

SIGNED Si06.

Planning obligation by deed of undertaking under the  
Town and Country Planning Act 1990 Section 106 for use  
in conjunction with an application for planning permission

THIS UNILATERAL UNDERTAKING is given the 23 day of March 2016

BY

SCPI BOWLAND LIMITED care of Land Law LLP, 10-14 Market Street, Altrincham,  
WA14 1QB, ('the Owner')

TO

RIBBLE VALLEY BOROUGH COUNCIL of Council Offices, Church Walk, Clitheroe,  
BB7 2RA ('the Council')

RECITALS

- A The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- B The Owner is the freehold owner of the Site as set out in Schedule 1.
- C The Owner submitted the Application to the Council on 21 February 2014.

- D The Council resolved on the 23 December 2014 to refuse planning permission in respect of the Application and the Owner has submitted the Appeal for determination by the Secretary of State.
- E The Owner is prepared to enter into this deed in order to secure the planning obligations it creates.

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

1.1 Definitions

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

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990.
- 1.1.2 'Affordable Housing' means subsidised housing that will be available to an Approved Person,
- 1.1.3 'the Affordable Housing Land' means those parts of the Site designated by the Owner for the construction of the Affordable Housing Units,
- 1.1.4 'the Affordable Housing Units' means the Dwellings to be provided on the Affordable Housing Land comprising residential units to total 20% of all Dwellings to be constructed on the Site, of which 50% are to be Rented Units and 50% are to be Discounted Sale Units, and which shall include the Over 55s Provision, and 'an Affordable Housing Unit' shall be construed accordingly.
- 1.1.5 'the Applicant' means a person applying to the Owner for a Rental Agreement of a Unit and in assessing an Applicant's application and eligibility for a Rental Agreement of a Unit all due regard shall be given to the Applicant's intended household,
- 1.1.6 'the Appeal' means the appeal to the Secretary of State following the refusal of the Application by the Council given appeal reference APP/T2350/W/15/3119224,

- 1.1.7 'the Application' means the application for outline planning permission for the Development dated the 21 February 2014 submitted to the Council and allocated reference number 3/2014/0183,
- 1.1.8 'Approved Person' means a person who meets the Qualifying Criteria,
- 1.1.9 'Borough' means the Borough of Ribble Valley.
- 1.1.10 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the erection of temporary buildings for the use of workmen on Site, the temporary display of site notices or advertisements and 'Commence the Development' shall be construed accordingly,
- 1.1.11 'Current Cricket Field' means that part of the Site which has formerly been used as a cricket pitch with accompanying outbuilding and which forms part of the land registered under title number LAN110557,
- 1.1.12 'the Date of Practical Completion' means the date of issue of a certificate of practical completion of a Dwelling by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect, or, where a Dwelling is being offered for sale with the benefit of an NHBC guarantee, or equivalent the date of issue of the relevant guarantee,
- 1.1.13 'the Development' means the development of the Site with 60 Dwellings pursuant to the Planning Permission,
- 1.1.14 'Discounted Sale Unit' means the sale of an Affordable Housing Unit at a discount of 40% of the Open Market Value in perpetuity,
- 1.1.15 'Dispose' means each and every means by which the right of occupation of the Affordable Housing is given or transferred to another person body or company and 'Disposal' shall be construed accordingly,

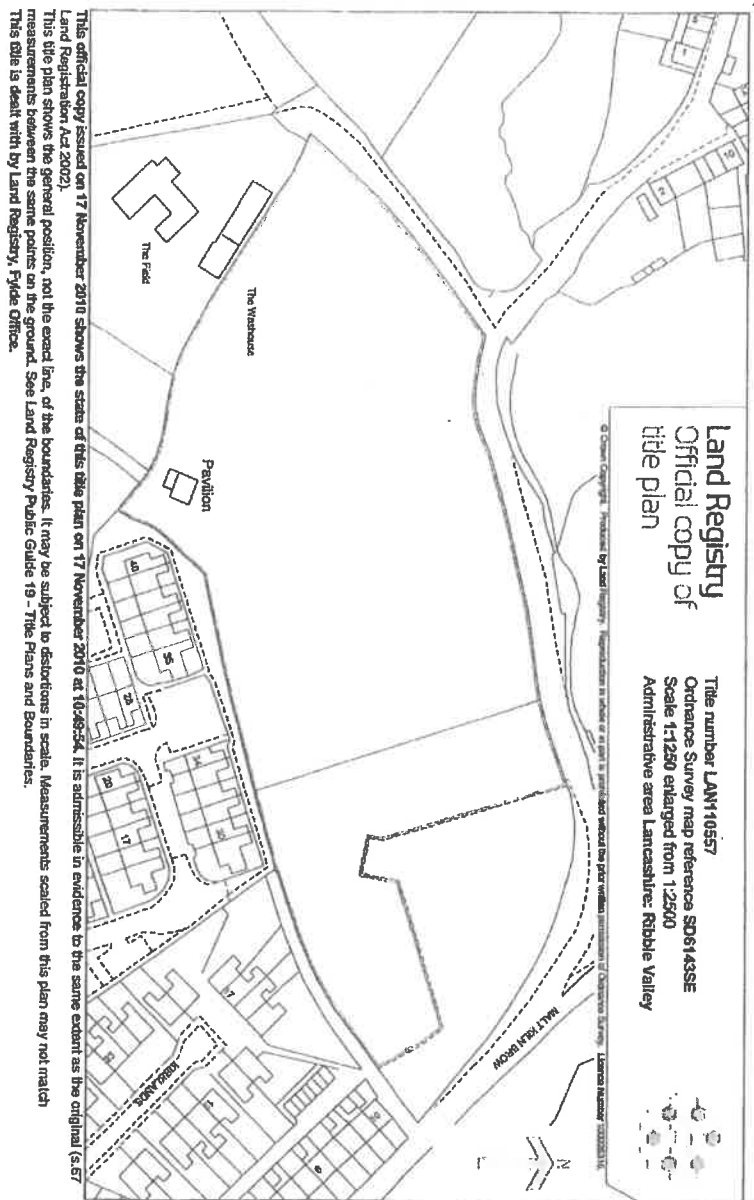
- 1.1.16 'a Dwelling' means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly,
- 1.1.17 'Financial Need' means an Applicant whose means are not reasonably sufficient to enable him/her to buy or rent a suitable property in the Locality or the Neighbouring Parish which is reasonably convenient and suitable for the Applicant,
- 1.1.18 'Financial Need Criteria' means:
- (a) that the Applicant cannot afford to rent suitable accommodation on the open market in the Locality or the Neighbouring Parish; or
  - (b) no suitable alternative affordable accommodation is available in the Locality or the Neighbouring Parish on the open market,
- 1.1.19 'Homes and Communities Agency' means the Homes and Communities Agency or its statutory successors,
- 1.1.20 'the Housing Corporation' means the Housing Corporation as defined in Section 56 of the Housing Act 1996 or its statutory successors,
- 1.1.21 'Independent Valuer' means an independent chartered surveyor with not less than 10 years post-qualification experience in the valuation of land and developments for use as permitted by the Planning Permission who shall be appointed jointly by the Owner and the Council or in default of agreement within 7 working days of either party seeking the agreement of the other, or appointed at the request of the Owner or the Council by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors,
- 1.1.22 'Kirk Mill Complex' means the buildings comprising a disused factory, warehouse, offices, and stone barn known as the Kirk Mill Complex situated on the land edged red on Plan 5,
- 1.1.23 'Kirk Mill Complex Works' means the works to be carried out to the Kirk Mill Complex details of which are contained in paragraph 2 of Schedule 3,
- 1.1.24 'Living' means those currently living in the Locality, Neighbouring Parish or Borough (as applicable),
- 1.1.25 'the Locality' means the parish of Chipping,

- 1.1.26 'the Local Housing Allowance' means the Local Housing Allowance rates for the Borough of Ribble Valley from time to time or any statutory replacement thereof,
- 1.1.27 'Market Housing Unit' means a Dwelling which is intended to form part of the general market housing for sale on the open market within the Development and which is not Affordable Housing,
- 1.1.28 'Mill' means the Grade II listed former mill building known as Kirk Mill situated on the land edged red on Plan 4.
- 1.1.29 'Mill Works' means the works to be carried out to the Mill details or which are contained in paragraph 1 of Schedule 3 and as will be more specifically detailed in the schedule to be prepared pursuant to paragraph 7.1 of Schedule 2,
- 1.1.30 'Neighbouring Parish' means the parishes which have a neighbouring common boundary with the Locality,
- 1.1.31 'Next of Kin' means mother, father, brother, sister or adult dependant children,
- 1.1.32 'Nominated Officer' means the Council's Housing Strategy Officer or such other officer of the Council as may from time to time be nominated by the Council to act in his place,
- 1.1.33 'Nomination Process' means the process of nominating an Approved Person as set out in Schedule 2,
- 1.1.34 'Notice' means a written notice from the Owner to the Council confirming that the Owner intends to market for sale the Affordable Housing Units and in which the Owner invites the Council to agree the Open Market Value of the Affordable Housing Units,
- 1.1.35 'Occupation' means the use of a Market Housing Unit for residential purposes and 'Occupied' shall be construed accordingly,
- 1.1.36 'Open Market Value' means the price reasonably obtainable at which the sale of the freehold interest in the relevant Affordable Housing Unit (together with any rights easements provisions covenants and other matters benefiting it but subject to any incumbrances restrictions stipulations or covenants which may affect it and which will still subsist and are capable of taking effect) would have been completed

unconditionally for cash consideration by private treaty at the date of the Notice with vacant possession on completion of the sale assuming:

- 1.1.36.1 a willing seller; and
- 1.1.36.2 that prior to the date of the Notice there had been a reasonable period (having regard to the nature of the Affordable Housing Unit and the state of the market) for the proper marketing of the interest the agreement of price and terms and the completion of the sale; and
- 1.1.36.3 that the state of the market levels of values and other circumstances were on any earlier assumed date of exchange of contracts the same as on the date of the Notice; and
- 1.1.36.4 that no account is taken of any additional bid by a buyer with a special interest; and
- 1.1.36.5 that both parties to the transaction had acted knowledgeably prudently and without compulsion
- 1.1.37 'Over 55s Provision' means Dwellings constructed to the standards published in the Lifetime Homes Design Guide current at the date of this Agreement, and comprising residential units to total 15% of all Dwellings to be constructed on the Site,
- 1.1.38 'Plan 1' means the plan attached to this deed and marked Plan 1,
- 1.1.39 'Plan 2' means the plan attached to this deed and marked Plan 2,
- 1.1.40 'Plan 3' means the plan attached to this deed and marked Plan 3,
- 1.1.41 'Plan 4' means the plan attached to this deed and marked Plan 4,
- 1.1.42 'Plan 5' means the plan attached to this deed and marked Plan 5,
- 1.1.43 'the Planning Permission' means the planning permission issued by the Council,
- 1.1.44 'Qualifying Criteria' means the priority in which an Applicant will be allocated a Rental Agreement of a Rented Unit being first in priority order:
- (a) those currently Living in the Locality for more than 10 years;

Plan 1



Plan 2



Plan 3

Land Registry  
Official copy of  
title plan

Title number LAN154315  
Ordnance Survey map reference SD6243SE  
Scale 1:1250 enlarged from 1:2500  
Administrative area Lancashire : Ribbles Valley

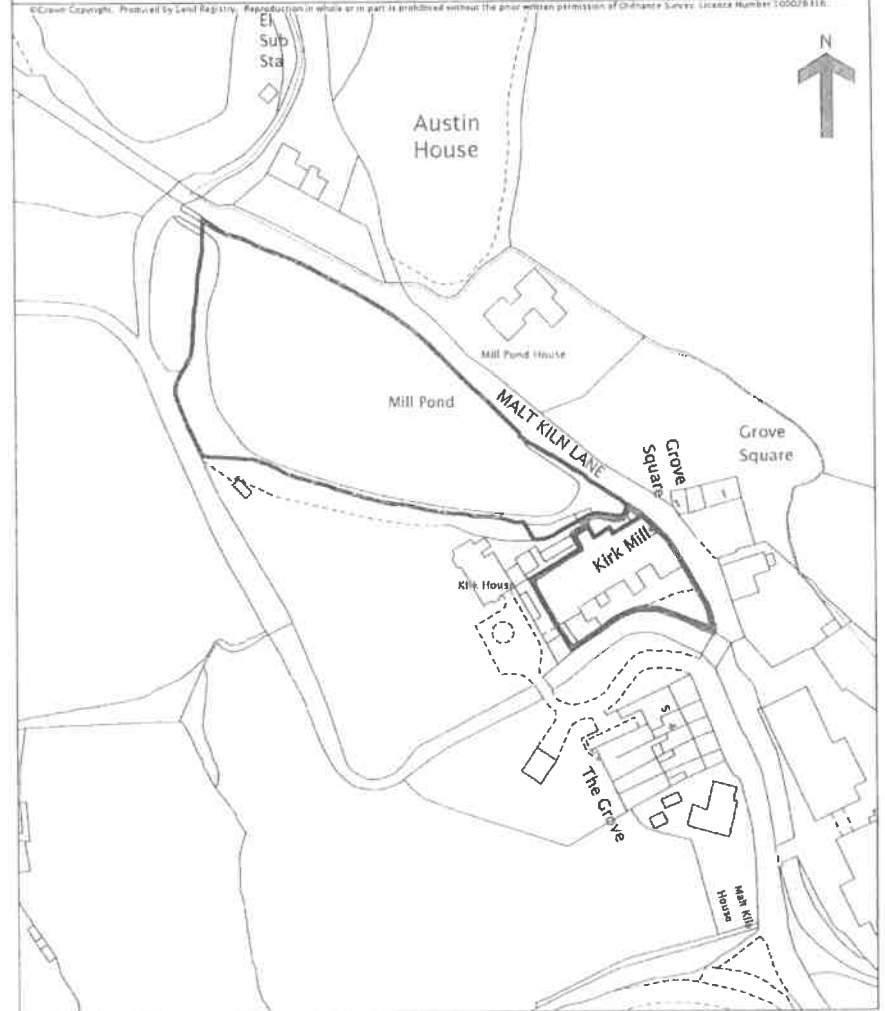


This official copy is incomplete without the preceding notes page.

Plan 4

Land Registry  
Official copy of  
title plan

Title number LAN116428  
Ordnance Survey map reference SD6143NE  
Scale 1:1250 enlarged from 1:2500  
Administrative area Lancashire : Ribbles Valley



This official copy is incomplete without the preceding notes page.

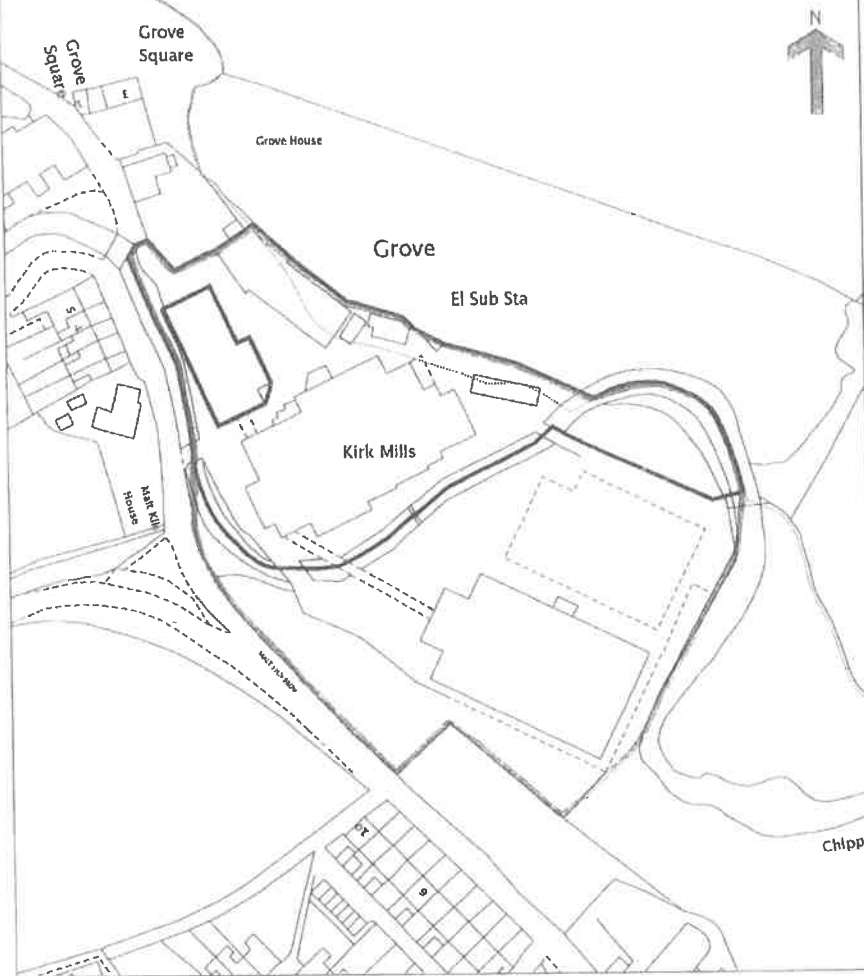
Plan 5

Land Registry  
Official copy of  
title plan

Title number LAN105017  
Ordnance Survey map reference SD6243NW  
Scale 1:1250 enlarged from 1:2500  
Administrative area Lancashire : Ribbles Valley



Screen Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence number 100026316.  
The land tinted green is not included in this title.



- (b) those currently Living in the Locality and have done so continually for between 5 to 10 years;
- (c) those currently Living in the Locality and have done so continually for a minimum of 12 months or
- (d) those currently Working in the Locality to which they have applied for accommodation;
- (e) those Returning to the Locality;
- (f) those currently Living in a Neighbouring Parish for more than 10 years;
- (g) those currently Living in a Neighbouring Parish and have done so for between 5 to 10 years;
- (h) those currently living in a Neighbouring Parish and have done so continually for a minimum of 12 months;
- (i) those currently Working in a Neighbouring Parish to which they have applied for accommodation;
- (j) those Returning to the Neighbouring Parish;
- (k) those currently Living in the Borough for more than 10 years;
- (l) those currently Living in the Borough and have done so continually for between 5 to 10 years;
- (m) those currently living in the Borough and have done so continually for a minimum of 12 months;
- (n) those Working in the Borough;
- (o) those Returning to the Borough; and finally
- (p) those who are able to justify and approved by the Council as requiring accommodation in the Borough.

1.1.45 'Rental Agreement' means a letting agreement for a Rented Unit granted by the RP on its standard terms and conditions to an Approved Person in accordance with the Nomination Process as shall be appropriate for the Site and subject to a rent which is accepted as affordable for the Borough by the Homes and Communities Agency provided that it does not exceed the Local Housing Allowance but which shall exclude any right which the lessee may otherwise have to acquire the freehold interest in the Rented Unit to which that rental agreement relates (as far as it is legally possible to do so).

- 1.1.46 'Rented Units' are Units which are available for rent only,
- 1.1.47 'the RP' means a registered provider as defined in section 80 of the Housing and Regeneration Act 2008, and who is approved by the Council (such approval not to be unreasonably withheld or delayed),
- 1.1.48 'Replacement Cricket Field' means the part of title number LAN131796 which is shown edged red on Plan 3 and which is known as land lying to the east of Longridge Road, Chipping.
- 1.1.49 'Returning' means persons where at least one of the adult Applicants have Next of Kin who currently live in the Locality, Neighbouring Parish or Borough (as applicable),
- 1.1.50 'a Shared Ownership Unit' means a unit of Affordable Housing in respect of which a shared ownership lease is granted by the RP to an Approved Person,
- 1.1.51 'the Site' means the land against which this deed may be enforced shown edged red on Plans 1 and 2 and described in Schedule 1,
- 1.1.52 'a Social Rented Unit' means an Affordable Housing Unit which is let subject to an assured tenancy agreement with the RP to persons identified in accordance with the nominations requirements of any funding agreement as approved by the Council in writing, at a rent not exceeding the target rent of the Housing Corporation,
- 1.1.53 'Working' means a person who is permanently employed or self employed for a minimum of 18 hours per week paid or unpaid in the Locality, Neighbouring Parish or Borough (as applicable),
- 1.1.54 'Working Days' means any day of the week excluding Saturdays, Sundays and Bank Holidays,
- 1.2 Interpretation**
- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.

- 1.2.3 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 interchangeably in that manner.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 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.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person 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.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.
- 2 Legal basis**
- 2.1 This planning obligation is made pursuant to the 1990 Act Section 106.
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council as local planning authority.
- 3 Conditions, duration and enforcement**
- 3.1 Conditions precedent**
- This deed is conditional upon:
- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Commencement of Development
- save for the provisions of clause 5, Provisions of Immediate Effect, which shall come into effect immediately upon completion of this deed.

**3.2 Duration**

3.2.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.2.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

3.2.3 Nothing in this deed shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this clause 3, and no such early compliance shall amount to a waiver of the effect of this clause 3.

**3.3 Other development**

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

**3.4 Non-enforcement**

The obligations contained in this deed shall not be binding upon or enforceable against:

3.4.1 any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage telecommunication services or public transport services,

3.4.2 the Owner after he has disposed of his interest in the Site, or in the event of a disposal of part, in the part disposed of, other than disposal of an interest in the nature of an easement or the benefit of a restriction or similar, but not so as to release the Owner from any antecedent breach, non-performance or non-observance of his obligations,

3.4.3 any mortgagee of the RP or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver,

3.4.4 any person to whom the RP grants a lease of an Affordable Housing Unit to, or any mortgagee or any receiver appointed by such a mortgagee or successor in title to any such persons,

3.4.5 the owners or occupiers of any Market Housing Unit or any mortgagee or any receiver appointed by such a mortgagee of a Market Housing Unit,

**4 Owner's covenants**

4.1 The Owner covenants with the Council as set out in Schedule 2.

**5 Provisions of immediate effect**

5.1 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

5.2 The Owner agrees with the Council to give the Council prompt 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, the notice to contain 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 or area of occupation purchased by reference to a plan.

**6 Notices**

6.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

6.2 The address for any notice or other written communication shall be within the United Kingdom.

6.3 A notice or communication shall be served or given:

6.3.1 on the Council at Church Walk, Cilltheroe, Lancashire BB7 2RA or such other address as shall be notified in writing to the Owner from time to time, marked for the attention the Housing Strategy Officer, and



6.3.2 on the Owner at its registered office or such other address as shall be notified in writing to the Council from time to time, marked for the attention of a Director.

## 7 Local land charge

7.1 This deed shall be registered as a local land charge.

## 8 Jurisdiction and legal effect

8.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

8.2 The Courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising or related to this Agreement.

8.3 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

8.4 No waiver (whether expressed or implied) by the 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 from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8.5 Subject to clause 8.8, if any dispute arises relating to or arising out of the terms of this agreement, any party (which for the purposes of this clause 8.5 shall include the Council) may serve written notice upon the other parties requiring the dispute to be determined under this clause 8.5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.5.1 For the purposes of this clause 8.5 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.5.2 Any dispute over the type of specialist appropriate to resolve the dispute may be referred to at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take

such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.5.3.

8.5.3 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange this nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

8.6 The Specialist is to act as an independent expert and:

8.6.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

8.6.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

8.6.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.6.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

8.6.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.6.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

8.7 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, and the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.8 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

IN WITNESS whereof the parties hereto have set their hands and/or seals the day and year first before written

#### SCHEDULE 1

##### The Owner's Title and Site Description

All that freehold land registered at HM Land Registry under title number LAN110557 and known as land lying to the south of Mall Kiln Brow, Chipping, Preston and shown edged red on Plan 1 and all that leasehold land being part of the land registered at HM Land Registry under title number LAN104997 and known as land behind Mall Kiln House, Chipping, Preston and shown edged red on Plan 2.

## SCHEDULE 2

### The Owner's Covenants with the Council

The Owner hereby covenants and undertakes to the Council and the County Council that in the event of the Planning Permission being granted and upon commencement of Development it will comply with the following obligations:

#### 1 Progress of development

To give written notice to the Council (via the Nominated Officer) within 15 Working Days of:

- 1.1 the Commencement of Development; and
- 1.2 the first Occupation of a Dwelling

#### 2 Affordable Housing

- 2.1 To build the Affordable Housing Units in accordance with the Planning Permission
- 2.2 To build the Over 55s Provision in accordance with the standards published in the Lifetime Homes Design Guide current at the date of this Agreement
- 2.3 To use all reasonable endeavours to Dispose of the Affordable Housing Units to an RP
- 2.4 That no more than 50% of the Market Housing Units shall be Occupied until 50% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of that has been made to the Council
- 2.5 That no more than 90% of the Market Housing Units shall be Occupied until 100% of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of that has been made to the Council
- 2.6 To give notice in writing to the Council within 15 Working Days after the completion of the disposal of the Affordable Housing Units to an RP

#### 3 Obligations of an RP upon taking an interest In the Affordable Housing

- 3.1 Upon the Disposal of the Affordable Housing Units the RP shall:-
  - 3.1.1 Not Dispose of any interest in the Rented Housing Units or any part thereof prior to the grant of a Rental Agreement save to another RP
  - 3.1.2 Not to Dispose of any interest in a Discounted Sale Unit save to another RP or to an Approved Person at a price which has a discount to the open market value of that Dwelling of 40%.
  - 3.1.3 Ensure that 50% of Affordable Housing Units are available to rent by an Approved Person unless otherwise agreed in writing by the Council.
  - 3.1.4 Not permit any occupier of a Rented Unit to acquire the freehold interest of that unit and to ensure that every Rental Agreement granted contains suitable provisions to secure compliance with this covenant.
  - 3.1.5 Ensure that the rental levels to be charged in relation to each Rented Unit shall be approved by the Council and shall not exceed those accepted by the Homes and Communities Agency as being affordable for the Borough by the Homes and Communities Agency provided that the rental levels shall not exceed the Local Housing Allowance.
  - 3.1.6 Ensure that the Disposal by the RP (and any subsequent owners) of the Affordable Housing Units shall be subject to the nomination rights and qualifications set out in this Schedule.
  - 3.1.7 Within 1 month of the transfer to the RP of the Affordable Housing Units invite in writing and permit the Council to nominate potential occupiers of the Rented Units as they become available. If the Council shall fail to nominate an Approved Person within 28 Working Days of the invitation from the RP then the RP shall be free to grant a Rental Agreement to an Approved Person provided always that the Council and the RP shall in any event co-operate in the nomination process and the RP shall consider sympathetically the Council's suggested nominations even if put forward after the aforesaid date.
  - 3.1.8 Serve notice in writing on the Council within 21 Working Days of the Disposal of a Rental Unit so that the Council is kept fully informed of tenancies on the Site.
  - 3.1.9 If the RP is minded to Dispose of the whole or any part of the Affordable Housing Units to any other RP serve written notice of its intention on the Council and shall obtain the prior written consent of the Council to any Disposal such consent not to be unreasonably withheld or delayed and to be deemed given if not refused within 28 Working Days of the date the written notice is served.

4. **Obligations of the Owner if the Affordable Housing Units are not transferred to an RP**

- 4.1 The obligation in paragraph 2.3 of this Schedule to convey the Affordable Housing Units to an RP shall cease to have effect upon the expiry of a period of one year from the Date of Practical Completion of the relevant Affordable Housing Units PROVIDED THAT it is demonstrated to the reasonable satisfaction of the Council that the Owner has used reasonable endeavours to conclude such an agreement with an RP
- 4.2 If paragraph 4.1 applies the Owner may still choose to Dispose of the Affordable Housing Units to an RP on the basis provided for in paragraph 2.3 of this Schedule but if it does not then the provisions in paragraphs 4.3 to 4.5 below will apply instead.
- 4.3 The Affordable Housing Units shall first be offered for purchase by an RP as Shared Ownership Units. In the event that no RP purchaser is secured for the Shared Ownership Units the Units may then be sold by the Owner as Discounted Sale Units but only to an Approved Person (subject as provided below) and only at a discount to Open Market Value of the relevant Discounted Sale Unit of 40%
- 4.4 Any Disposal of a Discounted Sale Unit shall include covenants by the Buyer to ensure that such Dwelling may only subsequently be disposed of to an Approved Person (subject as provided below) and only at a discount to Open Market Value of that Dwelling of 40% in perpetuity.
- 4.4 In the event that the Owner is unable to Dispose of any Discounted Sale Unit to an Approved Person because it is unable to find a person willing and able to buy the same having marketed the relevant Discounted Sale Unit for a period of at least 2 months, the Owner may Dispose of the relevant Discounted Sale Unit to a person who is not an Approved Person.
- 4.5 In the event that the Affordable Housing Units are converted to another tenure (and are therefore sold pursuant to paragraphs 4.3 or 4.5 either as Shared Ownership Units, 100% Discounted Sale Units or a combination of the two a commuted sum payment of 10% of the Open Market Value of each Shared Ownership Unit or Discounted Sale Unit (as applicable) shall be paid to the Council not later than seven days after completion of the sale of each corresponding Shared Ownership Unit or Discounted Sale Unit. No more than one commuted sum payment shall be due in respect of any Shared Ownership Unit or Discounted Sale Unit and the Council will provide a written receipt for any commuted sum payments that are

made within seven days of the date of the payment. Once all of the Affordable Housing Units and/or Shared Ownership Units and/or Discounted Sale Units have been sold this provision will (save for any claims against the Owner for antecedent breach) be of no further effect.

5 **Additional Affordable Housing Units Provisions**

- 5.1 The transfer or letting of the Affordable Housing Units to any RP shall be subject to the following provisions:
- 5.1.1 a covenant providing that the Rented Units shall only be occupied by an Approved Person meeting the Qualifying Criteria and nominated in accordance with the Nomination Process
- 5.1.2 a covenant providing that the Discounted Sale Units shall only be Disposed at a price which has a discount to Open Market Value of the relevant Discounted Sale Unit of 40% and only to an Approved Person.
- 5.1.3 a Restriction on the title of the Discounted Sale Units in favour of the Council that no disposition of the registered estate of the property (other than a charge) is to be registered at the Land Registry without a certificate signed by the solicitor or Conveyancer of the Council that the requirements of this Undertaking made the 23 day of *March* 2016 by the Owner pursuant to Section 106 of the Act have been fully complied with
- 5.2 Any Chargee or Mortgagee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 2 months' prior notice to the Council of its intention to dispose and:
- (a) in the event that the Council responds within 1 month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee or Mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer
- (b) if the Council does not serve its response to the notice served under paragraph 5.2.(a) within the 1 month then the Chargee or Mortgagee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 3
- (c) if the Council or any other person cannot within 2 months of the date of service of its response under paragraph 5.2 (a) secure such transfer then provided that the Chargee shall have complied with its obligations under

paragraph 5.2 (a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 3

PROVIDED THAT at all times the rights and obligations in this Clause 5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

## 6. Replacement Cricket Field

The Owner agrees with the Council:-

- 6.1 to provide layout and equip the Replacement Cricket Field in accordance with a specification attached to this Agreement to ensure that the facilities on the Replacement Cricket Field are of an equivalent or better standard than the facilities currently provided on the Current Cricket Field.
- 6.2 to complete the works of provision and laying out of the Replacement Cricket Field in accordance with paragraph 6.1 prior to the Commencement of Development on the Site.
- 6.3 to use reasonable endeavours to grant to the trustees of Chipping Cricket Club (or if the trustees so require any community interest company set up by them for the purpose of running Chipping Cricket Club) a right on reasonable terms to use the Replacement Cricket Field such grant so far as practicable to be completed within 2 months of completion of the works referred to in paragraph 6.1. In the event of the trustees of Chipping Cricket Club refusing to accept the right offered by the Owner within 2 months of completion of the works to offer use of the Replacement Cricket Field on reasonable terms to other local teams, clubs and schools.
- 6.4 not to allow the Replacement Cricket Facility to be used as anything other than a community sports facility without the prior approval of the Council.

## 7. The Works

The Owner agrees with the Council:

- 7.1 Not to begin the construction of the Dwellings without first procuring that a suitably qualified professional prepares a schedule of the works described in schedule 3 and submits the schedule to the council and obtains their approval of it (such approval not to be unreasonably withheld or delayed).
- 7.2 Not to occupy or permit occupation of any Dwelling until a suitably qualified professional has confirmed that the works covered by the schedule referred to at 7.1

have been completed and a notice confirming that has been submitted to the council.

## 8. Marketing Strategy

The Owner further agrees with the Council:

- 8.1 Not to begin the construction of the Dwellings without first preparing a marketing programme aimed at securing a leisure operator or leisure operators to run or purchase the Mill and Kirk Mill Complex and obtaining the written approval of the Council to such programme, such approval not to be unreasonably withheld or delayed and to be deemed given if the Council do not give written notice refusing approval within 10 Working Days of the schedule being served upon them. If refusing approval the council shall provide full details of why it finds the marketing proposal unacceptable. In the event that the Owner and the Council cannot agree the programme it will be determined on the application of either of them by a Specialist pursuant to clause 8 of this deed.
- 8.2 To use reasonable endeavours to implement the programme approved, deemed approved or determined pursuant to paragraph 8.1 above as soon as reasonably possible thereafter.

## SCHEDULE 3

### The Works

#### 1. Mill Works

Reroof the Mill and refurbish the external envelope of the Mill (apart from the windows) to safeguard the building's long term survival. This will include re-pointing the external brickwork of the Mill and carrying out any repairs that may be required to the exterior of the Mill save for that part of the exterior of the Mill which has been identified and authorised for removal pursuant to the terms of the Planning Permission.

#### 2. Kirk Mill Complex Works

Demolition of the factory, warehouse and office buildings at the Kirk Mill Complex, but leaving the stone barn in place.