

DATED 17th August 2012

**DEED OF UNILATERAL UNDERTAKING given by
MARTIN RANDLE KAY and ANNA RANDLE DIXON**

To

RIBBLE VALLEY BOROUGH COUNCIL

And

LANCASHIRE COUNTY COUNCIL

Under Section 106 Town and Country Planning Act 1990

relating to

PROPOSED RESIDENTIAL DEVELOPMENT OFF WHITEACRE LANE, BARROW

THIS DEED OF UNDERTAKING is made on the 17th day of August 2012

BY:

MARTIN RANDLE KAY of Church Farm Thornham Parva Eye Suffolk IP23 8EY and ANNA RANDLE DIXON of 89 Ellerton Road Wandsworth London SW16 3NH ["the Owner"]

TO:

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

AND

LANCASHIRE COUNTY COUNCIL of County Hall PO Box 78 Preston Lancashire PR1 8XJ ("THE County Council")

WHEREAS:

- (1) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 as amended ("the Act") for the property shown edged red on the plan ("the Property") annexed to this Undertaking
- (2) The Owner is the registered proprietor of the freehold estate of the Property registered at HM Land Registry under Title Number LAN125093 as edged red on the attached plan off Whiteacre Lane, Barrow O.S. 0785
- (3) The County Council is the authority that deals with waste management issues
- (4) On the 26th September 2011 the Owner applied ["the Application"] to the Council for outline planning permission for the redevelopment of the Property for residential use ("the Proposed Development").
- (5) The Owner enters into this Deed pursuant to section 106 of the Act
- (6) In the event that the Council grants planning permission for the Proposed Development such permission will only be subject to the imposition of those obligations appearing in this Deed which the Council expressly states in its decision letter are necessary for such grant and meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)

NOW THIS DEED WITNESSETH as follows:

1. **DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:-

- a. **"AHU"** (abbreviated from Affordable Housing Unit) means subsidised housing that will be available to persons who cannot afford to buy housing generally available on the open market. Such dwellings are to be available to purchase at a 40% discount from its open market value.
 - b. **"Affordable Value"** means 60% of the open market value of an AHU.
 - c. **"Approved Person"** means a person falling within the criteria set out in Schedule 4 to this Agreement
 - d. **"Eligibility Criteria"** include the following financial criteria and local connections:-
 - (i) a person not having sufficient income to purchase the same type of dwelling on the open market and having a satisfactory credit history including no County Court judgements or bankruptcy proceedings within a credit history report covering the 6 years prior to the date of the proposed acquisition and who has sufficient funds to cover the legal costs and disbursements which will be incurred in such acquisition and
 - (ii) whose income per household (as verified by wage slips/ P60s) is below the upper income brackets per household imposed by registered social landlords in accordance with the Homes and Communities Agency regulations and guidance from time to time
 - e. **"Planning Permission"** means the planning permission granted by the Council or the Secretary of State for the construction of the Proposed Development on the Property as applied for in the Application
2. THIS Deed is made in pursuance of Section 106 of Act and contains planning obligations enforceable by the Council and the County Council for the purposes of that Section with the intent to bind each and every part of the Property
3. The Owner covenants to observe and perform the covenants restrictions and obligations as set out in Schedules 1 to 6 hereto

4. The expressions "the Owner" "the Council" and "the County Council" shall include their respective successors in title and assigns
5. NO person shall be liable for breach of a covenant in this Deed after he shall have parted with all interest in the Property or the part thereof in respect of which such breach occurs but such release shall be without prejudice to any liability for any subsisting breach of covenant arising prior to the parting with such interest
6. This Deed is a local land charge and shall be registered as such by the Council for the purposes of the Local Land Charges Act 1975
7. Unless the context otherwise requires references to statutory provisions include those statutory provisions as amended or enacted
8. References to any gender include all genders and words denoting the singular shall include the plural and vice versa.
9. This Deed is conditional upon and shall not take effect unless and until the Planning Permission has been granted and the Proposed Development commenced
AND for the avoidance of doubt such Planning Permission will only be subject to the imposition of those obligations appearing in this Deed which the Council expressly states in its decision letter are necessary to the grant of such Planning Permission and to meet the relevant tests contained in Circular 05/2005 and Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended)
10. This Deed shall not be binding on the Owner in respect of any individual residential unit constructed on the Property once that completed unit has been purchased from the Owner save that the obligations in Schedules 2 and 3 shall be binding on any owner of an AHU
11. A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Deed
12. Any notice or other communication given or made in accordance with this Deed shall be in writing and may (in addition to any other effective mode of service) be sent by recorded delivery or registered post to the Strategic Housing Officer of the Council at the address of the Council shown on the first page of this Deed or at such other address as may from time to time have been notified to the sender as being the address for service of the relevant party under this Deed

13. The Owner shall maintain records enabling him to supply to the Council or County Council (within four weeks of either Councils written request to do so) such information as the Council or County Council may reasonably require in connection with this Deed

Do not scale this drawing. All dimensions to be checked on site before work commences.

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NO.	REVISION	DATE	BY
A	Right line & hogway planting noted and turning head incorporated.	04/07/11	GM
B	Pin two amended to a pair of semi-detached to provide affordable housing.	19/09/11	GM
C	Site access & garage/porch marking, speed limit transition point amended following highway constraints.	19/11/11	GM

NOTES

18/11/11

LEA, HOUGH & Co.
CHARTERED SURVEYORS
 Property Consultants

Blakewater House
 Phoenix Business Park
 Blackwater Road
 Blackburn BB1 5RW
 Telephone: 01254 260196
 Facsimile: 01254 51905
 E-mail: blackburn@leahough.co.uk
 Web: www.leahough.co.uk

RICS

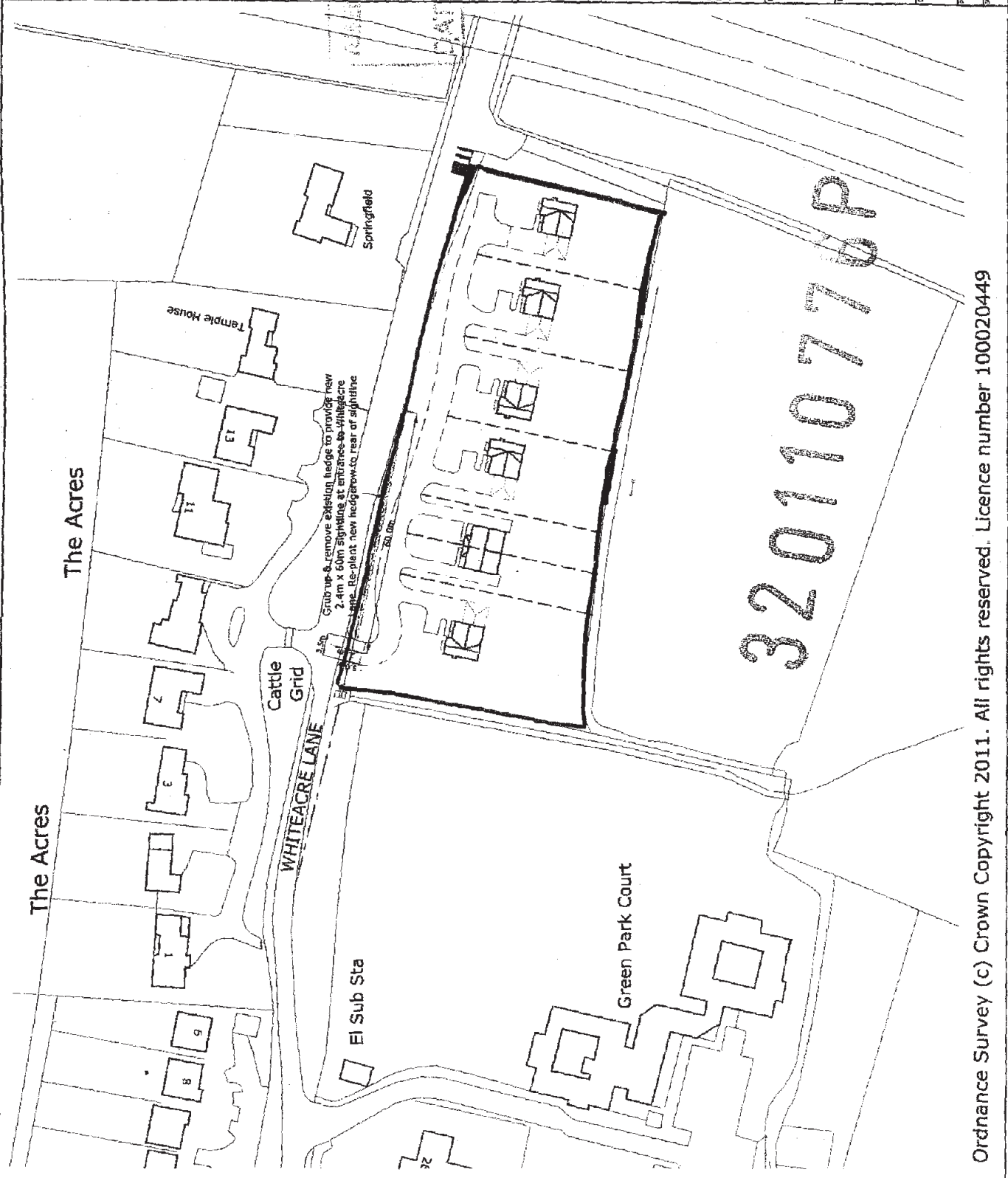
PROJECT ADDRESS
 Land off Whiteacre Lane
 Barrow,
 Nr Cuthbert,
 BB7 9BJ

DEVELOPMENT PROPOSED - Opt B
 (7 No. Residential Dwellings)

DATE
 11/03/2011

SCALE
 1:1250

BY
 GM



SCHEDULE 1

Affordable Housing Units

THE Owner covenants with the Council as follows and for the purposes of this Schedule references to the Owner shall include any registered provider with whom the Owner has entered into an agreement for the provision of AHUs

1. To provide AHUs on the Property as follows:
 - 1.1 The total number of AHUs provided on the Property shall be not less than 2 AHUs. In the event of any subsequent reserved matters approvals the total number of AHUs shall comprise not more than 30% of the total number of dwellings to be constructed on the Property pursuant to the Planning Permission and any subsequent reserved matters approvals
 - 1.2 The AHUs shall comprise semi-detached dwellings, or other mix and/or sizes of units as shall be agreed with the Council with the number size and tenure of units to be agreed with the Council in writing prior to commencement of development
 - 1.3 At the time of completion of all the open market housing units on the Property all the AHUs will be available for occupation.
2. On each and every subsequent disposal of any individual AHU after the first disposal, the Owner of that AHU will ensure that the disposal is to a person who falls within the criteria of an Approved Person meeting the Eligibility Criteria contained in this Agreement
3. The Owner;
 - 3.1 shall market the AHU for a period of at least two months to persons falling within paragraph 1 of Schedule 4. If at the end of such period no Approved Person has been identified then paragraph 3.2 of this Schedule shall apply
 - 3.2 shall market the AHU for a period of at least two months to persons falling within paragraph 2 of Schedule 4. If at the end of such period no Approved Person has been identified then paragraph 3.3 of this Schedule shall apply
 - 3.3 shall market the AHU for a period of at least two months to persons falling within paragraph 3 of Schedule 4. If at the end of such period no Approved Person has been identified then paragraph 3.4 of this Schedule shall apply

3.4 may with the consent of the Council not to be unreasonably withheld or delayed and in any event to be provided within two weeks of the Owner's request dispose of the AHU to a person who is not an Approved Person.

The Council may require reasonable evidence of the marketing pursuant to paragraphs 3.1 and 3.2 and 3.3 of this Schedule before it will grant any such consent to a disposal

SCHEDULE 2

Obligations of Owners of Affordable Housing Units

1. The owner of an AHU ("the AHU owner") shall not otherwise use and occupy the same other than as his only or principal home throughout his ownership. "Only or principal home" means the home is occupied for at least 9 months of any year.
2. The AHU owner must not let the AHU to a third party.
3. Where an AHU Owner has applied to re-mortgage an AHU, the lender must be a recognised (by the Council of Mortgage Lenders) lender and where the AHU Owner is proposing to increase their borrowing the new level of borrowing will be no more than the Affordable Value at that time.

SCHEDULE 3

Affordable Housing Transfer Provisions

- 1 The transfer of each and any AHU shall contain the following covenants by the transferee ('Transferee') for himself and his successors in title to the AHU for the benefit of the Council:
 - 1.1 The Transferee shall not allow the AHU to be occupied other than by himself and his immediate dependents as their primary and sole residence.
 - 1.2 The Transferee shall not dispose of the AHU except to an Approved Person and at a price equal to the Affordable Value.
 - 1.3 The Transferee shall serve written notice ('The Selling Notice') on the Council of his intention to dispose of the AHU. For the purpose of this Schedule 'dispose' shall mean the transfer sale or other disposal of the freehold or any leasehold interest for a term in excess of 7 years.
 - 1.4 The Selling Notice shall contain the Transferee's calculation of the Affordable Value for approval by the Council. Such approval is not to be unreasonably withheld.
 - 1.5 The Transferee and the Council shall use all reasonable endeavours to agree the Affordable Value of the AHU as soon as possible after the service of the Selling Notice
 - 1.6 In the event that the Affordable Value has not been agreed within 15 working days of service of the Selling Notice the Transferee and the Council shall jointly appoint an independent chartered surveyor whose costs shall be borne equally between the Transferee and the Council to determine the open market value ("OMV") as at the date of service of the Selling Notice.
 - 1.7 In the absence of agreement as to the appointment between the Transferee and the Council the President of the Royal Institution of Chartered Surveyors ("RICS") shall be asked to appoint an independent chartered surveyor.

- 1.8 Following the determination of the Affordable Value the AHU may be placed on the market. The Transferee is then to be responsible for ensuring any prospective purchaser meets the Eligibility Criteria.
- 1.9 On receipt of an acceptable offer for the AHU the Transferee must obtain the agreement of the Council that the prospective purchaser meets the Approved Person and Eligibility Criteria. Such agreement is not to be unreasonably withheld.
- 1.10 In the event such approval is not received within 15 working days either party may apply to the President of RICS for the independent determination of the suitability of the prospective purchaser.
- 1.11 The Transferee shall not dispose of the AHU at a price exceeding 60% of the OMV provided that this clause shall not apply in respect of a disposal by a mortgagee in possession.
- 1.12 The Transferee shall observe and perform the provisions of Schedules 2 & 3 & 4 insofar as they relate to and affect the AHU.
- 1.13 The Transferee shall not dispose of the AHU without on each occasion procuring that any prospective purchaser covenants directly with the Council to observe and perform the covenants contained in this Schedule and must deliver a completed deed of covenant in such terms to the Council.
- 1.14 It is agreed between the parties hereto that a Form L Restriction in favour of the Council shall be made in the Proprietorship Register of the title of each and every AHU that " No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by Ribble Valley Borough Council or their conveyancer that the provisions of the Section 106 Deed of Unilateral Undertaking dated.....2012 have been complied with".

2 The transfer of each and every AHU shall contain the following mortgagee relief provisions:

2.1 In the event that there is at any time any default under any legal charge over the AHU if the mortgagee takes possession of the same and proposes to exercise its power of sale in relation to the AHU he shall:

2.2 Not dispose of the AHU without first by irrevocable notice in writing informing the Council of such intention to dispose and allow the Council within 30 working days to nominate an Approved Person and to offer the AHU for sale to such person at a price which is no more than 60% of the OMV

2.3 In the event of the Council failing to nominate any Approved Person or such person not being ready willing and able to complete the sale and purchase of the AHU within 60 days of his nomination by the Council the mortgagee may immediately dispose of the AHU on the open market at the Affordable Value.

2.4 In the event of a sale under 2.4 of this Agreement the mortgagee will ensure that the restrictions of this Agreement bind future purchasers.

SCHEDULE 4

"Approved Person" means a person who meets the following criteria in the following order of priority:-

- 1 A first time buyer who can demonstrate a housing need for an AHU who is :
 - 1.1 currently living in either of the parishes of Wiswell or Barrow ("the First Parishes") for more than 10 years
 - 1.2 currently living in the First Parishes and has done so continually for between 5 to 10 years
 - 1.3 currently living in the First Parishes and has done so continually for a minimum of 12 months
 - 1.4 currently permanently employed in the First Parishes for a minimum of 12 months and is employed for a minimum of 18 hours per week paid or unpaid or
 - 1.5 A person who has next of kin who have lived in the First Parishes continually for a minimum of five years. Next of kin for the purposes of this clause shall be limited to his mother, father, brother, sister or adult dependant children.
 - 1.6 A person who is a former resident of the First Parishes who has moved from the Parish because of a lack of affordable housing in the same.
 - 1.7 A non-first time buyer who can meet one or more of the qualification provisions set out in sub- paragraphs 1.1 to 1.4 or 3.2 to 3.3 above
- 2 A first time buyer who can demonstrate a housing need for an AHU who is :
 - 2.1 currently living in either of the parishes of Little Mitton, Pendleton, Whalley, Sabden ("the Second Parishes") for more than 10 years
 - 2.2 currently living in the Second Parishes and has done so continually for between 5 to 10 years
 - 2.3 currently living in the Second Parishes and has done so continually for a minimum of 12 months
 - 2.4 currently permanently employed in the Second Parishes for a minimum of 12 months and is employed for a minimum of 18 hours per week paid or unpaid or

2.5 A person who has next of kin who have lived in the Second Parishes continually for a minimum of five years. Next of kin for the purposes of this clause shall be limited to his mother, father, brother, sister or adult dependant children.

2.6 A person who is a former resident of the Second Parishes who has moved from the Parish because of a lack of affordable housing in the same.

2.7 A non-first time buyer who can meet one or more of the qualification provisions set out in sub- paragraphs 1.1 to 1.4 or 3.2 to 3.3 above

3 A first time buyer who can demonstrate a housing need for an AHU who is

3.1 currently living in the Ribble Valley Borough area ("RVBA") for more than 10 years

3.2 currently living in RVBA and has done so continually for between 5 to 10 years

3.3 currently living in RVBA and has done so continually for a minimum of 12 months

3.4 currently permanently employed in RVBA for a minimum of 12 months and works for a minimum of 18 hours per week paid or unpaid or

3.5 A person who has next of kin who have lived in RVBA continually for a minimum of five years. Next of kin for the purposes of this clause shall be limited to mother, father, brother, sister or adult dependant children.

3.6 A person who is a former resident of RVBA who has moved from RVBA because of a lack of affordable housing in RVBA

3.7 A non first time buyer who can meet one or more of the qualification provisions set out in sub- paragraphs 1.1 to 1.4 or 3.2 to 3.3 above

SCHEDULE 5

WASTE CONTRIBUTIONS

- 1.0 On occupation of 50% of the dwellings to be constructed on the Property the Owner will make a contribution totalling £3360 (three thousand three hundred and sixty pounds) to Lancashire County Council in respect of a Waste Contribution.

SCHEDULE 6
WHEELED BIN CONTRIBUTIONS

1. The Owner of the Property covenants with the Council to pay the Contribution for Wheeled Bins as detailed in paragraph (3) and (4) of this Schedule

2. The Contribution for Wheeled Bins is calculated as below;

Number of dwellings to be erected on the Property x £90 (plus VAT) = A

3. On the occupation of the first unit to be completed on the Property the first Wheeled Bin Contribution payment is made. This payment is calculated as $A \times 50\%$
4. On occupation of 50% of the units to be completed on the Property the final Wheeled Bin Contribution payment is made. This payment is calculated as $A \times 50\%$