

Dated

2024

REAPER LIMITED  
HOLLINS STRATEGIC LAND LLP  
PRESTON CITY COUNCIL  
LANCASHIRE COUNTY COUNCIL

latest  
version -  
7/2/24 @  
10.17 am.

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PLANNING OBLIGATION BY  
WAY OF AGREEMENT  
UNDER SECTION 106 OF  
THE TOWN AND COUNTRY  
PLANNING ACT 1990  
RELATING TO LAND WEST  
OF GARSTANG ROAD,  
BROUGHTON,  
PRESTON PR3 5JA

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Further  
amendments  
made by  
the parties -  
instructions  
being taken  
to occur.

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This Deed is made on

2024

**Between**

- (1) **Reaper Limited** (No. 00723045) of The Albert Suite, Unit 2 Revolution Park, Buckshaw Avenue, Buckshaw Village, Chorley, Lancashire, PR7 7DW (**Owner**);
- (2) **Hollins Strategic Land LLP** (No. 0C330401) whose registered office is at Suite 4, 1 King Street, Manchester, M2 6AW (**Promoter**);
- (3) **Preston City Council** of Town Hall, Lancaster Road, Preston PR1 2RL (**Council**); and
- (4) **Lancashire County Council** of County Hall, Fishergate, Preston, PR1 8XJ (**County Council**).

**Whereas**

- (A) The Council and the County Council are local planning authorities for the purposes of the Town and Country Planning Act 1990 for the area within which the Site is situated.
- (B) The County Council is the local highway and education authority for the area within which the Site is situated.
- (C) The Owner is the freehold owner of the Site registered at HM Land Registry with freehold title absolute under title number LA517582 and has an interest in the Site within the meaning of Section 106(9)(b) of the Act.
- (D) The Promoter has an interest in the Site by virtue of a Promotion Agreement dated 8 October 2014 and submitted the Application to the Council.
- (E) The Council resolved to refuse the Application.
- (F) The Promoter has appealed to the Secretary of State against the refusal of the Application.
- (G) The Owner and the Promoter have agreed to enter into this Deed with the intent that their interests in the Site shall be subject to the covenants and obligations entered into by them and with the intention that the covenants and obligations entered into by them should create planning obligations enforceable by the Council and the County Council against the Owners and successors in title in the event that Planning Permission is granted on Appeal.

**It is agreed**

**1 Definitions and interpretation**

1.1 In this Deed save as where expressly provided otherwise:

**Act** means the Town and Country Planning Act 1990 (as amended)

**Affordable Housing** means housing for sale or rent, for those whose needs are not met by the market as the same is defined in Annex 2 to the National Planning Policy Framework 2023

**Affordable Housing Eligibility Criteria** means the criteria set out in Part 4 and Part 6 of Schedule 6 hereto

**Affordable Housing Provider** means a Registered Provider, Registered Social Landlord or a Housing Association or similar organisation registered in accordance with the Housing and

Regeneration Act 2008 or if such bodies cease to exist or are superseded the equivalent body whose main objectives included the provision of Affordable Housing and to whom the Affordable Housing Units may be transferred as approved by the Council in writing

**Affordable Housing Scheme(s)** means a scheme for the provision of Affordable Housing to be provided as part of the Development to be submitted to and approved by the Council in accordance with the provisions of this Deed which shall make provision for the following:

- (a) 40% of the total number of Dwellings comprised within the Development to be Affordable Housing Units;
- (b) 25% of Affordable Housing Units shall be First Homes;
- (c) 12.5% of Affordable Housing Units shall be provided as Larger Homes;
- (d) the Requisite Number of Rented Units; and
- (e) the location, layout, size, type and tenure of the Affordable Housing Units;

as may be varied from time to time with the written agreement of the Council ;

**Affordable Intermediate Units** means Affordable Housing which is either:

- a) Shared Ownership Units; and/or
- b) Low Cost Dwelling Units for sale

**Affordable Rent** means a rent of no more than 80% of local market rent (including service charges, where applicable) or at rental levels that accord with any measure of rental affordability published from time to time by HM Government or Homes England (or any successor body responsible for affordable housing)

**Affordable Rented Units** means Dwellings to be constructed as part of the Development and transferred to an Affordable Housing Provider under the provisions of this Deed to be let at Affordable Rent levels

**Affordable Housing Units** means the 40% of the total Dwellings to be constructed on the Site pursuant to the Planning Permission as part of the Development which shall be provided as Affordable Housing in accordance with the Affordable Housing Scheme and being of a tenure mix and in a location to be specified in the Affordable Housing Scheme

**Application** means the application for outline planning permission for the Development submitted to the Council and allocated reference number 06/2023/0030

**Appeal** means the planning appeal against the refusal of the Application for the Development submitted by the Promoter under Section 78(2) of the Act in respect of the Application and given reference (ref: APP/N2345/W/23/3330709)

**Base Rate** means the base lending rate from time to time of the Bank of England

**BCIS All-in Tender Price Index** means the BCIS All-in Tender Price Index published by the Royal Institution of Chartered Surveyors or any successor body (or such other index replacing the same) for the period in which the contribution (or any part of it) is paid

**Chargee** means any mortgagee or chargee of the Registered Provider or a security trustee or receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

**CIL Regulations** means the Community Infrastructure Regulations 2010 (as amended)

**City** means the City of Preston and wider administrative area of the Council

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

**Decision Letter** means the written decision relating to the Appeal

**Default Interest Rate** means 4% per annum above the Base Rate

**Development** means the development of the Site permitted by the Planning Permission and comprising residential development for up to 51no. dwellings with associated works and access (all other matters reserved)

**Discount Price** means 67% of the Market Value

**Disposal** means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in an Over 55 Accommodation Unit other than:

- (a) a transfer of the freehold interest in an Over 55 Accommodation Unit or land on which an Over 55 Accommodation Unit is to be provided before that Over 55 Accommodation Unit is made available for occupation except where the transfer is to Qualifying Person; or
- (b) a Qualifying Sale and "**Disposed**" and "**Disposing**" shall be construed accordingly

**Dwelling** means a unit of residential accommodation to be constructed as part of the Development pursuant to the Planning Permission

**Employment and Skills Monitoring Contribution** means a contribution of £6,000 (plus VAT) Index Linked payable in accordance with Schedule 2 hereto to be paid to the Council towards the cost of monitoring the Employment and Skills Statement

**Employment and Skills Statement** means a document submitted pursuant to a planning condition which comprises key performance indicators, targets and measures to promote local employment and skills opportunities, use of local supply chains and should contain the number of such opportunities that will be created in connection with the Development. An Action Plan sets out how the ESS will be implemented in accordance with Central Lancashire Employment Skills SPD Preston Addendum (December 2021)

**First Homes** means as more particularly defined in Schedule 3 and First Home shall be construed accordingly.

**Homes England** means a non-departmental body that is responsible for funding and regulating the provision of Affordable Housing in England or any successor body

**Housing Need** means living in unsuitable housing conditions and/or being unable to afford suitable housing at open market prices

**Index Linked** means increased by the amount which bears the same proportion thereto as the amount by indexation calculated in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the BCIS All - in Tender Price Index) that applied immediately preceding the date the payment is due.

B= the figure for the BCIS All - in Tender Price Index that applied when the index was last published prior to the date of this deed

**Key Worker** means a person employed or proposing to take employment in the City in:

- (a) a school or other educational establishment
- (b) a hospital or other healthcare establishment
- (c) the police force or fire service or ambulance service
- (d) the armed forces
- (e) national and local public services
- (f) agriculture forestry or fishery
- (g) any industry which the Council designates as being of critical economic importance to the City

**Landscaping and Management Scheme** means a scheme for the Open Space setting out the landscaping and future management and maintenance of the Open Space including the funding thereof and the details of the management company who shall maintain the same

**Larger Homes** means Dwellings which comprise four or more bedrooms which shall be provided on the Site as part of the Development and which shall comprise 12.5% of the Affordable Housing Units in accordance with the Affordable Housing Scheme and 40% of the Open Market Dwellings

**Low Cost Dwelling Units** means those Affordable Intermediate Units to be sold at the Discount Price

**Market Value** means the open market value as assessed by a Valuer of a Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account or include any discount provided for by this Deed

**Occupation and Occupied** means first 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,

the use of any Dwelling for the marketing of the Development or the storage of plant and materials and **Occupy** and **Occupied** shall be construed accordingly

**Open Market Dwelling** means any Dwelling constructed on the Site pursuant to the Planning Permission which is not a First Home or Affordable Housing

**Open Space** means that part of the Development identified in the Open Space Scheme and shown for indicative purposes only on the Open Space Plan subject to amendment from time to time with the written approval of the Council

**Open Space Plan** means the plan appended to this Deed showing the Open Space

**Open Space Scheme** means a document for the provision of public open space as part of the Development

**Over 55 Accommodation** means a Dwelling that shall not be Occupied by a person under the age of 55 years (except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age)

**Over 55 Accommodation Units** means the 10% of the Dwellings to be constructed and provided on the Site as part of the Development as Over 55 Accommodation in accordance with the provisions of this Deed and Over 55 Accommodation Unit shall be construed accordingly

**Person in Housing Need** means a person who does not have available to him or her and could not afford to acquire a home suitable for his or her needs and the needs of their household at normal market values prevailing in the area and who does not have equity in an existing dwelling

**Plan** means the plan attached at Schedule 1 of this Deed

**Planning Obligation(s)** means those obligations of the Owner contained and set out in this Deed of which each and every obligation is subject to the provisions of clause 4 of this Deed and reference to Planning Obligation shall be construed accordingly

**Planning Permission** means the outline planning permission granted by the Secretary of State pursuant to the Appeal

**Practical Completion** means the issue of a certificate of practical completion by the Owner's architect or other appropriate professional person or in the event that the Development is constructed by a third party the issue of a certificate of practical completion by the other party's architect or other appropriate professional person and for the avoidance of doubt in respect of a First Home and Over 55 Accommodation it means the stage reached when the construction of a First Home and an Over 55 Accommodation Unit is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied.

**Primary Cost Per Place** means the sum of £19,425.00

**Primary Education Contribution** means the sum equating to the number of primary Pupil Places Required multiplied by Primary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional primary school places at Harris Primary School, and/or Fulwood St. Peter's Church of England Primary School & Nursery or any subsequent name or designation by which these are known

**Primary Pupil Places Required** means the number of primary Pupils Expected to be Resident in the Development less any Spare Places expected to be able to cater for the Development

**Pupils Expected to be Resident** means the sum of the number of Dwellings with a given number of bedrooms multiplied by corresponding Pupil Yield Figure for primary education and secondary education (rounded to the nearest whole number)

**Pupil Yield Figure** means:

	Total Number of Bedrooms in Dwelling – Pupil Yield per Dwelling				
	One	Two	Three	Four	Five
Primary	0.01	0.07	0.16	0.38	0.44
Secondary	0.00	0.03	0.09	0.15	0.23

**Qualifying Person** means a person or persons who are at least 55 years old at the date of purchase of an Over 55 Accommodation Unit

**Qualifying Sale** means any transfer or assignment of the freehold or long leasehold title or letting of a tenancy or lease of a Dwelling EXCEPT where the transfer or assignment amounts to an Exempt Disposal because it is:

- (a) executed in pursuance of an order of a court on granting in respect of the parties a decree of marriage;
- (b) executed in pursuance of an order of a court which is made in connection with the dissolution or annulment of the marriage or the parties' judicial separation and which is made at any time after the granting of such a decree;
- (c) executed at any time in pursuance of an agreement of the parties made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or their judicial separation;
- (d) executed by personal representatives of the owner/tenant for the purpose of transferring or assigning into the sole ownership of the spouse of the owner/tenant; or
- (e) executed by personal representatives of a joint owner/tenant and the surviving owner/tenant for the purpose of transferring or assigning the Dwelling into the sole ownership of the surviving owner/tenant

**Reasonable Endeavours** means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable

**Registered Provider** means a registered provider of social housing within the meaning of Section 80(2) of Part 2 of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with the Homes and Communities Agency

**Rented Units** means Social Rented Units and/or Affordable Rented Units



**Requisite Number of Rented Units** means the amount of Affordable Housing Units that should be provided as Rented Units as determined by the Secretary of State or the Inspector pursuant to the Appeal and confirmed in his/her decision letter and being either:

- (a) the number of Affordable Housing Units to be provided as Rented Units as agreed with the Council as part of the approval of the Affordable Housing Scheme submitted to the Council by the Owner in accordance with the provisions of this Deed and with the first Reserved Matters Application; or
- (b) no fewer than 53% of the Affordable Housing Units

**Reserved Matters** means matters reserved for future determination pursuant to the Planning Permission and to be satisfied by the submission of a Reserved Matters Application

**Reserved Matters Application** means an application for Reserved Matters for the Development pursuant to the Planning Permission and shall include any amendment to it or fresh application for Reserved Matters made in substitution therefore or an alternative application for Reserved Matters

**Reserved Matters Approval** means an approval by the Council pursuant to a Reserved Matters Application

**Secondary Cost Per Place** means the sum of £26,717.00

**Secondary Education Contribution:** the sum equating to the number of Secondary Pupil Places Required multiplied by Secondary Cost Per Place to be paid to the County Council in accordance with the terms of this Deed for the provision of additional secondary school places at Archbishop Temple Church of England High School, and/or Broughton High School or any subsequent name or designation by which these are known.

**Secondary Pupil Places Required** means the number of secondary Pupils Expected to be Resident in the Development less any Spare Places expected to be available to cater for the Development

**Secretary of State** means the Secretary of State for Levelling Up Housing and Communities, responsible for determining the Planning Appeal (or the Planning Inspector if the Planning Appeal is to be determined by the Planning Inspector)

**Shared Ownership Units** means Dwellings purchased on a shared equity basis whereby not more than 75% and not less than 10% of the equity is initially sold to the purchaser by the Affordable Housing Provider with the flexibility to increase their degree of Ownership to 100% if they so wish and Shared Ownership Unit shall be construed accordingly

**Social Rented Units** means Dwellings that are available to rent at rent no greater than the Homes England Target Rents by Persons In A Housing Need via the medium of an Affordable Housing Provider and which housing remains permanently accessible for those purposes to people who for any reason cannot afford to rent or purchase suitable accommodation at prevailing market prices and Social Rented Unit shall be construed accordingly

**Site** means the land against which this Deed may be enforced being the land registered with absolute title at HM Land Registry under title number LA517582 as shown edged red on the Plan attached to this Deed in Schedule 1

**Spare Places** means the number of primary or secondary places expected to be available to meet the needs of the Development calculated in accordance with the principles set out in Schedule 2 of this Deed

**Staircasing** means the exercise by the owner/occupier of a Shared Ownership Unit of the right to purchase additional equity shares up to 100% of the interest in the Shared Ownership Unit after which the rent payable on any equity share retained by the Affordable Housing Provider shall be reduced proportionately and Staircase/Staircased shall be construed accordingly

**Transfer** means in relation to the transfer of an interest in property the transfer of a freehold interest

**Working Days** means Monday to Friday in any week excluding any public, bank or any other statutory holidays

## **2 Construction of this deed**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Any covenant by the Owner not do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.9 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 2.10 The Schedules hereto comprise part of the Deed and shall have effect as it set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

### **3 Legal Basis**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and County Council against the Owner as set out in this Deed.
- 3.3 This Deed shall come into effect on the date hereof.

### **4 Conditionality**

- 4.1 This Deed is conditional upon:
- (a) the grant of the Planning Permission on Appeal; and
  - (b) subject to Clause 4.2 below the Secretary of State being satisfied the Planning Obligations in this Deed are:
    - (i) necessary to make the Development acceptable in planning terms; and
    - (ii) directly related to the Development; and
    - (iii) fairly and reasonably related in scale and kind to the Development; and
    - (iv) to comply in all other respects with Regulation 122 of the CIL Regulations; and
  - (c) Commencement of Development with the exception of any obligation expressly requiring compliance before the Commencement of Development, this clause 4 and clauses 5.2, 12, 14, 17, 18 and 19 which shall come into effect immediately upon completion of this Deed.
- 4.2 In the event that the Secretary of State expressly states in his Decision Letter that any individual Planning Obligation within this Deed is not compliant with the CIL Regulations and/or the NPPF or is immaterial to the grant of Planning Permission and that no weight has been given to the same in reaching his decision then that Planning Obligation or those Planning Obligations will cease to have effect and shall be void for the purposes of this Deed and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect provided that severance is achievable.

### **5 The Owner's Covenants**

- 5.1 The Owner covenants (so as to bind the Site) to fully observe and perform the obligations in this Deed and to carry out the Development in accordance with the obligations and restrictions set out in Schedule 2, Schedule 3, Schedule 6 and Schedule 7.
- 5.2 The Owner shall pay on or before completion of this Deed the Council's and the County Council's reasonable and proper legal costs in connection with the preparation, completion and registration of this Deed in the sum of £950 and £500 respectively.

### **6 Covenants by the Council and County Council**

The Council and the County Council covenant with the Owner to observe and perform the covenants, restrictions and obligations contained in this Deed including for the avoidance of

doubt those on the part of the Council in Schedule 2, Schedule 3, Schedule 4 and Schedule 6 and on the part of the County Council in Schedule 5.

## **7 Local land charge**

- 7.1 This Deed shall be registered as a local land charge by the Council.
- 7.2 Following the performance and satisfaction of all the obligations contained in this Deed or where the obligations under this Deed are no longer enforceable the Council may effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed against the Site (or relevant part).

## **8 Termination of this deed**

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) or expires prior to the Commencement of Development.

## **9 The Contracts Act**

Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council or County Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

## **10 Liabilities**

- 10.1 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with all its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 10.2 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed in respect of any part of the Site in which they do not have a legal interest.
- 10.3 The obligations in this Deed will not be enforceable against:
- (a) with the exception of paragraphs 3(j) – 3(m) of Part C of Part 5 of Schedule 6 in respect of Low Cost Dwelling Units; paragraphs 6 and 7 of Schedule 3 in respect of First Homes; and paragraph 7 of Schedule 2 in respect of the Over 55 Accommodation, the purchaser or lessee of an individual Dwelling erected on the Site pursuant to the Planning Permission having a roof window and door and being in a state of readiness for Occupation; or
  - (b) a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owner to that statutory undertaker; or
  - (c) with the exception of Schedule 6 Part 1-Part 6, an Affordable Housing Provider; or
  - (d) a mortgagee or chargee until they become a mortgagee or chargee in possession; or
  - (e) anyone whose only interest in the Site or any part of it is in the nature of the benefit of an easement or covenant

- 10.4 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

**11 Council powers**

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

**12 Waiver**

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

**13 Promoter's consent**

The Promoter consents to this Deed being entered into with the intention that its interest in the Site will be bound by the terms of this Deed provided always that such consent is given on the basis that the Promoter will not incur any liability for any breach of the obligations contained in this deed unless and until it becomes the freehold owner of the Site (or any part thereof) or obtains a leasehold interest in the Site (or any part thereof).

**14 Mortgagee consent**

Any legal charge taken over the Site in the future shall take effect subject to this Deed provided that any new mortgagee shall have no liability under this deed unless it becomes a mortgagee in possession in which case it too will be bound by the planning obligations in this Deed as if it were a person deriving title from the Owner

**15 Ownership**

**15.1 Change in ownership**

The Owner covenants to give the Council and County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan (save that this clause shall not relate to the sale of a Dwelling constructed pursuant to the Planning Permission).

**15.2 Warranty of title**

The Owner warrants that no person other than the Owner and the Promoter has any legal or equitable interest in the Site.

**16 VAT**

Save where expressly provided otherwise all consideration given in accordance with the terms of this Deed shall be inclusive of any value added tax properly payable.

## **17 Dispute provisions**

- 17.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 17.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a person having ten years or more relevant qualifying experience of the issues in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute to determine the dispute such person acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 Working Days after the conclusion of any hearing that takes place or 28 Working Days after he has received any file or written representation.
- 17.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further 10 Working Days.

## **18 Interest**

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

## **19 Jurisdiction**

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

## **20 Delivery**

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

## **21 Notices**

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

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

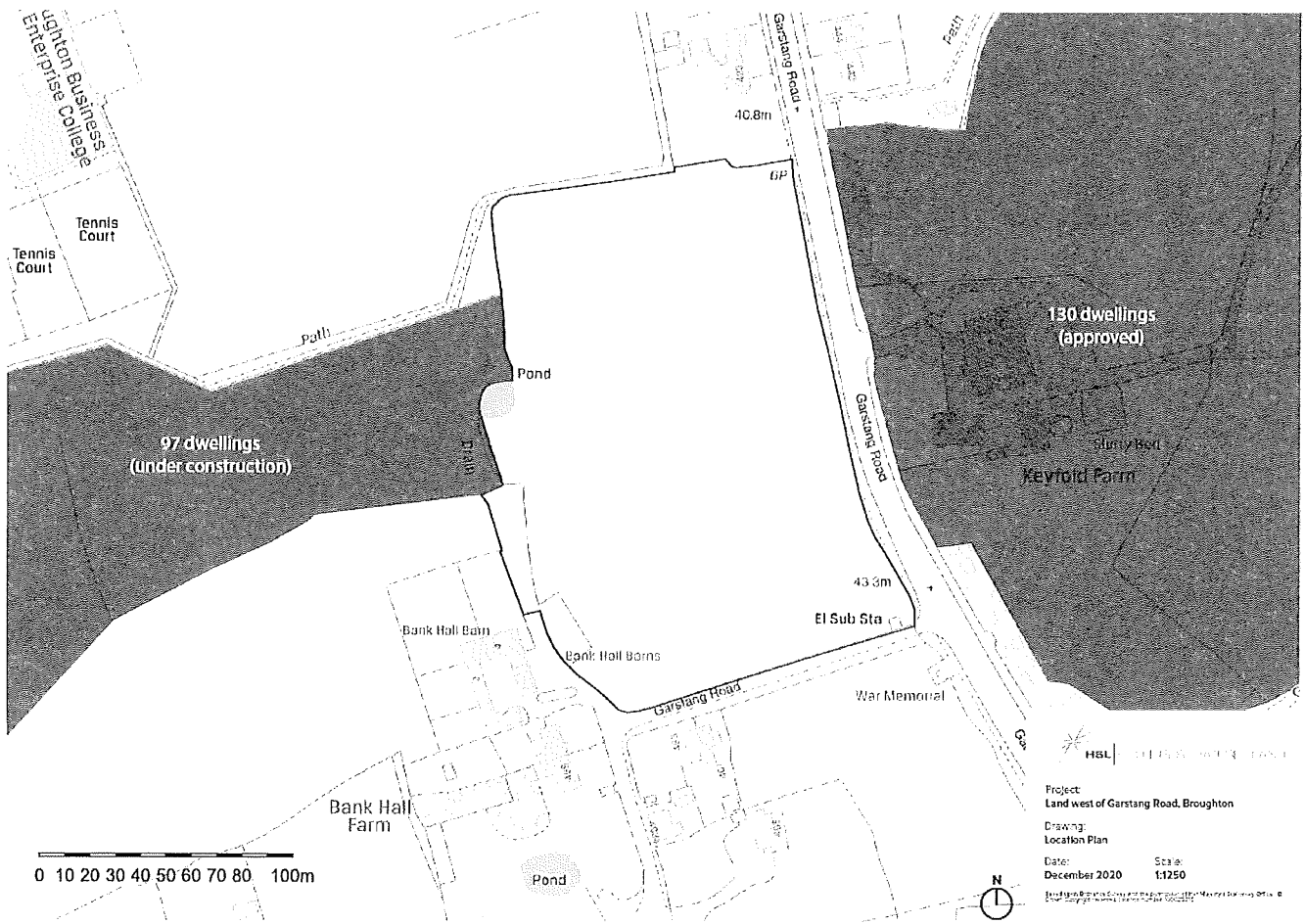
- (a) if by hand, upon delivery;
- (b) if by first class recorded delivery, 48 hours after delivery of the notice, request, demand or other written communication in to the postal system.

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

**In witness** whereof the parties hereto have executed this Deed on the day and year first before written.

### Schedule 1

### The Plan





## Schedule 2

### The Owner's covenants

The Owner covenants as follows:

#### **1 Notices**

- 1.1 To give Notice in writing to the Council and County Council within 5 Working Days of:
- (a) Commencement of Development;
  - (b) Occupation of the first Dwelling comprised within the Development;
  - (c) Occupation of 60% of the Dwellings comprised within the Development; and
  - (d) Occupation of 85% of the Dwellings comprised within the Development.

#### **2 Primary Education Contribution**

- 2.1 Within 20 Working Days following the grant of a Reserved Matters Approval to notify the County Council that a Reserved Matters Approval has been granted and request that the County Council calculates the Primary Education Contribution relating to the Reserved Matters Approval in accordance with this Deed.
- 2.2 To notify the County Council on first Occupation of the 1st and 20<sup>th</sup> and 40<sup>th</sup> Dwelling.
- 2.3 To pay the Primary Education Contribution to the County Council in the following instalments:
- (a) 50% prior to the Occupation of the 20th Dwelling on the Site; and
  - (b) 50% prior to the Occupation of the 40th Dwelling on the Site.

#### **3 Calculation of the Primary Education Contribution**

- 3.1 Within 20 working days following the grant of a reserved matters approval pursuant to planning permission to notify the County Council's school planning team of such grant and request that the County Council calculates the Primary Education Contribution and number of Spare Places in accordance with this Agreement and in the same manner as demonstrated in the County Council's Education Methodology - Infrastructure and Planning Annex 2 September 2020 (Revised July 2023)
- 3.2 The County Council's pupil projections that are current at the time of the calculation shall be used.
- 3.3 For the avoidance of doubt, if the County Council's re-calculations show that the number of Spare Places in primary schools has increased then there may be a reduction in the payment due in accordance with the re-calculated shortfall. If, however the re-calculated number of Spare Places is expected to exceed the calculated pupil yield from this development as per this Schedule, then no Primary Education Contribution shall be payable.
- 3.4 Where a Primary Education Contribution is payable, the Owner covenants to pay to the County Council acting as local education authority the Primary Education Contribution Index Linked:

#### **4 Calculation of the Secondary Education Contribution**

- 4.1 Within 20 working days following the grant of a reserved matters approval pursuant to the Planning Permission to notify the County Council's school planning team of such grant and request that the County Council calculates the Secondary Education Contribution and number of Spare Places in accordance with this Deed and in the same manner as demonstrated in the County Council's Education Methodology - Infrastructure and Planning Annex 2 September 2020 (Revised July 2023)
- 4.2 The County Council's pupil projections that are current at the time of the calculation shall be used.
- 4.3 For the avoidance of doubt, if the County Council's re-calculations show that the number of Spare Places in secondary schools has increased then there may be a reduction in the payment due in accordance with the re-calculated shortfall. If, however the re-calculated number of Spare Places is expected to exceed the calculated pupil yield from this development as per this Schedule, then no Secondary Education Contribution shall be payable.
- 4.4 Where a Secondary Education Contribution is payable, the Owner covenants to pay to the County Council acting as local education authority the Secondary Education Contribution Index Linked as follows:
- (a) 50% of the Secondary Education Contribution Index Linked prior to the Occupation of the 20th Dwelling to be Occupied on the Site.
  - (b) the balance of the Secondary Education Contribution Index Linked prior to the Occupation of the 40th Dwelling to be Occupied on the Site.

#### **5 Affordable housing provisions**

- 5.1 The Owner covenants to comply with the obligations in Schedule 6 hereto relating to Affordable Housing

#### **6 Employment Skills**

- 6.1 To pay the Employment and Skills Monitoring Contribution to the Council prior to the Commencement of Development and not to Commence Development until the Employment and Skills Monitoring Contribution has been paid to the Council.

#### **7 Over 55 Accommodation**

- 7.1 The Owner shall provide and deliver Over 55 Accommodation as part of the Development in accordance with the provisions of this Schedule.
- 7.2 The Over 55 Accommodation Units shall be marketed for sale and shall not be Occupied by a person under the age of 55 years (except that in circumstances of a married couple or civil partnership at least one person in the married couple or civil partnership is not less than 55 years of age) and no Over 55 Accommodation Unit (whether on a first or any subsequent sale) shall be Transferred, let or assigned otherwise than to a Qualifying Person unless that transaction constitutes a Qualifying Sale.
- 7.3 If after an Over 55 Accommodation Unit has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who is a Qualifying Person, paragraph 7.2 shall cease to apply.

- 7.4 No Over 55 Accommodation Unit shall be Disposed of (whether on a first or any subsequent sale) unless and until the Council has been provided with evidence that:
- (a) the intended purchaser is a Qualifying Person
  - (b) the Dwelling is being Disposed of as an Over 55 Accommodation Unit; and
  - (c) the transfer of the Over 55 Accommodation Unit includes:
    - (i) a definition of the "Council" which shall be Preston City Council
    - (ii) a definition of " Over 55 Accommodation Provisions" in the following terms:

"means the provisions set out in paragraphs 7.4 to 7.9 of Schedule 2 to the S106 Agreement a copy of which is attached hereto as the Annexure."
    - (iii) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) Reaper Limited (2) Hollins Strategic Land LLP (3) Preston City Council and (4) Lancashire County Council
    - (iv) a provision that the property is sold subject to and with the benefit of the Over 55 Accommodation Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the Over 55 Accommodation Provisions
    - (v) a copy of the Over 55 Accommodation Provisions in an annexure

- 7.5 On the first Disposal of each and every Over 55 Accommodation Unit to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that Dwelling of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Preston City Council of Town Hall, Lancaster Road, Preston PR1 2RL or their conveyancer that the provisions of clause 7 of Schedule 2 of the S106 Agreement made pursuant to section 106 of the Town and Country Planning Act 1990 relating to land west of Garstang Road, Broughton, Preston PR31RD dated [date] and made between [parties] have been complied with or that they do not apply to the disposition"

- 7.6 The owner of an Over 55 Accommodation Units (which for the purposes of this clause shall include the Owner and any owner of an Over 55 Accommodation Unit) may apply to the Council to Dispose of it other than as an Over 55 Accommodation Unit on the grounds that either:

- (a) the Dwelling has been actively marketed as an Over 55 Accommodation Unit for six (6) months in accordance with the provisions of this Schedule (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as an Over 55 Accommodation Unit but it has not been possible to Dispose of that Dwelling as Over 55 Accommodation in accordance with paragraphs 7.4; or

- (b) requiring the owner of the Over 55 Accommodation Unit to undertake active marketing for the period specified in paragraph 7.6(a) before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

and paragraph 7.7 of this Schedule below shall apply in respect of such unit or units of Over 55 Accommodation

7.7 Where paragraph 7.6 applies then:

- (a) the Owner may at any time serve notice upon the Council stating that this paragraph 7.7 applies and providing evidence as to why despite complying with paragraph 7.2 of this Schedule 2 the Owner has been unable to sell of some or all of the Over 55 Accommodation to those eligible for such units together with evidence of such proper marketing as was carried out to effect the sale; and
- (b) upon receipt of the Owner's written notice served pursuant to sub paragraph 7.7(a) above the Council shall consider the evidence ( and confirm in writing within 20 Working Days of the date of receipt whether or not it agrees that despite complying with paragraph 7.2 of this Schedule 2 the Owner has been unable to sell of some or all of the Over 55 Accommodation to those eligible for such units and in the event that the Council disagrees the Council shall set out its reasons for such disagreement.

7.8 In the event that the Council confirms in writing pursuant to sub-paragraph 7.7(b) that it disagrees that despite complying with paragraph 7.2 of this Schedule 2 the Owner has been unable to sell of some or all of the Over 55 Accommodation to those eligible for such units then the Owner may:

- (a) submit further evidence and submissions to the Council in order to address the Council's reasons for disagreement in which case sub-paragraphs 7.7(a) and 7.7(b) of this Schedule 2 shall apply mutatis mutandis to the Council's consideration of such evidence and submission; or
- (b) refer any dispute or disagreement for independent determination in accordance with clause 17 of this Deed.

7.9 In the event that the Council or an expert (pursuant to clause 17 of this Deed) confirms pursuant to this paragraph 7 of Schedule 2 or Clause 17 (as the context requires) that despite complying with paragraph 7.2 of this Schedule 2 the Owner has been unable to sell any or all of the Over 55 Accommodation to those eligible for such units then the Owner shall be entitled to dispose of the relevant Over 55 Accommodation Units on the open market free from the occupancy restrictions for Over 55 Accommodation.

## **8 First Homes**

The Owner covenants to comply with the obligations in Schedule 3 hereto relating to First Homes.

### Schedule 3

#### First Homes

#### INTERPRETATION

In this Schedule the following words and expressions shall mean as follows:

<p>"Additional First Homes Contribution"</p>	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of this Schedule 3, the lower of the following two amounts:</p> <p>(a) 30% of the purchase monies; and</p> <p>(b) the purchase monies less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.</p>
<p>"Affordable Dwellings"</p>	<p>means a Dwelling to be provided as Affordable Housing together with rights and easements over the Site to provide access to the Dwelling and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including car parking in accordance with this Schedule</p>
<p>"Armed Services Member"</p>	<p>means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service</p>
<p>"Cluster"</p>	<p>shall mean a group of Affordable Dwellings which does not have contiguous boundaries with another group of Affordable Dwellings</p>
<p>"Compliance Certificate"</p>	<p>means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 applies the Eligibility Criteria (Local) in the form at Annex 1</p>
<p>"Development Standard"</p>	<p>means a standard to fully comply with the following:-</p> <p>(a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015</p>

	<p>(b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time</p> <p>(c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited</p> <p>(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)</p> <p>as the same may be amended by written agreement of the Parties in accordance with paragraph 5.1</p>
"Discount Market Price"	means a sum which is the Market Value discounted by at least 30%
"Disposal"	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>(a) a letting or sub-letting in accordance with paragraph 7</p> <p>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner</p> <p>(c) an Exempt Disposal</p> <p>and "Disposed" and "Disposing" shall be construed accordingly</p>
"Eligibility Criteria (National)"	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <p>(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and</p> <p>(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).</p>
"Eligibility Criteria (Local)"	<p>means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:</p> <p>(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and</p> <p>(b) any or all of criteria (i) (ii) and (iii) below are met:</p> <p>(i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or</p> <p>(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or</p> <p>(iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker</p>

	it being acknowledged that at the date of this Deed the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.
"Exempt Disposal"	<p>means the Disposal of a First Home in one of the following circumstances:</p> <p>(a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner</p> <p>(b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner</p> <p>(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order</p> <p>(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 8 shall apply to such sale)</p> <p>Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 7</p>
"First Home"	means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap
"First Homes Owner"	<p>means the person or persons having the freehold or long leasehold interest (as applicable) in a First Home other than</p> <p>(a) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or</p> <p>(b) the freehold a tenant or sub-tenant of a permitted letting under paragraph 7 of this Schedule 3</p>
"First Homes Provisions"	the provisions set out in paragraphs 6.1 to 6.9 of Schedule 3 of this Deed
"First Time Buyer"	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
"Income Cap (Local)"	<p>means</p> <p>such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this Deed the Council has not set an Income Cap (Local)</p>

"Income Cap (National)"	Eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home
"Key Worker"	<p>means a person employed or with a confirmed job offer proposing to take employment in the City in one of the following:</p> <ul style="list-style-type: none"> <li>• a school or other educational establishment</li> <li>• a hospital or other healthcare establishment</li> <li>• the police force or fire service or ambulance service</li> <li>• the armed forces</li> <li>• national and local public services</li> <li>• agriculture forestry or fishery</li> <li>• any industry which the Council designates as being of critical economic importance to the City or</li> </ul> <p>such other categories of employment as may be published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal</p>
"Local Connection Criteria"	<p>means either (a) or (b) below</p> <p>(a) criteria which are met by a person who satisfies one or more of the following:</p> <ul style="list-style-type: none"> <li>(i) is ordinarily resident within the City wards and has been for a continuous period of not less than three out of the last five years or three consecutive months out of the last six months prior to exchange of contracts for the relevant First Home; and/or</li> <li>(ii) who has a close family association with the City by reason of a parent or child who is ordinarily resident within the City; or</li> <li>(iii) is a person/family who can demonstrate a local connection to the City by reason of employment in the City.</li> </ul> <p>(b) such other local connection criteria as may be published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal</p>
"Market Value"	means the open market value as assessed by a Valuer of a Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation



"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"Price Cap"	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

## **1 Obligations**

Unless otherwise agreed in writing by the Council, the Owner for and on behalf of itself and its successors in title to the Site with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the Council as below save that

- 1.1 paragraphs 2, 3, 4 and 5 shall not apply to a First Homes Owner;
- 1.2 paragraphs 6 and 7 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and
- 1.3 Paragraph 8 applies as set out therein.

## **2 Quantum of First Homes**

- 2.1 At least 25% of the Affordable Housing Units shall be identified reserved and set aside as First Homes and shall be provided in accordance with the approved Affordable Housing Scheme and be retained as First Homes in perpetuity and subject to the terms of this Schedule.

## **3 Clustering**

- 3.1 The First Homes shall not be visually distinguishable from the Open Market Dwellings based upon their external appearance.
- 3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted.
- 3.3 The size of Clusters for the Affordable Dwellings shall be agreed in writing with the Council as part of the Affordable Housing Scheme.

#### 4 Type and distribution

- 4.1 The location plot boundaries layout and mix of First Homes provided within the Site shall be in accordance with the approved Affordable Housing Scheme.

#### 5 Development Standard

All First Homes shall be constructed to:-

- 5.1 the Development Standard current at the time of the relevant Reserved Matters Approval; and  
5.2 no less than the standard applied to the Open Market Dwellings.

#### 6 Delivery mechanism

- 6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- (a) the Eligibility Criteria (National); and
  - (b) the Eligibility Criteria (Local) (if any).
- 6.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 6.1(b) shall cease to apply.
- 6.3 Subject to paragraphs 6.6 to 6.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee
- 6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
- (a) the Council has been provided with evidence that:
    - (i) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility Criteria (Local) (if any)
    - (ii) the Dwelling is being Disposed of as a First Home at the Discount Market Price and
    - (iii) the transfer of the First Home includes:
      - (A) a definition of the "Council" which shall be Preston City Council
      - (B) a definition of "First Homes Provisions" in the following terms:
 

*"means the provisions set out in paragraphs 6.1 to 6.9 of Schedule 3 to the S106 Agreement a copy of which is attached hereto as the Annexure."*
      - (C) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) Reaper Limited (2) Hollins Strategic Land LLP (3) Preston City Council and (4) Lancashire County Council

- (D) a provision that the property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions
    - (E) a copy of the First Homes Provisions in an annexure
  - (b) The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4(a) have been met
- 6.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:
- "No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Preston City Council of Town Hall, Lancaster Road, Preston PR1 2RL or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*
- 6.6 The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:
- (a) the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4(a); or
  - (b) requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6(a) before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.
- 6.7 Upon receipt of an application served in accordance with paragraph 6.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.
- 6.8 If the Council is satisfied that either of the grounds in paragraph 6.6 above have been made out it shall confirm in writing within twenty-eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:
- (a) to the Council at the Discount Market Price; or
  - (b) (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

- 6.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner of a First Home setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 6.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home
- 6.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution
- 6.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- (a) within 23 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title
  - (b) apply all monies received towards the provision of Affordable Housing
- 6.12 Any person who purchases a First Home free of the restrictions in Schedule 3 of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

## **7 Use**

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 - 7.4 below:

- 7.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances 7.2(a) – 7.2(f) below:
- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;

- (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- (e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

7.3 A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

7.4 Nothing in this sub-paragraph 7 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

## **8 Mortgagee exclusion**

The obligations in paragraphs 1 - 7 of this Schedule in relation to First Homes shall not apply to any Mortgagee, Chargee or any receiver (including an administrative receiver appointed by such Mortgagee, Chargee or any other person appointed under any security documentation to enable such Mortgagee, Chargee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee, Chargee or Receiver PROVIDED THAT:

- 8.1 such Mortgagee, Chargee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee, Chargee or Receiver to the Council the Mortgagee, Chargee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3.
- 8.3 Following the Disposal of the relevant First Home the Mortgagee, Chargee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 8.4 Following receipt of notification of the Disposal of the relevant First Home the Council shall:
  - (a) forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and
  - (b) apply all such monies received towards the provision of Affordable Housing.

## **Schedule 4**

### **The Council Covenants**

The Council hereby covenants with the Owner:

- 1 not to unreasonably withhold or delay its approval of any scheme for Affordable Housing submitted to it
- 2 to observe and perform the obligations of the Council in relation to Affordable Housing in this Deed;
- 3 as soon as reasonably practicable following the written request of the Owner to provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

## Schedule 5

### The County Council's covenants

#### **1 Primary Education Contribution**

- 1.1 On receipt of a notice pursuant to paragraph 3.1 of Schedule 2 to calculate the Primary Education Contribution and Spare Places in accordance with this Deed and in the same manner as demonstrated in the County Council's Education Methodology - Infrastructure and Planning Annex 2 September 2020 (Revised July 2023)
- 1.2 To pay the Primary Education Contribution into a separately identified interest-bearing section of the County Council's combined accounts as soon as reasonably practicable.
- 1.3 Not to use any part of the Primary Education Contribution other than towards the cost of providing, expanding or improving educational facilities (which may include the purchase and improvement of land and buildings) at Broughton-in-Amounderness Church of England Primary School or any subsequent name or designation by which it is known.
- 1.4 In the event that the Primary Education Contribution has not been spent or committed for expenditure by the County Council within 5 years following the date of receipt of the final payment of the Primary Education Contribution the County Council shall refund to the party who paid it any part of the Primary Education Contribution which has not been spent or committed for expenditure, together with any accrued interest at the Bank of England Base Lending Rate.
- 1.5 Should the Primary Education Contribution not be spent on the project named within this Deed, the County Council will return the entire sum to the party who paid any part of the Primary Education Contribution. Furthermore, the County Council will ensure that sufficient local primary school places are provided to address the impact of the development at no cost to the Owner.

#### **2 Secondary Education Contribution**

- 2.1 On receipt of a notice pursuant to paragraph 4.1 of Schedule 2 to calculate the Secondary Education Contribution and Spare Places in accordance with this Deed and in the same manner as demonstrated in the County Council's Education Methodology - Infrastructure and Planning Annex 2 September 2020 (Revised July 2023)
- 2.2 To pay the Secondary Education Contribution into a separately identified interest-bearing section of the County Council's combined accounts as soon as reasonably practicable.
- 2.3 Not to use any part of the Secondary Education Contribution other than towards the cost of providing, expanding or improving educational facilities (which may include the purchase and improvement of land and buildings) at Broughton High School or any subsequent name or designation by which it is known.
- 2.4 In the event that the Secondary Education Contribution has not been spent or committed for expenditure by the County Council within 5 years following the date of receipt of the final payment of the Secondary Education Contribution the County Council shall refund to the party who paid it any part of the Secondary Education Contribution which has not been spent or committed for expenditure, together with interest at the Bank of England Base Lending Rate.
- 2.5 Should the Secondary Education Contribution not be spent on the project named within this Deed, the County Council will return the entire sum to the party who paid any part of the Secondary Education Contribution. Furthermore, the County Council will ensure that sufficient

local secondary school places are provided to address the impact of the development at no cost to the Owner.



## Schedule 6

### Affordable Housing

#### Part 1 - General provisions relating to the Affordable Housing

- 1 The Owner hereby covenants with the Council:
- 1.1 To provide for 40 per cent of the total number of Dwellings comprised in the Development as Affordable Housing Units in accordance with the Affordable Housing Scheme.
- 1.2 That the Owner shall submit to the Council for approval the Affordable Housing Scheme detailing the numbers location plot boundaries layout tenure and mix of Affordable Housing Units with the first Reserved Matters Application.
- 1.3 Not to construct any Dwellings comprised in the Development until the Affordable Housing Scheme has been approved in writing by the Council.
- 1.4 Following approval of the Affordable Housing Scheme the Owner shall construct the Affordable Housing Units in accordance with this Deed and the terms of the approved Affordable Housing Scheme.
- 1.5 The transfer of the Affordable Housing Units to an Affordable Housing Provider shall be at a price which allows the Affordable Housing Provider to use an Affordable Rent for the Affordable Rented Units and in respect of the Affordable Intermediate Units shall be at a price which allows the Affordable Housing Provider to assign the Affordable Intermediate Units as Shared Ownership Units.
- 1.6 The Affordable Housing provisions in paragraph 4 of Part 2 of this Schedule 6, the whole of Part 3 and Part 4 of Schedule 6 and paragraphs 2(e), 2.3, 2.4, 3(j), 3(k), 3(l) of Part 5 of Schedule 6 and the whole of Part 6 of Schedule 6 of this Deed shall not be binding on a mortgagee or Chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or Chargee or any other person appointed under any security documentation to enable such mortgagee or Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or Chargee or Receiver PROVIDED THAT:
- (a) such mortgagee or Chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three month period, the mortgagee, Chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in paragraph 4 of Part 2 of this Schedule 6, in the whole of Part 3 and Part 4 of Schedule 6, and paragraphs 2(e), 2.3, 2.4, 3(j), 3(k), 3(l), of Part 5 of Schedule 6 and the whole of Part 6 of Schedule 6 of this Deed which provisions shall determine absolutely;

- 1.7 The affordable housing provisions in this Deed shall cease to apply to those Affordable Housing Units where the Affordable Housing Provider shall be required to dispose of such of the Affordable Housing Units pursuant to right to buy under Part IV of the Housing Act 1985 or section 16 of the Housing Act 1996 or any similar or applicable substitute right or shall be required to sell to a tenant with the benefit of a voluntary purchase grant provided under sections 20 and 21 of the Housing Act 1996 (or any similar provision in any subsequent legislation) or shall not apply to a tenant of an Affordable Intermediate Unit who has Staircased up to 100 per cent or their mortgagee.

## **Part 2 - Provisions relating to Rented Units**

The Owner hereby covenants with the Council:

- 1 That all Rented Units shall be constructed to a standard and quality no less than that of the Open Market Dwellings to be constructed upon the Site in accordance with the Planning Permission relating thereto and in accordance with the general specification of constructional standards of the National House Builders Council, or similar.
- 2 To complete the construction of 50% in number of the Rented Units on or prior to the Occupation of 50% of the Open Market Dwellings and to use reasonable endeavours to complete the transfer of the freehold title (free from any financial charges) to those Affordable Rented Units to an Affordable Housing Provider on or prior to the Occupation of 60% of the Open Market Dwellings within the Site.
- 3 To complete the construction of 100% in number of the Rented Units on the site prior to the occupation of 75% of the Open Market Dwellings and to use reasonable endeavours to complete the transfer of the freehold title (free from any financial charges) to those Rented Units to an Affordable Housing Provider on or prior to the Occupation of the last Open Market Dwelling within the Site to be Occupied.
- 4 The transfer of the Rented Units to the Affordable Housing Provider shall be on terms that the Rented Units shall not be Occupied except in accordance with or pursuant to a rental scheme operated by the Affordable Housing Provider whereupon the Affordable Housing Provider shall be bound by the nomination rights policy in relation to such to the Rented Units as detailed in Part 3 of this Schedule.
- 5 If the Owner is of the opinion (acting reasonably) that the obligations as aforesaid will not be discharged by the trigger dates detailed above despite the Owner using reasonable endeavours to do so and demonstrating this to the Council the Owner may approach the Council in writing to agree an alternative Affordable Housing Scheme.

### Part 3 - Nomination Rights Policy in Relation to the Rented Units

1 The following definitions shall apply to this Part 3 of Schedule 6:

"Agreed Letting Policy"	the Select Move allocations policy or any alternative lettings policy agreed between the parties if the Select Move Scheme ceases to exist or ceases to apply to the Rented Units
"Council Nominee"	a person or persons nominated by the Council who is in Housing Need
"First Letting"	the first Tenancy granted of a Rented Unit
"Nomination Period"	such period as is agreed between the Council and the Affordable Housing Provider to allow the Council to nominate a Council Nominee
"One Cycle"	means one advertising cycle of 5 days which runs from Friday at midnight until midnight on the following Wednesday or as otherwise as prescribed by the then current Select Move Scheme
"Select Move"	a choice based lettings scheme adopted by the Council and "Select Move Scheme" shall be construed accordingly
"Subsequent Letting"	the second and subsequent grants of Tenancies of a Rented Unit
"Tenancy"	an introductory tenancy or assured tenancy in a standard form of introductory tenancy or assured tenancy agreement

- 1.1 In the event of Select Move being the Agreed Letting Policy for allocations in Preston, all Rented Units under this Deed will be advertised and allocated under the Select Move Scheme.
- 1.2 Allocations under the Select Move Scheme will include the advertising of any Rented Units on the Select Move website in the property shops used by Select Move and in any other media used by Select Move by the Affordable Housing Provider or the Council. All Rented Units will be advertised for at least One Cycle. The Affordable Housing Provider will then be responsible for short listing the bidders and selecting the successful bidder. Affordable Housing Providers will unless otherwise agreed with the Council be responsible for processing and maintaining waiting list and transfer applications received through Select Move.
- 1.3 First Lettings and Subsequent Lettings to successful bidders will be made by the Affordable Housing Provider.
- 1.4 In the event that the Council no longer wishes to participate in the Select Move Scheme, the Council (acting reasonably) will provide the Affordable Housing Provider with 2 months written notice after which time the procedure for nominations will be as stated at paragraphs 1.7 to 1.11 below.
- 1.5 In the event that the Affordable Housing Provider ceases to engage in the Select Move Scheme the Affordable Housing Provider will provide the Council with 2 months written notice after which time the Council will advertise the Rented Units using the Select Move Scheme to identify

- successful bidders. The bidder's details will be provided to the Affordable Housing Provider as a nomination.
- 1.6 In the event of the Select Move Scheme no longer being operational, the Agreed Letting Policy shall apply the Council's system of nominations. The Affordable Housing Eligibility Criteria in Part 4 of this Schedule 6 will continue to apply.
- 1.7 The Affordable Housing Provider shall covenant with the Council to use reasonable endeavours to procure the letting of each Rented Unit by the grant of a Tenancy to a Council Nominee.
- 1.8 The Affordable Housing Provider shall grant to the Council the right during the Nomination Period to nominate a Council Nominee for 100% of the First Lettings and at least 75% of the Subsequent Lettings of the Rented Units Provided That each such nomination shall be in accordance with the Agreed Letting Policy.
- 1.9 The Agreed Letting Policy shall apply to any nominations made under this Deed and the Council will endeavour to nominate those who satisfy the Affordable Housing Eligibility Criteria set out in Part 4 of this Schedule 6 below.
- 1.10 The Affordable Housing Provider shall notify the Council of the availability of a Rented Unit by serving a written notice (a "**Notice**") on the Council and in the case of First Lettings the Notice may be served on the Council prior to the issue of the Completion Certificate
- 1.11 If:
- (a) the Council fails to nominate a Council Nominee for a First Letting of a Rented Unit within 15 Working Days of the Notice; or
  - (b) despite the reasonable efforts of the Affordable Housing Provider no Council Nominee shall on the occasion of a First Letting enter into a Tenancy of a Rented Unit within a reasonable time (being not less than 15 Working Days from the date of Notice); or
  - (c) the Council fails to nominate a Council Nominee for a Subsequent Letting of a Rented Unit within fifteen (15) Working Days of the Notice; or
  - (d) despite reasonable efforts of the Affordable Housing Provider no Council Nominee shall on the occasion of a Subsequent Letting enter into a Tenancy of a Rented Unit within a reasonable time (being not less than fifteen (15) Working Days from the date of the Notice).
  - (e) then the Affordable Housing Provider shall be free to grant a Tenancy of such Rented Unit to any person satisfying the Affordable Housing Eligibility Criteria detailed at Part 4 of this Schedule 6.
  - (f) During the Nomination Period the provisions of this Deed shall apply in respect of all grants of a Tenancy by the Affordable Housing Provider until such time as it is reviewed. Any amendments to the nominations will be negotiated and agreed between the Council and the Affordable Housing Provider.
  - (g) The nomination provisions contained in this Deed are personal to the Council and the Affordable Housing Provider and shall not be enforceable against any Chargee of any Rented Unit or any part of the Site or any purchaser acquiring from a mortgagee in possession.

- (h) The Affordable Housing Provider shall on demand provide to the Council details of the First Lettings and the Subsequent Lettings made in respect of the Rented Units.
- (i) The Council and the Affordable Housing Provider shall agree a standard format of information to be provided for all nominations in accordance with each party's policy on confidentiality.

## **2 Liaison Arrangements**

The Council shall promptly and diligently provide to the Affordable Housing Provider contact details for its Housing (Options) Team Leader and its Housing Manager (Options) so as to facilitate efficient liaison arrangements in connection with operation of the Agreed Letting Policy and Council's nomination rights hereunder.

## **3 Allocations Criteria**

- 3.1 The Council will forward a copy of its allocations policy to the Affordable Housing Provider.
- 3.2 The Affordable Housing Provider shall provide the Council with copies of the following documentation:
  - (a) Housing Application Form (where this is different from the one used by the Council);
  - (b) Allocations/ Lettings Policy (where this is different to the one used by the Council); and
  - (c) Equal Opportunities Statement

## **4 Criteria for Selecting Nominations**

The Council will endeavour to make nominations in line with its current allocation policies and any changes will be notified to the Affordable Housing Provider.

- 4.1 The Council will consult the Affordable Housing Provider in the event of considering any changes to its allocation policy.
- 4.2 In the event of a dispute arising regarding a nomination or bidder, the Affordable Housing Provider shall provide the Council with evidence regarding the refusal and commit to adhering to the requirements of the agreed allocation policy.

## **5 Procedures for Nominations**

- 5.1 The Affordable Housing Provider will provide the Council with a timetable for the hand-over of the Rented Units at least 1 month prior to anticipated completion and first occupation of the Rented Units. Following the provision of this timetable the Affordable Housing Provider will provide the Council with a monthly progress report.
- 5.2 With the object of preserving the nature of the Rented Units as affordable homes for rent the same shall be managed by an Affordable Housing Provider with its usual and normal leasehold terms and conditions in such form of lease as shall be appropriate for the Site.

## **6 Confidential Information**

The Council and the Affordable Housing Provider shall share confidential information relating to the nominee such information may affect the nomination in some way, e.g. people at risk,

domestic violence, ex-offenders, people with drug or alcohol related problems. The Council and the Affordable Housing Provider shall comply with the Data Protection Act 2018 at all times.

**7 Equal Opportunities**

The Council and the Affordable Housing Provider shall agree that disadvantaged and minority groups shall have equal access to nominations as laid down in the Council's Equal Opportunities Policy.

**8 Notices**

Any notice required to be served hereunder shall be sufficiently served on the Council and the Affordable Housing Provider at the Council's address indicated above and at the main business address of the Affordable Housing Provider or such other address notified by one to the other and any notice shall be deemed to have been served 5 Working Days after posting.

#### Part 4 - Eligibility Criteria for the Rented Units

- 1 A person satisfying the Affordable Housing Eligibility Criteria set out below must use the Rented Unit as their main and principal residence.
- 2 None of the Rented Units shall be occupied except by persons who meet any of the criteria set out in paragraph 3 below in descending order of priority and have been nominated by the Council or selected by the Affordable Housing Provider on behalf of the Council via the Select Move Scheme or persons set out paragraphs 7 to 11 below or as otherwise provided in this Deed:
- 3 A person deemed to be in Housing Need in accordance with the agreed allocation policy. Where there are bands within the policy, an applicant will need to be in a priority band in order to be eligible and satisfy one of the following: They must:
  - 3.1 be a person/family ordinarily resident within the City wards for a minimum of three out of the last five years or three out of the last six months calculated from the date of the application;
  - 3.2 be a person/family who can demonstrate a local connection or who has a family association within the City;
  - 3.3 be a person/family with employment in the City; or
  - 3.4 be a Key Worker.
- 4 In the event that more than one person satisfies the above criteria applicants will be considered in order of the date of their application.
- 5 In the event of there being no interest from applicants who comply with paragraph 3 above applicants who are ordinarily resident within the neighbouring boroughs of Chorley and South Ribble can be considered, as well as applicants who can demonstrate a Housing Need.
- 6 For the avoidance of doubt local connections means (not in order of priority)
  - 6.1 The applicant must be able to demonstrate that they have lived 6 out of the last 12 months or 3 out of the last 5 years continuously in the City; or
  - 6.2 The applicant must be able to demonstrate that they have parents, children or adult siblings who currently permanently reside in the City and have done so continuously for at least 5 years; or
  - 6.3 The applicant is currently employed in the specific Local Authority area. Employment is work that is not temporary or seasonal, is for at least 16 hours per week and has been continual for at least 6 months and the applicant must be working at the point an offer of a tenancy is made (banding is global); or
  - 6.4 The applicant is currently making a positive community contribution or undertaken voluntary work in the City for at least 10 hours per month over the last 12 months; or
  - 6.5 The applicant needs to give or receive long term care, which is effective and genuine to another person who permanently resides within the City and who could not otherwise manage without the care provided and there is a need for the applicant to move into the area in order to facilitate the provision of such long term care.

- 7 The applicant at the time of the application is serving in or has formerly served in the UK regular forces within the last 5 years.
- 8 The applicant has recently ceased or will cease to be entitled to reside in accommodation provided by the UK Government following the death of that persons spouse or civil partner who has served in the UK regular forces and their death was attributable wholly or partly to that service.
- 9 The applicant at the time of the application is serving in or has formerly served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable wholly or partly to that service.
- 10 Applicants/households that cannot demonstrate a local connection but have an exception welfare need will be accepted on to the scheme e.g. harassment, domestic abuse, witness protection.
- 11 Applicants under the Right to Move Regulations i.e. social tenants moving into the area to take up employment



## Part 5 - Affordable Intermediate Units

### Part A General

- 1 The Owner hereby covenants with the Council not to dispose of the Affordable Intermediate Units other than as Shared Ownership Units or as Low Cost Dwelling Units and only in accordance with the provisions of this Schedule and the Affordable Housing Scheme.

### Part B Shared Ownership Units

- 2 The Owner further covenants as follows:
- (a) That any Affordable Intermediate Units to be disposed of as Shared Ownership Units shall be constructed to a standard and quality no less than that of the Market Dwellings to be constructed upon the Site in accordance with the Planning Permission relating thereto and in accordance with the general specification of constructional standards of the National House Builders Council, or similar.
  - (b) The Owner hereby covenants with the Council to complete the construction of 50% in number of the Shared Ownership Units on the Site prior to the Occupation of 50% of the Open Market Dwellings on the Site and to use reasonable endeavours to complete the transfer of the freehold title (free from any financial charges) to those Shared Ownership Units to an Affordable Housing Provider on or prior to the Occupation of 60% of the Open Market Dwellings.
  - (c) The Owner hereby covenants with the Council to complete the construction of 100% in number of the Shared Ownership Units prior to the Occupation of 75% of the Open Market Dwellings and to use reasonable endeavours to complete the transfer of the freehold title (free from any financial charges) to those Shared Ownership Units to an Affordable Housing Provider on or prior to the Occupation of the last Open Market Dwelling within the Site to be Occupied.
  - (d) The Owner shall give the Council written notice within 10 Working Days of the Owner entering into a binding agreement with the Affordable Housing Provider to transfer (or grant a long lease of) the Shared Ownership Units to the Affordable Housing Provider and also the date of completion of the transfer (or grant of a long lease) in accordance with this Deed.
  - (e) No part of any Shared Ownership Unit shall be used for any purpose other than the provision of Affordable Housing for disposal by way of a transfer or the grant of a lease to persons satisfying the Affordable Housing Eligibility Criteria as detailed in paragraphs 1.2, 1.3, 3, 4, 5 and 6 of Part 6 of this Schedule 6.
  - (f) The Owner shall in the initial transfer (or lease) of the Shared Ownership Units to the Affordable Housing Provider require:
    - (i) a covenant that the Shared Ownership Units shall not be used other than for residential purposes; and
    - (ii) a covenant to comply with Part A and this Part B of this Part 5 of this Schedule 6.
- 2.2 If, in accordance with the triggers set out within paragraphs 2(b) and 2(c) of this Part B, Part 5 of this Schedule 6, neither the Owner nor the Council have been able to identify an Affordable

Housing Provider who is ready willing and able to exchange contracts for the purchase of the Shared Ownership Units and the Owner has provided to the Council written evidence of the Owner having used reasonable endeavours to secure sales to Affordable Housing Providers and reasons why such sales have not progressed and the Council confirming in writing that the Owner has taken all reasonable steps to conclude an agreement with an Affordable Housing Provider the Shared Ownership Units shall instead be provided as Low Cost Dwelling Units in accordance with the provisions of Part C of this Schedule 6 and the provisions of this Part B shall cease to apply thereto.

- 2.3 That without prejudice to any statutory rights to Staircasing to 100% the Shared Ownership Units shall be made available as Affordable Housing in perpetuity subject to the provisions contained in this Part B of this Schedule 6.
- 2.4 The Affordable Housing Provider will pay into a designated reserve fund ("the **Fund**") any proceeds (after deduction of mortgage redemption and legal and/or administrative costs) received from a person who has purchased 100% equity through Staircasing pursuant to their rights in accordance with legislation ("the **Proceeds**") and the Affordable Housing Provider will:
- (a) Retain the Proceeds in the Fund (until utilised in accordance with paragraph 2.4(b) and/or paragraph 2.4(c) immediately below);
  - (b) Utilise the Proceeds within 24 (twenty four) months from the date of receipt, for the provision of Affordable Housing within the City of Preston subject to agreement from the Council's Housing Manager that the proposed use of the Proceeds is in line with the Council's strategic housing objectives;
  - (c) If within 24 (twenty four) months from the date of receipt of the Proceeds they have not been used in accordance with paragraph 2.4(b) above, the Proceeds may be used by the Affordable Housing Provider for use by them as part of their affordable housing development programme whether in or out of the City of Preston;
  - (d) Inform the Council's Housing Manager within 1 (one) month of being notified of the occupier's intention to exercise the right to acquire the Shared Ownership Unit, advising of the current amount of the Proceeds of the Fund; and
  - (e) Provide to the Council a yearly transaction and balance statement for the Fund at the end of each financial year.

### **Part C Low Cost Dwelling Units**

- 3 The Owner further covenants as follows:
- (a) That any Affordable Intermediate Units to be disposed of as Low Cost Dwelling Units shall be constructed to a standard and quality no less than that of the Open Market Dwellings to be constructed upon the Site in accordance with the Planning Permission relating thereto and in accordance with the general specification of constructional standards of the National House Builders Council, or similar.
  - (b) To complete the construction of 50% in number of any Affordable Intermediate Units to be disposed of as Low Cost Dwelling Units prior to the Occupation of 50% of the Open Market Dwellings and to use reasonable endeavours to complete the transfer of the freehold title or the leasehold title (as appropriate) (free from any financial charges) of such Low Cost Dwelling Units to persons satisfying the Affordable Housing Eligibility Criteria detailed at Part 6 of this Schedule 6 at the Discount Price prior to the

Occupation of 60% of the Open Market Dwellings and subject to the terms of this Part C of Part 5.

- (c) To complete the construction of 100% in number of any Affordable Intermediate Units to be disposed of as Low Cost Dwelling Units prior to the Occupation of 75P% in number of the Open Market Dwellings and to use reasonable endeavours to complete the transfer of the freehold title or the leasehold title (as appropriate) (free from any financial charges) of such Low Cost Dwelling Units to persons satisfying the Affordable Housing Eligibility Criteria detailed at Part 6 of this Schedule 6 at the Discount Price prior to the Occupation of the last Open Market Dwelling within the Site and subject to the terms of this Part C of Part 5.
- (d) The Owner shall give the Council written notice within 10 Working Days of the Owner entering into a binding agreement to transfer (or grant a long lease of) any Low Cost Dwelling Unit to persons satisfying the Affordable Housing Eligibility Criteria detailed at Part 6 of this Schedule 6 and also the date of completion of the transfer (or grant of a long lease) in accordance with this Deed.
- (e) The Owner covenants with the Council that the Owner shall not dispose of the Low Cost Dwelling Units on the initial sale:
  - (i) for a price which exceeds the Discount Price; and
  - (ii) other than to a person who meets the Affordable Housing Eligibility Criteria as detailed at Part 6 of this Schedule 6.
- (f) The Transfer or lease (as appropriate) of each and every Low Cost Dwelling Unit on initial sale shall contain the following covenants by the transferee (which in this context and for the purpose of Part C of this Schedule 6 shall also mean the lessee of any long lease of any Low Cost Dwelling Unit as appropriate) (the “**Transferee**”) for themselves and their successors in title to the Low Cost Dwelling Unit for the benefit of the Council:
  - (i) not to allow the Low Cost Dwelling Unit to be occupied other than by the Transferee and the Transferee's immediate dependants as their primary and sole residence;
  - (ii) not to dispose of the Low Cost Dwelling Unit at a price exceeding the Discount Price in perpetuity;
  - (iii) not to dispose of the Low Cost Dwelling other than to a person satisfying the Affordable Housing Eligibility Criteria detailed at Part 6 of this Schedule 6 save where the provisions of paragraph 3(l) below apply; and
  - (iv) not to dispose of the Low Cost Dwelling Units without on each occasion procuring that any disponee covenants directly with the Council to observe and perform the covenants contained in this paragraph 3 of Part C of Part 5 and delivers a completed Agreement of covenant in such terms to the Council in a form reasonably acceptable to the Council.
- (g) The Owner shall give the Council 40 Working Days' notice of their intended sales release of any Low Cost Dwelling Units together with the estimated Discount Price whereupon the Owner shall use reasonable endeavours to agree the Discount Price with the Council within 20 Working Days of the date of the Owner's notice.

- (h) Within 20 Working Days of the Discount Price for a Low Cost Dwelling Unit either being agreed or determined in accordance with paragraph 3(g) immediately above or determined in accordance with Clause 17 of this Deed the Council may provide to the Owner the name and address of a person who meets the Affordable Housing Eligibility Criteria as detailed in Part 6 of this Schedule 6 and who in the reasonable opinion of the Council is able to proceed with the purchase of the Low Cost Dwelling Unit in accordance with the terms of this Part C of Part 5 of this Schedule 6.
- (i) In the event that the Council nominates in writing a potential buyer who meets the Affordable Housing Eligibility Criteria as provided in paragraph 3(h) above the Owner shall forthwith submit a draft contract and supporting documentation to the potential buyer's conveyancer upon the Owner's standard reservation terms (save that such potential buyer shall have 36 days to exchange contracts rather than the usual 28 days) and use reasonable endeavours to exchange contracts for the disposal of the Low Cost Dwelling Unit to such nominated potential buyer as soon as is reasonably practical Provided That:
- (i) if such person fails to exchange contracts within such reservation period or indicates that they are either unable or unwilling to proceed to exchange of contracts; or
  - (ii) in the event that the Council fails to notify the Owner of a potential buyer of the Low Cost Dwelling Unit who meets the Affordable Housing Eligibility Criteria prior to the expiry of the time period as detailed in paragraph 3(h) above
- then the Owner shall be able to dispose of such Low Cost Dwelling without further reference to the Affordable Housing Eligibility Criteria as detailed in Part 6 of this Schedule 6 but to such other person who in the reasonable opinion of the Owner is in need of Affordable Housing Provided that the provisions of paragraph 3(f) of this Part C of this Schedule 6 shall apply to such disposal.
- (j) Upon the second and all subsequent disposals of the Low Cost Dwelling Unit the Transferee shall give the Council 20 Working Days notice of the intended sale of the Low Cost Dwelling Unit and the estimated Discount Price at which the Transferee intends to sell the Low Cost Dwelling Unit for whereupon the Transferee shall use reasonable endeavours to agree the Discount Price with the Council within 20 Working Days of the date of the Transferee's said notice Provided That:
- (i) if the Council fails to respond to the Transferee's notice within the said 20 Working Day period (time being of the essence) then the Transferee may proceed to market the Low Cost Dwelling Unit at a price which does not exceed the estimated Discount Price; and
  - (ii) within 20 Working Days of the Discount Price either being agreed or determined as aforesaid the Council may provide to the Transferee the name and address of a person who meets the Affordable Housing Eligibility Criteria as detailed in Part 6 of this Schedule 6 and who in the opinion of the Council is able to proceed with the purchase of the Low Cost Dwelling Unit in accordance with the terms of this Part C of Part 5.
- (k) In the event that the Council nominates in writing a potential buyer who meets the Affordable Housing Eligibility Criteria as detailed in Part 6 of this Schedule 6 the Transferee shall forthwith instruct his conveyancer to submit a draft contract and supporting documentation to the potential buyer's conveyancer and use reasonable

endeavours to exchange contracts for the disposal of the Low Cost Dwelling Unit to such nominated potential buyer as soon as is reasonably practical Provided That:

- (i) if such person fails to exchange contracts within 36 days of receipt of such contract and supporting documentation or indicates that they are either unable or unwilling to proceed to exchange of contracts; or
- (ii) in the event that the Council fails to notify the Transferee of a potential buyer of the Low-Cost Dwelling Unit who meets the Affordable Housing Eligibility Criteria prior to the expiry of the time period as detailed in paragraph 3(j)(ii) above

then the Transferee shall be able to dispose of such Low-Cost Dwelling Unit without further reference to the Affordable Housing Eligibility Criteria as detailed in Part 6 of this Schedule 6 but to such other person who in the reasonable opinion of the Transferee is in need of Affordable Housing Provided Further That the provisions of paragraph 3(f) of Part C of this Part 5 of Schedule 6 shall apply to such disposal.

- (l) In the event that upon the second and all subsequent disposals of the Low Cost Dwelling Unit the Transferee has not been able to complete a sale of the Low Cost Dwelling Unit using the procedure detailed at paragraphs 3(j) – 3(l) above within 6 months of the start of the process as detailed at paragraph 3(j) above then the Transferee shall be able to dispose of such Low Cost Dwelling Unit without further reference to the Affordable Housing Eligibility Criteria as detailed in Part 6 of this Schedule 6 and to such other person he so chooses whereupon the provisions of paragraph 3(f)(iii) above shall not apply but paragraphs 3(f)(i), 3(f)(ii) and 3(f)(iv) shall apply Provided Further That on all subsequent disposals of that Low Cost Dwelling Unit the provisions of Part C of this Part 5 of Schedule 6 shall continue to apply to such disposals.
- (m) So as to preserve the Low Cost Dwelling Units as Affordable Housing in perpetuity the Owner shall procure that upon the initial sale of a Low Cost Dwelling Unit that a restriction shall be entered on the Proprietorship Register of the title thereof that:
  - (i) “No disposition of the registered estate by the proprietor or by the proprietor of any registered charge is to be registered without a certificate signed by the conveyancer for the disponent that the provisions of clause [ *Drafting Note: this will refer to the equivalent clause of para 3(f)(iv) of this Schedule in the lease / transfer*] of the [transfer/registered lease] have been complied with”

## Part 6 - Eligibility for Affordable Intermediate Units

- 1 The following is the Council's Affordable Housing Eligibility Criteria for the Affordable Intermediate Units:
  - 1.1 Applicants for Low Cost Dwelling Units must have a local connection with the area in which they are seeking to live;
  - 1.2 Applicants for Low Cost Dwelling Units and Shared Ownership Units must be deemed to be in need of financial assistance to purchase a property on the open market;
  - 1.3 Applicants for Low Cost Dwelling Units and Shared Ownership Units must be able to demonstrate a Housing Need for a property type.
- 2 For the avoidance of doubt local connection for a Low Cost Dwelling Unit means in the following order of priority
  - 2.1 Applicants for the Low Cost Dwelling Units in question who are Key Workers; or
  - 2.2 Applicants for the Low Cost Dwelling Units in question who have previously had their only or principal home in the City for a continuous period of three years; or
  - 2.3 Applicants for the Low Cost Dwelling Units in question who for a period of 12 months prior to proposed occupation of the Affordable Intermediate Unit had their principal place of work within in the City; or
  - 2.4 Applicants for the Low Cost Dwelling Units in question who have immediately prior to the proposed occupation thereof have one or more of their parents grandparents children or siblings living within in the City for a continuous period of five years
- 3 For the avoidance of doubt when considering the ability of a person to purchase on the open market the Council will take into account household income levels, and other commitments.
- 4 For the avoidance of doubt applicants will be assessed on their current Housing Need. Applicants will only be authorised to proceed with a purchase after meeting the criteria above.
- 5 Notwithstanding the above the Council and Affordable Housing Provider (if applicable) may agree between themselves any amendment to the Affordable Housing Eligibility Criteria where the Council shall deem it reasonable to do so Provided That after such amendments are applied the Applicant is able to demonstrate a Housing Need.
- 6 Applicants must use the Low Cost Dwelling Unit or Shared Ownership Unit as their main and principal residence.
- 7 If after the Low Cost Dwelling Units have been marketed for 3 months and there is no interest from Applicants who comply with paragraphs 1.1 to 2.4 above Applicants who are ordinarily resident within the neighbouring boroughs of Fylde, Wyre, Ribble Valley, Chorley and South Ribble can be considered who can demonstrate a Housing Need.

## Schedule 7

### Public Open Space

The Owner hereby covenants with the Council as follows:

- 1 As part of the first Reserved Matters Application to submit the Open Space Scheme to the Council for approval such Open Space Scheme to include the following:
  - 1.1 the part or parts of the Site where the Open Space is to be provided;
  - 1.2 the amount and location of the Open Space(s);
  - 1.3 the timescale for the delivery of the Open Space(s);
  - 1.4 the specification of the Open Space(s) to be provided including how they are to be laid out, planted and equipped; and
  - 1.5 the Landscaping and Management Scheme
- 2 Not to Occupy or cause or allow to be Occupied any Dwelling until the Council has approved the Open Space Scheme.
- 3 The Open Space Scheme may be amended or varied from time to time by agreement in writing between the Council and the Owner (both acting reasonably and without delay).
- 4 The Open Space(s) shall be provided laid out and made available for use in accordance with the approved Open Space Scheme and thereafter maintained by the Owner in accordance with the approved Landscaping and Management Scheme in perpetuity or until an alternative arrangement is agreed with the Council.

The common seal of )  
**Preston City Council** )  
was affixed to this deed in the presence of )

.....  
Authorised Signatory

The common seal of )  
**Lancashire County Council** )  
was affixed to this deed in the presence of )

.....  
Authorised Signatory

Executed as a deed by )  
**Reaper Limited** ) .....  
acting by director in the presence of a ) Director name  
witness/two directors:

.....  
Signature of witness

Name .....

Address .....

.....



Executed as a deed by  
**Hollins Strategic Land LLP**  
acting by:

)  
) .....  
) ◆

.....  
Signature of witness

Name .....

Address .....

.....

## Annex 1

## Form of Compliance Certificate for First Homes

## FIRST HOMES COMPLIANCE CERTIFICATE

<b>Date:</b>	[ ]
<b>To:</b>	[Buyer's conveyancer]
	[Builder's/Seller's conveyancer]
	[Buyer's mortgage advisor]
	[First Home Buyer(s)]
<b>First Homes Buyer(s) name(s) (the proposed First Homes Owner(s)):</b>	[ ]
<b>First Home property to be purchased:</b>	[ plot number & site name/address ]
<b>Copied to:</b>	[First Homes Buyer(s) current address before purchase] [First Homes house builder]

The proposed First Homes Buyer(s) First Homes application has been approved by Preston City Council pursuant to the S106 Agreement made pursuant to section 106 of the Town and Country Planning Act 1990 relating to land west of Garstang Road, Broughton, Preston PR31RD dated [date] and made between [parties] and this Compliance Certificate issued to the proposed First Homes Buyer(s) and their conveyancer by [Council] as follows:

<b>First Homes Buyer(s) name(s) (the proposed First Homes Owner(s))</b>	[Full Names]
<b>[Builder] [Current First Homes Owner]</b>	[Builder/Seller]
<b>First Home property to be purchased:</b>	[ plot number & site name/address ]
<b>First Home forecast purchase legal completion date:</b>	
<b>Market value (100% of value)</b>	[£ ]
<b>First Homes discount %</b>	30%
<b>First Homes Purchase Price (price to be paid by the proposed First Homes Buyer(s) applying the First Homes discount to the Market value)</b>	[£ ]

<b>Proposed date of exchange of contracts</b>	
<b>Proposed date of completion</b>	

This **COMPLIANCE CERTIFICATE** is issued by Preston City Council and confirms that a Dwelling is being disposed of to the First Home Buyer(s) specified in this Compliance Certificate who meet the:

- (a) Eligibility Criteria (National)
- (i) First Time Buyer;
  - (ii) Having Household income no more than £80,000 per annum [*and if applicable*]
- (b) the Eligibility Criteria (Local)
- (i) [*insert Local eligibility Criteria*]
  - (ii) [ ]

As set out in full in the S106 Agreement made pursuant to section 106 of the Town and Country Planning Act 1990 relating to land west of Garstang Road, Broughton, Preston PR3 5JA dated [*date*] and made between [*parties*] ("**Planning Obligations**").

The First Homes Buyer(s) (the new First Homes Owner) has provided all the necessary First Homes confirmations and declarations of eligibility required by Preston City Council and the First Homes Buyer(s) solicitor has confirmed that the transfer to the First Home Buyer(s) will comply with the requirements in Planning Obligations in relation to the Property.

Yours sincerely

<b>Name:</b>	
<b>Signed:</b>	
<b>For and on behalf of:</b>	<b>Preston City Council</b>
<b>Dated:</b>	

