford all reasonable facilities to the County Council to remove the same

5.5. Rights in the Transfers

To exercise the rights excepted and reserved in the draft transfers annexed hereto notwithstanding that the transfers have not been completed

6. Title

6.1. County Council's Ownership

The County Council's title to the Site is partly registered at H.M. Land Registry as

part of Title No. LA385445 and in respect of which title shall be deduced in accordance with Section 110 of the Land Registration Act 1925 and is partly unregistered and comprised (inter alia) in a Conveyance dated the 7th day of May 1974 and made between (1) Skelmersdale Development Corporation and (2) the County Council ("the 1974 Conveyance")

6.1.1. The County Council will if so requested in writing by the Developer apply to register the County Council's title to the unregistered part of the Site at H.M. Land Registry provided that all the costs expenses and fees incurred in such application are solely borne by the Developer

6.2. The Site is sold subject to and where appropriate with the benefit of:

- (a) All Local Land Charges (whether registered or not before the date of this Agreement) and all matters capable of registration as Local Land Charges or otherwise registrable by any competent authority or pursuant to statute or like instrument
- (b) Notices served and orders demands proposals or requirements made by any local or public or competent authority whether before or after the date of this Agreement
- (c) All actual or proposed charges notices orders restrictions agreements conditions or other matters arising under the Planning Acts
- (d) All rights of way drainage watercourses light or other easements or quasi or reputed easements and rights of adjoining owners affecting this Site and all liability to repair or covenants to repair roads pavements pathways passages sewers drains ditches gutters fences and other like matters without obligation on the County Council to provide evidence of the creation of or to define or apportion any such liability

- (e) All matters in the nature of overriding interests as defined in Section 70 of the Land Registration Act 1925 affecting the Site
- (f) All other matters which either are revealed or would be reasonably expected to be revealed by inspection and by searches and enquiries usually made by a prudent purchaser
- (g) The matters contained mentioned or referred to in the Property Proprietorship and Charges Registers of Title Number LA 385445
- (h) So far as the same have not been released by a Deed of Release dated the 5th day of January 1998, the covenants conditions and other matters contained mentioned or referred to in the 1974 Conveyance.
- (i) the matters contained mentioned or referred to in the Property and Charges Registers of Title Number LA816351 and a Conveyance dated the 16th day of July 1975 and made between (1) The County Council and (2) Liverpool Roman Catholic Archdiocesan Trustees Incorporated and (3) Skelmersdale Development Corporation
- (j) The Highway Agreement
- (k) The Planning Agreement

6.3. The County Council sells with Limited Title Guarantee as implied by the Law of Property (Miscellaneous Provisions) Act 1994 ('the Act') except:

- (a) That the words "at his cost" in Section 2(1)(b) of the Act shall be replaced by "at the Developer's cost"
- (b) That the covenants implied by Section 3(3) of the Act applies only to charges or encumbrances created only by the County Council
- (c) For the purposes of the Act any matters referred to in this Agreement subject to which the Site is expressed to be sold are matters which this disposition is

expressly made subject to

- (d) Without prejudice to the preceding clause hereof the covenants implied in the transfer of plots or the transfer of the Site referred to in clauses 9 and 10 shall be limited to the effect that the County Council shall not be deemed to be in breach of any of the covenants implied by Sections 2 and 3 of the Act by reason of any matter or thing mentioned or referred to in the preceding clause

6.4. Registration of Agreement

Upon completion of this Agreement the Developer or its solicitors shall within 28 days apply to H M Land Charges Registry for registration thereof against the County Council's title and will apply for the removal of all such entries within 28 days of the expiration or sooner determination of the Licence Period and will provide written evidence thereof to the County Council

7. Requirements on completion of Transfers of Dwellinghouses

7.1. Transfer of Plots - Model Transfer

The County Council shall subject to the Developer or the Developer's solicitors complying with the proviso contained in clause 7.3 below as and when required by the Developer following the completion of each Dwellinghouse transfer to any person or persons nominated as purchaser or purchasers by the Developer its freehold title to the relevant Plot and the Dwellinghouse constructed thereon each such Transfer to be in the form of Transfer marked "Appendix C" and annexed hereto or in such other form as may reasonably be approved by the County Council

7.2. Nomination of Purchasers

The Developer shall have the exclusive right to nominate the purchaser or purchasers aforesaid and to stipulate the consideration (to be paid to the

Developer) for the Transfer

7.3. Authority to Exchange Contracts

The Developer's Solicitors shall on behalf of the County Council but at the Developer's expense act in the sale of the Plots to the respective purchasers thereof provided that

- (a) the Developer or the Developer's solicitors shall not have authority to exchange contracts for the sale of the Plots during a period or periods whilst any of the sums payable under clause 2 remain outstanding for more than seven days after the due date and
- (b) such authority to exchange contracts for the sale of the Plots shall only continue until the County Council has served notice upon the Developer's Solicitors withdrawing such authority

8. Transfer of the Site of the Developer

- 8.1. If at any time during the Licence Period the Developer shall desire to take a transfer of the freehold title in those parts of the Site which have not at that time been transferred to purchasers of the Plots and (if the Blue Land Transfer has previously been completed) the County Council's estate and interest in the Blue Land (unless it is a requirement of the Local Planning Authority that the Developer's estate and interest in the land comprised in the Blue Land Transfer shall be transferred to the County Council, in which case the Developer will transfer its estate and interest in the Blue Land to the County Council) ('the Remaining Land') and the County Council shall agree to such a transfer by serving notice in writing on the Developer to that effect then the following provisions of this clause shall apply

- 8.2. Subject as is mentioned in Clause 8.1 above in relation to the Blue Land if at any

time during the Licence Period thereafter the County Council shall be desirous of transferring its freehold title in the Remaining Land to the Developer and shall serve notice in writing on the Developer to that effect then the following provisions of this clause shall apply

- 8.3. In the event that the Licence Fee has been paid in full the transfer of the Remaining Land shall take place not later than 28 days after the service of the notice referred to in clause 8.1 or 8.2 in consideration of the sum of £1.00
- 8.4. In the event that any part of the Licence Fee is outstanding the Developer shall either:
- (a) pay to the County Council the amount of the unpaid part of the Licence Fee together with any interest and Value Added Tax thereon and in which case the transfer of the Remaining Land shall be in consideration of the payment of such sum; or
 - (b) immediately after the transfer of the Remaining Land grant to the County Council a charge over the freehold title of the Remaining Land which shall rank in equal priority to any other charges by the Developer over the Remaining Land and which shall be released in respect of the whole of the Remaining Land upon payment of the balance of the Licence Fee and in which case the transfer of the Remaining Land shall be in consideration of the grant of such charge and the payment of £1.00
- 8.5. The Transfer of the Remaining Land shall be in the form of Transfer marked "Appendix D" annexed hereto subject to any minor amendments which may be agreed between the parties

9. Miscellaneous

9.1. Certified Copy Transfers

On completion of any transfer of the Site or any part thereof the Developer's

solicitors shall prepare and supply a certified copy of the completed Transfer to the County Secretary and Solicitor as soon as is reasonably practicable thereafter

9.2. Continuity of Supporting Agreements

The Transfers to be made pursuant to clauses 7 and 8 of this clause shall be subject (where appropriate) to the agreements referred to in clause 3.4 hereof

10. Assignment and Determination

10.1. Assignment

The Developer shall not without the previous consent in writing of the County Council (such consent not to be unreasonably withheld or delayed) assign this Agreement or any interest therein except by way of mortgage or charge made for securing monies advanced for the payment of the Licence Fee or for the purposes of developing the Site or otherwise (for which no consent is required) and in case of any permitted assignment the assignee but not a mortgagee or chargee) shall enter into a direct covenant with the County Council in terms to be approved in writing by the County Council (such approval not to be unreasonably withheld or delayed) prior to such assignment being completed for the performance and observance of the several stipulations and conditions herein contained

10.2. County Council's Remedies on Breach of Terms

(a) Fundamental Terms etc

If there shall be a breach non-performance or non-observance of any of the fundamental terms agreements stipulations and conditions herein contained and on the part of the Developer to be performed or observed and the Developer shall have failed to remedy the same within a reasonable period from service of a written notice by the County Council to the Developer requiring it to remedy such breach non-performance or non-observance or if an administration order is made in

relation to the Developer or if the Developer shall enter into liquidation (whether compulsorily or voluntarily except for the purposes of amalgamation or reconstruction of a solvent company) or if a receiver or manager shall be appointed thereof then and in any such case this Agreement shall at the option of the County Council (to be expressed in a written notice by the County Council to the Developer) cease and determine and the County Council may then enter upon the Site and take possession thereof together with all buildings erections or works thereon provided that (unless this Agreement is taken over by a mortgagee of the Developer or by an assignee of such mortgagee) the County Council shall upon completion of any subsequent dealing with its estate and interest in the Site pay or allow to the Developer (or its mortgagee) any sums it receives in respect of such dealing but only to the extent that the County Council has thereby recovered the value or any part thereof of any buildings erections or works on the Site remaining undisposed of at the time of such re-entry the value of such buildings erections or works to be agreed between the County Council and the Developer and in default thereof within one calendar month of the date of re-entry then to be determined in accordance with the provisions of clause 11 hereof provided that the right of entry of the County Council shall not apply (at the option of the Developer) to any of the Plots upon which there shall then be a completed Dwellinghouse in respect of which the Developer shall then have entered into a Contract for Sale with a purchaser and the Agreement shall remain in existence in respect of such Plot or Plots

(b) Other Terms etc

If there shall be a breach non-performance or non-observance of any of the remaining terms agreements stipulations and conditions herein contained and on

the part of the Developer to be performed or observed and the Developer shall have failed to remedy the same within a reasonable period from service of a written notice by the County Council to the Developer requiring it to remedy such breach non-performance or non-observance then and in any such case the County Council shall be lawfully entitled to withhold performance of the terms of Clause 7.1 and 8.1 hereof unless and until the Developer has remedied the breaches notified by the County Council without the County Council being in breach of any of its obligations under this Agreement Provided Always that such right shall not apply (at the option of the Developer) to any of the Plots in respect of which the Developer shall then have entered into a Contract for Sale with a purchaser and this Agreement shall remain in existence in respect of such Plot or Plots

(c) Failure to Carry out Works

In addition to the County Council's remedies set out in sub-clauses (a) and (b) above if the Developer shall fail to carry out or complete any of the works required by this Agreement in accordance with the terms of this Agreement the County Council its agents employees contractors and licensees shall be entitled to enter the Site and to carry out such works itself and the Developer shall forthwith upon demand ~~reimburse the costs fees and expenses~~ incurred by the County Council in connection therewith (such costs fees and expenses to be recovered by the County Council as a debt)

- (d) In the event of any assignment or the determination of this Agreement as provided for in this Clause 10 hereof, howsoever arising during the Licence Period, and the Blue Land Transfer has been completed, the Developer will upon receipt of written notice from the County Council transfer all its estate and interest in the Blue Land to the County Council or to any assignee approved by the County Council in

accordance with the provisions of Clause 10.1 or 10.3(e) hereof

10.3. Mortgagee Protection Provisions

(a) Definitions

In this clause 10.3 the following words and expressions shall where the context so admits be deemed to have the following meanings:

- (i) 'Mortgagee' means any mortgagee or chargee of the benefit of this Agreement or the works or materials on the Site
- (ii) the 'Termination Notice' means the notice in writing given by the County Council to the Mortgagee pursuant to clause 10.3(c) hereof
- (iii) 'its Receiver' means any Receiver appointed by the Mortgagee and shall include its Receiver and Manager or Receivers and Managers as the case may be
- (iv) the 'Enforcement Notice' means a notice in writing given by the Mortgagee to the County Council pursuant to clause 10.3(d)(ii)
- (v) the 'Charge' means a charge over the Agreement and the Developer's estate and interest in the Site to the Mortgagee

(b) Covenants by the County Council

Upon receipt of written notice of the Charge the County Council will:

- ~~(i) covenant with the Mortgagee that it will furnish to the Mortgagee copies of all~~
notices in writing served by the County Council upon the Developer pursuant to the terms of this Agreement and will keep the Mortgagee fully informed of all material progress in connection therewith
- (ii) covenant with the Mortgagee that it will not at any time agree with the Developer the value of any works and development on this Site pursuant to this Agreement without the consent of the Mortgagee (such consent not to be unreasonably withheld or delayed)

(c) Procedure for Termination Notice

(i) Service of Termination Notice

If the County Council shall wish to exercise all or any of the powers of re-entry and possession contained in this Agreement or to otherwise terminate the same or treat the same as having been repudiated it shall before doing so give the Termination Notice to the Mortgagee

(ii) Mortgagee's Options

As from the date of receipt by the Mortgagee of the Termination Notice the Mortgagee shall have two calendar months in which to decide whether to:

- (A) tender to the County Council a duly perfected covenant in a form to be approved by the County Council (such approval not to be unreasonably withheld or delayed) binding the Mortgagee to procure the erection and execution of the Approved Scheme of Development and performance of this Agreement on the terms therein contained but with the County Council permitting the Mortgagee subsequently to assign this Agreement subject always to the provisions of clause 10.3(e) hereof and the extension of time referred to in clause 10.3(g) hereof or

- (B) produce to the County Council a person firm or company reasonably acceptable to the County Council ready willing and able to forthwith enter into an assignment of

this Agreement and tender to the County Council a duly perfected covenant in a form to be approved by the County Council (such approval not to be unreasonably withheld or delayed) binding such assignee to carry on and complete the Approved Scheme of Development in accordance with the provisions thereof and the performance of this Agreement in the terms therein contained or

- (C) take no action

(iii) Suspension of Termination Notice

The County Council will not take any further steps to proceed with such powers of

re-entry and possession or to otherwise terminate this Agreement or treat the same as having been repudiated until the expiry of two calendar months from the date of the Termination Notice and the County Council will not terminate this Agreement (pursuant to the Termination Notice) in the event that the Mortgagee shall proceed in the manner indicated in clause 10.3(c)(ii)(A) or 10.3(c)(ii)(B) hereof

(iv) Continuation Provisions

If the Mortgagee notifies the County Council in writing of its intention to proceed in the manner indicated in clause 10.3(c)(ii)(A) or 10.3(c)(ii)(B) hereof then the covenantor or the said assignee of this Agreement (as the case may be) shall be allowed an extension of time in accordance with clause 10.3(g) hereof and

- (A) the County Council shall continue to be bound by the terms of the agreement and
- (B) the covenantor or the said assignee of this Agreement shall thereafter be deemed (as between the covenantor or the said assignee and the County Council) to have taken assignment of the rights and obligations of the Developer under this Agreement and shall thenceforth be in the place of the Developer and this Agreement shall be construed accordingly

(v) Termination Provisions

If the Mortgagee notifies the County Council in writing of its intention to proceed in the manner indicated in clause 10.3(c)(ii)(C) hereof or in the event of the Mortgagee failing to notify the County Council in writing of any decision within a period of two calendar months from the date of receipt by the Mortgagee of the Termination Notice (whichever shall be the earlier) then the County Council shall be free to proceed with the said powers of re-entry and possession contained in this Agreement or to otherwise treat the same as having been repudiated

(d)(i) Assignment by Mortgagee

Subject to the conditions on the power to assign set out in clause 10.3(e) hereof the Mortgagee or its Receiver shall be entitled to assign this Agreement to a third party

(ii) Mortgagee's Enforcement Notice

If the Mortgagee serves on the County Council the Enforcement Notice by which it intends to exercise its powers of enforcement under the Charge then the Mortgagee or its Receiver shall be entitled to demand from the County Council the execution to any person firm or company nominated by it (subject always to the provisions of clause 10.3(c)) of a transfer or transfers of this Agreement or any part or parts of the Site and shall also be entitled generally to exercise all the rights of the Developer under or in connection with this Agreement or the Site and the Mortgagee or its Receiver or the contractors appointed by either of them shall be entitled to enter upon the Site in accordance with this Agreement in order to complete the Approved Scheme of Development

(iii) Mortgagee's Power of Entry

In the event of either the County Council serving the Termination Notice or the Mortgagee serving the Enforcement Notice the Mortgagee or its Receiver shall be permitted to enter upon and take possession of the Site and of all buildings or erections whatsoever thereon pursuant to the provisions of the Charge but only to be entitled to execute any works matters or things necessary to be done to the Site in order to remedy or rectify any failure by the Developer to perform or comply with the obligations of the Developer under this Agreement without adopting or incurring any liability under this Agreement or otherwise unless and until a duly perfected covenant shall be tendered to the County Council as

provided for in this Deed

(iv) Continuation of Construction

Notwithstanding the foregoing if the Mortgagee or its Receiver or any assignee of the Agreement during the subsistence of the Agreement shall elect to erect and execute the said buildings in accordance with the terms herein contained then the Mortgagee or its Receiver or the assignee of the agreement or the contractors appointed by any of them shall be entitled to enter upon the Site in accordance with the Agreement in order to complete construction of the said buildings

(e) Assignment by the Mortgagee

(i) Where pursuant to the provisions of either clause 10.3(c)(ii)(A) hereof or clause 10.3(c)(ii)(B) hereof or clause 10.3(d)(i) hereof the Mortgagee or its Receiver wish to assign the benefit of the Agreement the provisions of this clause 10.3(e) shall apply

(ii) The Mortgagee or its Receiver shall be entitled with the prior approval of the County Council (such approval not to be unreasonably withheld or delayed) to assign the Agreement to a person firm or company reasonably acceptable to the County Council and who shall first enter into a duly perfected covenant in a form approved by the County Council ~~(such approval not to be unreasonably withheld or delayed)~~ binding such assignee to carry on and complete the Approved Scheme of Development in accordance with the provisions hereof and the performance of the Agreement on the terms herein contained subject to an extension of time in accordance with clause 10.3(g) hereof

(f) No right of set-off

If the Mortgagee tendering to the County Council a duly perfected covenant pursuant to clause 10.3(c)(ii)(A) hereof or enters into an assignment of the

Agreement pursuant to clause 10.3(c)(ii)(B) hereof or elects to take no action pursuant to clause 10.3(c)(ii)(C) hereof then (with regard to any monies or compensation payable by the County Council pursuant to the Agreement) the County Council shall not be entitled to set off against such monies or compensation any sum or sums of money due from the Developer to the County Council save any pursuant to this Agreement

(g) Extension of Time Limits

In the event of clauses 10.3(c)(iv) 10.3(d) or 10.3(e)(ii) applying then the Mortgagee or its Receiver or any assignee of the Agreement (as the case may be) shall be allowed upon payment to the County Council of such sum as may be agreed between the County Council and the Mortgagee a reasonable extension of any time limit within which the Approved Scheme of Development should have been completed and if the County Council and the Mortgagee or its Receiver or the said assignee (as the case may be) shall be unable to agree as to what is a reasonable extension of the same the question shall be referred to arbitration as hereinafter provided

(h) The County Council's action on Developer's Breach

- (i) Whenever the Developer shall be in breach of the Agreement the County Council shall serve upon the Mortgagee notice in writing:
 - (A) specifying the particular breach complained of and
 - (B) if the breach is capable of remedy requiring the same to be remedied and
 - (C) where such breach is not capable of remedy specifying what reasonable alternative action should be taken
- (ii) The Mortgagee shall be given a reasonable period of time to remedy the breach (if it is capable of remedy) or to take such reasonable alternative action (where the

breach is not capable of remedy) to the reasonable satisfaction of the County Council but shall be under no obligation to do so

(i) Mortgagee's concurrence to variations

The terms of this Agreement shall not be varied or be capable of variation by the County Council or the Developer except with the prior written consent of the Mortgagee (such consent not to be unreasonable withheld or delayed)

11. Arbitration

If there shall be any dispute between either of the parties hereto (or the County Council and any Mortgagee or the County Council and any assignee) then the same shall be and is hereby referred to the decision of an independent expert to be agreed either by the parties hereto (or the County Council and any Mortgagee or the County Council and any assignee) a person nominated as an expert on the question to be decided by the President for the time being of the Royal Institution of Chartered Surveyors. Such expert shall not act as an arbitrator and his decision shall be final and binding on all parties but before making his decision he shall give all parties a full opportunity of making such representations as they may reasonably require. Such referral may be made on the application of either party hereto or any Mortgagee or assignee as the case may be and the cost of such referral shall be borne in equal shares and paid in full before the decision of such expert is declared.

12. Construction (Design and Management) Regulations

- (a) Notwithstanding any other provisions of this Agreement to the contrary for the purposes of the Construction (Design and Management) Regulations 1994 ('the Regulations') the County Council appoints the Developer (and the Developer accepts the appointment) to be the County Council's agent

(b) Without prejudice to the generality of the functions imposed upon the Developer under the Regulations by reason of its appointment herein as agent pursuant to sub clause (a) above the Developer shall further procure that a principal contractor and a planning supervisor (which may be the same person and may be the Developer so far as is permitted by the Regulations) are at all relevant times appointed for the purposes of the Regulations and the Developer shall if required by the County Council inform them of the identity and last known whereabouts of such contractor and supervisor

(c) The Developer undertakes to make and file in due time with the Executive referred to in the Regulations the appropriate declaration referred to in Regulation 4(4) and promptly to deliver to the County Council copies thereof and of any notice received by the Developer from the said Executive under Regulation 4(5)

13. Time of the Essence

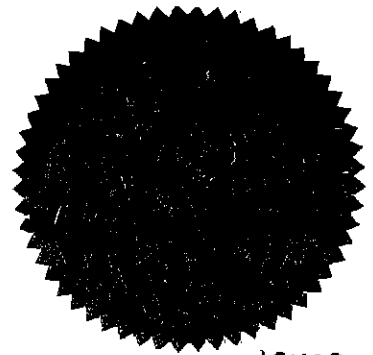
Time shall be of the essence of this Agreement

14. Non merger

Notwithstanding the completion of all the said transfers this Agreement shall remain in full force and effect in regard to anything remaining to be done performed or observed hereunder on the part of the Developer and not provided for in the said transfers

IN WITNESS whereof the parties hereto have executed this Deed the date and year first hereinbefore written

THE COMMON SEAL of THE LANCASHIRE)
COUNTY COUNCIL was hereunto affixed)
in pursuance of a resolution)
authorising the sealing hereof:-)



12439

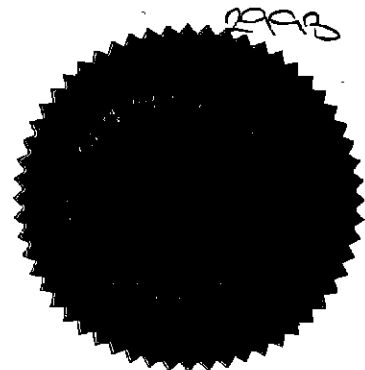
[Signature]
Assistant County Secretary

THE COMMON SEAL of BELLWAY
HOMES was hereunto affixed in the
presence of:-

Director

Director/Secretary

THE COMMON SEAL of PERSIMMON)
HOMES (NORTH WEST) LIMITED was)
hereunto affixed in the presence of:-)



Director

Director/Secretary

Appendix A

Copy of the Highway Agreement



Land at Tanhouse Road, Skelmersdale
Conditions of Tender
& Sale Plan

Scale: 1:3,000 Grid Ref: SD5005nw
Date: 6/12/1999 Plan Ref:

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[Signature]
Assistant County Secretary

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