



Dated 2025

- 1) Nuvu Development Limited
- 2) Your Housing Limited
- 3) Knowsley Metropolitan Borough Council

Section 106A Town & Country Planning Act 1990 modification of planning obligation

Relating to Land South of Lickers Lane and site of former Saunder’s Nursery, Windy Arbor Road, Halsnead Garden Village, Whiston originally entered into under planning application 20/00399/OUT

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THIS AGREEMENT is made on

2025

BETWEEN:

1. **NUVU DEVELOPMENT LIMITED** (CRN 11155335) of Youggle House, 130 Birchwood Boulevard, Birchwood, Warrington, Cheshire WA3 7QH ("**The First Owner**")
2. **YOUR HOUSING LIMITED** (Community Benefit Society No: 17704R) of Youggle House, 130 Birchwood Boulevard, Birchwood, Warrington, Cheshire WA3 7QH ("**The Second Owner**") and in respect of the Charge ("**The Mortgagee**"); and
3. **KNOWSLEY METROPOLITAN BOROUGH COUNCIL** of Municipal Buildings, Huyton L36 9UX.

Commented [LA1]: Waiting to receive requested information of pending applications so that the title position can be considered and finalised.

BACKGROUND

- (A) The Council is a local planning authority for the purposes of the Act.
- (B) The Owners are the freehold owner of the Site under title numbers MS273478, MS498795, MS56079, MS598869 and MS643046.
- (C) The Mortgagee has a charge over the Site dated 18th December 2020 ("the Charge").
- (D) Parts of the Site have been transferred from the First Owner to the Second Owner in three 'golden brick' transfers to date dated 18th December 2024, 7th May 2025 and 20th August 2025. These transfers are currently being registered at the Land Registry.
- (E) The Principal Agreement was entered into on the 26th July 2023 following the submission of application 20/00399/OUT.
- (F) The outline planning permission was subsequently varied on 6 February 2024 with the granting of the s73 application 23/02755/FUL.
- (G) Reserved matters for the erection of 239 dwellings and associated works was approved on 26th January 2024 under reference 23/02378/REM.
- (H) The Owners and the Mortgagee and the Council have agreed to vary the terms of the Principal Agreement to the extent set out in this deed.

Commented [LA2]: Please insert the details of the transfers

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 The words and expressions in this deed shall where the context so requires or admits and except as otherwise provided or required by this deed have the meanings as given to them in the Principal Agreement.

1.2 In this deed the following words and expressions have the following meanings:

"Act" the Town and Country Planning Act 1990 as amended

"Principal Agreement" the agreement pursuant to Section 106 of the Act dated 26th July 2023 made between, (1) Nuvu Development Limited (2) Your Housing Limited (3) Knowsley Metropolitan Borough Council as appended at Appendix 1

"The Owners" together the First Owner and the Second Owner and Mortgagee

2. **Operative provisions**

- 2.1 The parties to this deed agree that:
- 2.1.1 this deed shall take effect on the date of this deed; and
 - 2.1.2 the Principal Agreement shall be varied as set out in clause 4 of this deed from the date of this deed.
- 2.2 The Principal Agreement remains valid and in force subject to the variations contained in clause 4 of this deed.
- 2.3 If any provisions of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not be in any way deemed thereby to be affected or impaired.

3. **STATUTORY PROVISIONS**

- 3.1 This Agreement:
- 3.1.1 is made pursuant to the provisions of Section 106 and 106A of the Act, Section 111 of the Local Government Act 1990 and Section 1 of the Localism Act 2011 and any other enabling powers;
 - 3.1.2 is made with the intent to bind the Owners' interests in the Site;
 - 3.1.3 is enforceable by the Council as local planning authority;
 - 3.1.4 is executed as a deed; and
 - 3.1.5 Any definitions are as set out in the Principal Agreement unless otherwise stated.

4. **MODIFICATION OF THE PRINCIPAL AGREEMENT**

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From the date of this Deed the Owners and the Council agree that the Principal Agreement shall be modified as follows:

- 4.1 The definition of 'Phase' in clause 1 shall be deleted and replaced with the following:

"Phase" means a Reserved Matters Phase or a phase as shown on approved drawing 33678-MR-M-DWG-11 Revision I attached at Appendix I and "Phases" shall be construed accordingly.

- 3.3 Drawing 33678-MR-M-DWG-11 Revision I (attached at Appendix 2 of this Agreement) shall be appended as a new Appendix I in the Principal Agreement.

- 4.4 A new clause 1.4 shall be added as follows:

"1.4 with the exception of the definition of "Reserved Matters Phase" at clause 1.1 above any reference to "Reserved Matters Phase" within this Deed shall be read as if the words "or Phase" appear immediately after the words so it becomes "Reserved Matters Phase or Phase".

- 4.5 In Schedule 1 in the definitions of "25% Affordable Housing Scheme", "100% Affordable Housing Scheme" and "Affordable Housing Plan" the word "Phases" shall be deleted and replaced with the word "phases".

- 4.6 The definition of "Estate Management Scheme" in Schedule 2 shall be deleted and replaced with the following:

"Estate Management Scheme" means a scheme setting out the arrangements for the management, repair, renewal and maintenance in perpetuity of a Managed Area to the reasonable satisfaction of the Council which scheme shall incorporate the requirements set out in the Halsnead Design Guide SPD dated January 2016 for estate management and shall include details of:

- (a) The identity and responsibilities of the entity being either the Owner or a Management Company who will be managing the Managed Areas including a structure of who is responsible for managing the Managed Areas*
- (b) Full details of the maintenance specification of the Managed Area(s) and full details of the management programme including the renewal and replacement for implementing those specifications and monitoring operations for the Managed Area(s) provided that the details submitted may be varied by written agreement between the parties (acting reasonably)*
- (c) Details of how the management and maintenance will be funded including the detailed proposals for the long term funding of the Management Company (or the Owner in respect of the Managed Area(s)) including the setting and collection (including in default) of the service/rent charges for plot purchasers (including in respect of any Affordable Housing Units) and any sinking / reserve fund and evidence of the covenants on residents to pay service charge in respect of the Managed Area to the Management Company or the Owner*

(d) the trust arrangements for the service/rent charges and any sinking/reserve fund referred to in paragraph (c) above

(e) Where the Owner is proposing to transfer a Managed Area(s) to a Management Company then the following additional information:

a. Copies of the memorandum and articles of association of the Management Company

b. Paragraph 1.3.7 of Schedule 2 shall be deleted and replaced with the following:

"1.3.7 following the issue of the Certificate of Final Completion for those parts of the Managed Areas to which the Certificate of Final Completion relates, within 15 Working Days the Owner shall elect by way of written notice to the Council whether they will (i) transfer the Managed Areas (or part thereof) to a Management Company or (ii) retain the Managed Areas (or part thereof) to be managed by the Owner."

A new paragraph 1.3.8 shall be inserted as follows:

"In the event that the Owner elects to transfer the Managed Areas (or part thereof) to a Management Company pursuant to paragraph 1.3.7 (i) above to transfer those parts of the Managed Areas to which the Certificate of Final Completion relates subject to the Development Covenants and Public Access Agreement to which that certificate relates, and reserving such rights of way and easements as are required to benefit the Site for the purposes of the Development, and for the avoidance of doubt the Owner shall be entitled to transfer the Managed Areas by one or more transfers."

A new paragraph 1.3.9 shall be inserted as follows:

"In the event that the Owner elects to retain the Managed Areas (or part thereof) pursuant to paragraph 1.3.7 (ii) above the Owner covenants that from the date of the issue of the Certificate of Final Completion for those parts of the Managed Areas to which the Certificate of Final Completion relates to comply with the Development Covenants and

- 1. allow access to the public to the Managed Areas subject to the Reserved Rights and any rules and regulations enacted by the Owner in the interests of health and safety or the wellbeing of users or good estate management and any necessary temporary limitation(s) of access to the Managed Areas associated with their proper maintenance and repair".*

4.6 Paragraph 1.7 shall be deleted and replaced with the following:

*"1.7 In the event that a Management Company appointed pursuant to paragraph 1.3.7 (i) above or any replacement Management Company (if applicable) becomes insolvent or is otherwise incapable of performing or is in fundamental breach of its obligations as referred to in this Deed then the Council shall be entitled to serve a written notice ("**Step-In Notice**") on the Owner requiring the Owner to either appoint an alternative Management Company or itself to take over the obligations contained in this Schedule or to appoint the Council to take over the*

management of the Managed Areas and if the Owner does not make the appointment within 60 (sixty) Working Days from the date of the Step-In Notice then the Council shall be entitled to take over the management of the Managed Areas and the Owner shall at the Owner's cost:

1.7.1 transfer or otherwise allocate all service charges, sinking funds and other monies collected from the residents of the Development to contribute to the upkeep of the Managed Areas to the Council;

1.7.2 assign the right to collect service charge monies from the residents to the Council from the date that the Council has taken over the Managed Areas pursuant to this paragraph 1.7 and provide the necessary notifications to the residents of the arrangements to make such payments directly to the Council;

1.7.3 transfer/procure the transfer of the Managed Areas to the Council upon request by the Council to carry out their obligations as regards the maintenance and upkeep of the Managed Areas or alternatively grant all rights to the Council to enable the Council to enter onto the Managed Areas at all reasonable times for the purposes of carrying out the maintenance and upkeep of the Managed Areas as required in this Schedule; and

1.7.4 provide, prepare and execute or procure the execution of all documents as may be required to give the Council control of the land comprising the Managed Areas including liaising with the residents and amending any plot transfers if required."

Paragraph 1.8 shall be deleted and a new paragraph 1.8 shall be inserted

"1.8 In the event that the Owner retains the Managed Areas pursuant to paragraph 1.3.7 (ii) above and becomes insolvent or is otherwise incapable of performing or is in fundamental breach of its obligations as referred to in this Deed then the Council shall be entitled to serve a written notice ("Step-In Notice") on the Owner permitting the Council to take over the obligations contained in this Schedule or to take over the management of the Managed Areas or appoint such other body as it chooses and the Owner shall at the Owner's cost:

1.8.1 transfer or otherwise allocate all service charges, sinking funds and other monies collected from the residents of the Development to contribute to the upkeep of the Managed Areas to the Council;

1.8.2 assign the right to collect service charge monies from the residents to the Council from the date that the Council has elected to take over the Managed Areas pursuant to this paragraph 1.8 and provide the necessary notifications to the residents of the arrangements to make such payments directly to the Council;

1.8.3 transfer/procure the transfer of the Managed Areas to the Council upon request by the Council to carry out their obligations as regards the maintenance and upkeep of the Managed Areas or alternatively grant all rights to the Council to enable the Council to enter onto the Managed Areas at all reasonable times for the purposes of carrying out the maintenance and upkeep of the Managed Areas as required in this Schedule; and

1.8.4 provide, prepare and execute or procure the execution of all documents as may be required to give the Council control of the land comprising the Managed Areas including liaising with the residents and amending any plot transfers if required."

4.7 A new paragraph 1.9 shall be inserted as follows:

"1.9 If the Management Company or the Owner (as the case may be) fails to maintain any of the Managed Areas that are its responsibility, the Council may serve notice on the Management Company or Owner (as the case may be) detailing any works which it considers to be reasonably and properly required in accordance with the relevant approved Estate Management Scheme(s) and giving to the Management Company or the Owner (as the case may be) the required notices as will be set out in the projected maintenance schedule in the relevant approved Estate Management Scheme(s), which shall be at least 4 (four) weeks, and if the Management Company or Owner (as the case may be) fails to comply with such notice within such period of at least 4 (four) weeks of receipt, the Council may enter onto the relevant Managed Areas together with relevant personnel and equipment to remedy the breach of the relevant approved Estate Management Scheme(s) specified in the Council's notice, and the Council shall be entitled to reimbursement by the Management Company or Owner (as the case may be) of its reasonable and proper costs and expenses incurred in rectifying the said breach".

4.8 A new paragraph 1.10 shall be inserted as follows:

"1.10 By way of security for the obligations of the Owner under clause 1.8 of this Deed the Owner irrevocably appoints the Council as its attorney to do:

1.10.1 anything the Owner has authorised the Council to do under clause 1.8 of this Deed; or

1.10.2 anything the Owner is required to do pursuant to clause 1.8 of this Deed but has failed to do so; and

1.10.3 the Council may delegate this power as it sees fit".

(I) OWNERS' COVENANTS

a. The Owners covenant so as to bind their respective interests in the Site to observe and perform the covenants restrictions and obligations contained in the Principal Agreement as varied by this deed and with the intent that this covenant shall be enforceable not only against the Owners but also against any successors in title or assigns of the Owners and any person claiming through or under the Owners an interest or estate in the Site or any part of it as if that person had been an original covenanting party in respect of the interest for the time being held by it.

b. The Owners agree to pay the Council upon completion of this Agreement:

(d) its reasonable legal fees incurred in connection with the negotiation and completion of this Agreement, up to a maximum of £2,000.

(e) The sum of £500.00 in respect of registering the obligation contained in this deed.

(J) MORTGAGEES CONSENT

The Mortgagee hereby consents to the completion of this deed and agrees to bound by it and for the avoidance of doubt agrees to be bound by the obligations herein contained only in the event that it becomes a mortgagee in possession of the relevant part of the Site.

For the avoidance of doubt this does not effect the obligations of Your Housing Limited as the Second Owner.

(K) LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

(L) THIRD PARTY RIGHTS

A person who is not a party to this deed does not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

(M) DECLARATION

Other than as varied by this Agreement the Principal Agreement will continue in full force and effect.

(N) EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed.

THE SEAL of
KNOWSLEY METROPOLITAN BOROUGH COUNCIL was hereunto affixed in the presence of:

Authorised Signatory

EXECUTED as a **DEED** by

NUVU DEVELOPMENT LIMITED

By affixing the common seal in the presence of:

Authorised Signatory

EXECUTED as a **DEED** by

YOUR HOUSING LIMITED

By affixing the common seal in the presence of:

Authorised Signatory

Appendix 1

The Principal Agreement

Appendix 2
Phasing Plan