



dated

2020

Lancaster City Council

and

Morehomes for the Bay (Investments) Limited

and

Morehomes for the Bay (Developments) Limited

Shareholder Agreement

in respect of Lancaster City Council's companies

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Contents

1	Definitions and Interpretation	1
2	Business	4
3	Conduct of the Company's Affairs	6
4	Covenants	7
6	Termination	7
8	Confidentiality	8
9	Shareholder Committee	10
10	No Partnership	10
11	Contracts (Rights of Third Parties) Act 1999	10
12	Waiver	10
13	Variation	11
14	Invalidity	11
15	Entire Agreement	11
16	Status of this Agreement	11
17	Consents	11
18	Communications	12
19	Counterparts	13
20	Governing Law and Jurisdiction	13
	Schedule 1 – Council Consent Matters	16
	Schedule 2 - First Business Plan	19
	Schedule 3 - Company Covenants	20
	Schedule 4 - Shareholder Committee Terms of Reference	21
	Schedule 5 - Deed of Accession	25

Shareholder Agreement

dated 2021

Parties

- (1) **Lancaster City Council** of Town Hall, Dalton Square, Lancaster, LA1 1PJ (the **Council**);
- (2) **Morehomes for the Bay (Developments) Limited** (company no [REDACTED]) whose registered office is at Town Hall, Dalton Square, Lancaster, LA1 1PJ (the **Development Company**); and
- (3) **Morehomes for the Bay (Investments) Limited** (company no [REDACTED]) whose registered office is at Town Hall, Dalton Square, Lancaster, LA1 1PJ (the **Investment Company**)

Introduction

- (A) The Initial Companies were incorporated in England under the Companies Act 2006 on [REDACTED] and, at the date of this Agreement, 1 Share is in issue of each of the Initial Subsidiaries and both are registered in the name of and is beneficially owned by the Council as their sole shareholder.
- (B) The Initial Companies have been incorporated by the Council pursuant to the general power of competence in the Localism Act 2011 and all other powers thereto enabling.
- (C) This Agreement sets out the terms upon which the Council will participate in the Initial Companies as their sole shareholder.
- (D) Further companies or subsidiaries may execute a Deed of Accession and become parties to this Agreement from time to time.

Agreed Terms

1 Definitions and Interpretation

1.1 In this Agreement:

Articles means the articles of association of the Company;

Business means the business of the Company as set out in clause 2;

Business Day means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for retail business;

Business Plan means the Company's plan for delivery of the Business as set out in Schedule 2 as updated or amended in accordance with this Agreement;

Company means separately each of the Initial Companies and any other corporate body which is wholly owned by (i) the Council or (ii) the Initial Companies and accedes to this Agreement as a Subsidiary in accordance with clause 5;

Council Consent means consent of the Council which shall be granted by (in the case of Council Consent Matters listed in Schedule 1 Part 1) the Cabinet or (in the case of Council Consent Matters listed in Schedule 1 Part 2) the Shareholder Committee in accordance with clause 3.7;

Council Consent Matters means those matters listed in Schedule 1;

Council Representative has the meaning set out in clause 3.8;

Debt Recovery Policy means the policy of the Company in relation to the recovery of debt owed to it by a tenant of a Dwelling as adopted by the Company (and amended from time to time with Council Consent);

Deed of Accession means the deed of accession in substantially the same form as set out at Schedule 5 of this Agreement;

Delegations has the meaning given to it in clause 9.1;

Director means a director of the Company;

Dwelling means any dwelling owned by the Company from time to time;

Environmental Information Regulations means the Environmental Information Regulations 2004;

Finance Documents means the facility, equity subscription and/or other documents and agreements providing funding and/or equity and/or security between the Council and the Investment Company and/or Development Company which have been or are to be entered between the Council and the Investment Company and/or Development Company;

Financial Model means the financial model set out in the Business Plan and initialled by way of identification by the signatories to this Agreement, as amended from time to time with Council Consent;

FOIA means the Freedom of Information Act 2000;

Information has the meaning given to it under section 84 of the FOIA;

Initial Companies means together the Development Company and the Investment Company;

Policies mean the Rent, Allocations and Lettings Policy, Debt Recovery Policy, Remuneration and Expenses Policy and the Property Policies;

Property Policies means the Rent and Lettings Policy, Shared Ownership Policy and the Sales Policy;

Remuneration and Expenses Policy means a policy adopted by the Company (following receipt of Council Consent) and amended from time to time in relation to the remuneration (including salary, bonus, the provision of benefits-in-kind, reimbursement of expenses or otherwise) of employees (if any), officers and consultants;

Rent, Allocations and Lettings Policy means the policy of the Company under which it will allocate, set the rents of and let Dwellings, as adopted by the Company (and amended from time to time in accordance with Council Consent);

Request for Information has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environmental Information Regulations;

Sales Policy means the policy of the Company under which it will sell Dwellings, as adopted by the Company (and amended from time to time in accordance with Council Consent);

Shared Ownership Policy means the policy of the Company under which it will grant shared ownership of Dwellings, as adopted by the Company (and amended from time to time in accordance with Council Consent);

Shareholder Committee means the group of Cabinet members of the Council with responsibility for (i) overseeing Company activity, (ii) providing strategic guidance to the Council, and (iii) advising the Council in its capacity as shareholder pursuant to the Delegations;

Shareholder Committee Terms of Reference means the terms of reference set out in Schedule 4;

Shares means the ordinary shares of £1 each in the issued share capital of the Company;

United Kingdom means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

1.2 A reference to a statutory provision includes a reference to:

1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement);

1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement); and

1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate);

1.3.2 a statutory or regulatory body shall include its successors and any substituted body;

1.3.3 an individual includes, where appropriate, his personal representatives;

1.3.4 the singular includes the plural and vice versa; and

- 1.3.5 one gender includes all genders.
- 1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.
- 1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.
- 1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.
- 1.7 Where a provision of this Agreement imposes an obligation, cost or liability on the Parties, that obligation, cost or liability shall be construed as being against those Parties jointly and severally, and where a provision of this Agreement gives a claim, benefit or right to the Parties, that claim, benefit or right attaches to those Parties jointly.
- 1.8 Where a consent and/or permission is required under this Agreement from one party to the other that consent and/or permission shall not be unreasonably withheld or delayed.
- 1.9 Provisions referring to the "Company" shall apply separately to each of the Development Company, the Investment Company and any other companies that accede to this Agreement by virtue of a Deed of Accession and shall be enforceable by and against each of those entities.

2 **Business**

- 2.1 The Business of the Development Company is:
- 2.1.1 to purchase land and property predominantly within the Council's administrative area either from the Council or on the open market;
 - 2.1.2 to acquire, develop, construct and/or refurbish residential and other property predominantly within the Council's administrative area which is in accordance with the Property Policies;
 - 2.1.3 securing value through planning permissions and larger scale master planning and design briefs to support site development;
 - 2.1.4 developing the market conditions, procurement and contracting models to drive value and support delivery;
 - 2.1.5 delivering of business and industrial developments
 - 2.1.6 engaging with partners and acting as a member of joint ventures or LLPs;
 - 2.1.7 exploring and securing grants, resources and wider opportunities to increase delivery of housing in the Council's administrative area; and
 - 2.1.8 to operate as a commercial company (for trading or other purposes) and deliver a financial return for the benefit of the Council and/or to fund the Company's future Business activities;

together with any activities reasonably incidental to the above or approved in the Business Plan.

2.2 The Business of the Investment Company is:

2.2.1 to purchase land and property predominantly within the Council's administrative area either from the Council or the Development Company or on the open market;

2.2.2 to carry out refurbishment works on properties;

2.2.3 acting as the holding vehicle for a range of assets, including, without limitation, assets of the Council and its Companies;

2.2.4 management of these assets (either directly or through entering into contracts with others, including the Council) including the delivery of the housing management, landlord responsibilities and fulfilling regulatory requirements;

2.2.5 delivering, owning and/or managing a mix of private residential tenure, including (without limitation):-

(a) private rented;

(b) section 106 affordable housing in line with the planning requirements set out in the Local Plan of the Council;

(c) shared ownership housing in line with the planning requirements set out in the Local Plan and subject to schemes being mortgageable;

2.2.6 to operate as a commercial company (for trading or other purposes) and deliver a financial return for the benefit of the Council and/or to fund the Company's future Business activities;

2.2.7 exploring and securing grants, resources and wider opportunities to increase delivery of housing in the Council's administrative area;

together with any activities reasonably incidental to the above or approved in the Business Plan.

2.3 The draft first Business Plan for each of the Development Company and Investment Company is set out in Schedule 2 to this Agreement. Subject to Council Consent, that first Business Plan along with any subsequent agreed amendments will be adopted for the period stated within it. Before the end of each accounting period (beginning accounting year 2021/2022), the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan in accordance with paragraph 8 of the Shareholder Committee Terms of Reference.

2.4 No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has been undertaken in accordance with the Shareholder Committee Terms of Reference.

2.5 Upon the Council's request, the Company will provide copies of the Policies to the Council.

2.6 The Company shall not acquire any property or otherwise trade outside of the Council's administrative area without Council Consent.

3 **Conduct of the Company's Affairs**

3.1 Meetings of the Directors shall be held no fewer than four times in every year and at not longer than three monthly intervals.

3.2 With the exception of those matters requiring Council Consent pursuant to clause 3.7, the management of the Company shall be vested in the Directors.

3.3 On the receipt of Council Consent, the Directors may appoint a managing director on such terms as they may think fit, who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to them by the Directors. The Directors may only remove such managing director with Council Consent, and appoint a replacement on such terms as they may think fit providing that no such appointment shall be made without Council Consent.

3.4 Without prejudice to the generality of the foregoing, the Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to (a) the Business Plan, (b) those matters requiring Council Consent pursuant to clause 3.7 and (c) any other provisions of this Agreement or any other agreement entered into between the Council and the Company. In particular, the Directors shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and powers) that, at all times during the term of this Agreement, the Company shall:

3.4.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with both the Business Plan and good business practices; and

3.4.2 transact all its business on arm's length terms, save where the Council has consented to the Company acting otherwise.

3.5 The Company shall not carry out any activity which would render the holding of Shares by the Council unlawful, provided that where a proposed change of law would render such shareholding unlawful the Council will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.

3.6 If the Company requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, the Company will obtain and maintain the same in full force and effect.

3.7 The Company shall ensure that none of the Council Consent Matters shall be carried out without the prior consent in writing of the Council.

3.8 The Council shall authorise a Council officer (the **Council Representative**) to notify the Company of the Council's decision on any Council Consent Matter. Notification in writing by the Council Representative to the Company shall be conclusive of a decision of the Council on a Council Consent Matter.

- 3.9 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company with any designated officers of the Council at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he deems appropriate to keep the Council properly informed about the business and affairs of the Company or to protect its interests as shareholder. Any information secured as a consequence of such discussions and examinations shall be kept confidential by the Council in accordance with the terms of clause 8.
- 3.10 The Company agrees with the Council that it will:
- 3.10.1 maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company;
 - 3.10.2 report to the Council's Cabinet via the Shareholder Committee at quarterly intervals (or such periods as the Council may direct) regarding:
 - (a) the Company's progress on the objectives contained in the Business Plan; and
 - (b) any matters which may adversely impact on the Company's performance against the same; and
 - 3.10.3 otherwise keep the Council informed of the progress of the Company's business and affairs and in particular will procure that the Council is given such information and such access to the officers, employees and premises of the Company as it may reasonably require, in accordance with the provisions of clause 7.
- 3.11 The Company shall not breach nor cause the Council to be in breach of the Local Authorities (Companies) Order 1995.

4 **Covenants**

The Company covenants to the Council in as set out in Schedule 3.

5 **Subsidiaries Acceding to this Deed**

Each Subsidiary of the Company (save for the Initial Subsidiaries) will enter into a Deed of Accession and shall have all the rights and obligations as if it were an original party to this Agreement.

6 **Termination**

6.1 This Agreement shall terminate upon:

- 6.1.1 the written agreement of the Council and the Company; or
- 6.1.2 when a resolution is passed by the Council or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors and the Council; or

- 6.1.3 the Company ceasing to carry on its business; or
- 6.1.4 the Company being convicted of a criminal offence and the Council notifying the Company that this Agreement shall be terminated; or
- 6.1.5 the Council as sole shareholder giving not less than ninety (90) days written notice to the Company of the date on which all or part of this Agreement will terminate,

but shall cease and determine in respect of a Company (without prejudice to the Council's accrued rights, obligations or liabilities) upon the Council ceasing to hold Shares in the Company.

7 Monitoring and Reporting

- 7.1 The Company shall (so far as practicable and subject always to meeting any obligations under company law) align its accounting practices with the Council.
- 7.2 The Company shall, within 5 Business Days of a written request by the Council to do so, provide the Council and/or the Shareholder Committee with some or all of the following information:
 - 7.2.1 monthly financial reports including management accounts, profit and loss, balance sheet, cash flow and forecast;
 - 7.2.2 unaudited accounts within one month of the end of the Financial Year;
 - 7.2.3 annual audited accounts three months after the end of that Financial Year;
 - 7.2.4 copies of Board meeting minutes;
 - 7.2.5 explanations and data (in the format specified by the Council) needed for its own accounting purposes and to enable production of group accounts; and
 - 7.2.6 any other information reasonably required by the Council.
- 7.3 The Company shall notify the Council and the Shareholder Committee immediately of any matters which may significantly adversely impact on the Company's performance.
- 7.4 The Company must maintain complete and accurate accounting and other financial records giving a true and fair view of the business and affairs of the Company.
- 7.5 The Council and its authorised representative(s) shall have the right, on giving to the Company reasonable notice, and during normal business hours, to inspect the accounts, books and all financial and all other records of the Company.
- 7.6 The accounting reference date for the Company shall be aligned with the Council's accounting reference date in each year.

8 Confidentiality

- 8.1 The Council and the Company mutually undertake that they shall not at any time during this agreement disclose to any person any confidential information concerning (as

appropriate) the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 8.2.

8.2 The Council and the Company may disclose each other's confidential information:

8.2.1 to their employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. The Council and the Company shall ensure that their employees, officers, representatives or advisers to whom they disclose the other party's confidential information comply with this clause 8; and

8.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 The Council and the Company acknowledge that each is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall each facilitate the other's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 8.4 and 8.7.

8.4 If either the Council or the Company (each a **Recipient**, as the case may be) receives a Request for Information in relation to Information that the other is holding and which the Recipient does not hold itself, the Recipient shall refer to the other party such Request for Information as soon as practicable and in any event within five Business Days of receiving a Request for Information, and the other party shall:

8.4.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within ten Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and

8.4.2 provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

8.5 Following notification under clause 8.4, and up until such time as the other party has provided the Recipient with all the Information specified in clause 8.4, the other party may make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:

8.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

8.5.2 whether Information is to be disclosed in response to a Request for Information; and

8.5.3 in no event shall the other party respond directly to a Request for Information unless the Request for Information is addressed to it.

8.6 The Council and the Company acknowledge that (notwithstanding the provisions of clause 8.1) the Recipient may, acting in accordance with the Cabinet Office Freedom of Information Code of Practice under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other party:

8.6.1 in certain circumstances without consulting with the other party; or

8.6.2 following consultation with the other party and having taken their views into account.

8.7 The Council and the Company shall each transfer to the other any Request for Information which it receives but is addressed to the other as soon as practicable and in any event within three Business Days of receiving it.

8.8 The Council and the Company acknowledge that any lists provided which list or outline Confidential Information are of indicative value only and that a Recipient may nevertheless be obliged to disclose Confidential Information in accordance with clause 8.6.

9 **Shareholder Committee**

9.1 The Council has, at the date of this Agreement, delegated authority to the Shareholder Committee those matters identified in paragraphs 1.4 and 7 of Schedule 4 (the **Delegations**).

9.2 If and to the extent that the Delegations are withdrawn from the Shareholder Committee then the Council shall notify the Company of any alternative arrangements.

9.3 The Company and the Council shall comply and (the Council shall procure that the Shareholder Committee shall comply) with the Shareholder Committee Terms of Reference.

10 **No Partnership**

Nothing in this Agreement gives rise to a partnership between the Council and the Company or constitutes one as the agent of the other.

11 **Contracts (Rights of Third Parties) Act 1999**

11.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.2 The Council and the Company may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

12 **Waiver**

12.1 The rights of each of the Council and the Company in respect of a breach of this Agreement shall not be affected by completing, by rescinding, or failing to rescind, this Agreement, or by failing to exercise, or delaying in exercising, a right or remedy, or by anything else, except a specific authorised written waiver or release. A single or partial

exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

12.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

12.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

13 **Variation**

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Council and the Company.

14 **Invalidity**

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Council and the Company agree to negotiate in good faith to agree the terms of a mutually satisfactory provision to be substituted for the provision found to be illegal or unenforceable.

15 **Entire Agreement**

15.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Council and the Company (whether written or oral) relating to its subject matter and contains the entire agreement between the Council and the Company relating to its subject matter.

15.2 The Council and the Company each acknowledge that they do not enter into this Agreement on the basis of, and do not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).

15.3 The Council and the Company waive their rights against each other in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.

15.4 Nothing in this clause 15 limits or excludes liability for fraud.

16 **Status of this Agreement**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Council that the provisions of this Agreement shall prevail. Accordingly, the Company shall take all available steps and do all practicable acts and things as may be necessary or desirable, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

17 **Consents**

17.1 Consents, notices, approvals or agreements to be given by the Council under this Agreement shall be given in writing.

17.2 Where this Agreement provides that a matter is subject to the consent, approval or Agreement of any party then (except as expressly provided otherwise), it shall be in the absolute discretion of the party concerned as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

18 **Communications**

18.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post (and by air mail if overseas) or by facsimile or by email as follows:

18.1.1 if to the Council, to:

Address: Town Hall, Dalton Square, Lancaster, LA1 1PJ

Email: chiefexecutive@lancaster.gov.uk

marked for the attention of: Office of the Chief Executive

18.1.2 if to Morehomes for the Bay (Developments) Limited to:

Address: Town Hall, Dalton Square, Lancaster, LA1 1PJ

Email: jowilkinson@lancaster.gov.uk

marked for the attention of: Head of Housing

18.1.3 if to Morehomes for the Bay (Investments) Limited to:

Address: Town Hall, Dalton Square, Lancaster, LA1 1PJ

Email: jowilkinson@lancaster.gov.uk

marked for the attention of: Head of Housing

or to such other person, address, or fax number or email as the Company or the Council may specify by notice in writing to the other.

18.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

18.2.1 if delivered personally, when left at the address referred to in clause 18.1;

18.2.2 if sent by mail, other than airmail, two Business Days after posting it;

18.2.3 if sent by email, when sent provided there has been no communication by the recipient to the senders that the email has not been received,

18.2.4 provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

18.3 The original of any notice or other communication by fax shall be forwarded to the recipient(s) but the non-arrival of that original shall not affect the validity of the notice or other communication by fax.

19 **Counterparts**

19.1 This Agreement may be executed in a number of counterparts and by the Council and the Company on different counterparts, but shall not be effective until each party has executed at least one counterpart.

19.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

20 **Governing Law and Jurisdiction**

20.1 This Agreement and the rights and obligations of the Council and the Company shall be governed by and construed in accordance with the laws of England.

20.2 The Council and the Company irrevocably submit to the exclusive jurisdiction of the courts of England in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject matter or formation (including non-contractual disputes or claims).

In witness whereof the parties have executed this Agreement as a deed.

The **Common Seal** of)
Lancaster City Council)
was hereunto)
affixed in the presence of:)

.....
Authorised Signatory

executed as a deed by)
Morehomes for the Bay (Developments) Limited)

acting by:)

a director in the presence of:

.....

Director

Witness signature

Name

Address

executed as a deed by)

Morehomes for the Bay (Investments) Limited)

)

acting by:)

a director in the presence of:

Director

Witness signature

Name

Address

DRAFT

Schedule 1

Council Consent Matters

Part 1 – Cabinet Council Consent matters

- 1 Adopt or amend its Business Plan;
- 2 adopt or amend the Financial Model;
- 3 vary in any respect its articles of association or the rights attaching to any of its shares;
- 4 permit the registration (upon subscription or transfer) of any person as a member of the Company other than the Council in accordance with the terms of this Agreement and/or any permitted transferees;
- 5 increase the amount of its issued share capital except as provided in this Agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital;
- 6 issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital;
- 7 make any borrowing other than under the Finance Documents;
- 8 apply for the listing or trading of any shares or debt securities on any stock exchange or market;
- 9 pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent);
- 10 engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business;
- 11 form any subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not);
- 12 close down any business operation, or dispose of or dilute its interest in any of its subsidiaries for the time being, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan;
- 13 amalgamate or merge with any other company or business undertaking;
- 14 enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors whether or not any other person shall be party to such transaction or arrangement;
- 15 enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms;

- 16 create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or any of its shares other than:
- 16.1 pursuant to the Finance Documents;
 - 16.2 liens arising in the ordinary course of business;
 - 16.3 any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business;
- 17 change its financial year end
- 18 make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit (other than in the normal course of trading) or give any guarantee (other than in the normal course of trading) or indemnity (other than in the normal course of trading);
- 19 give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan;
- 20 factor or assign any of its book debts;
- 21 establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees;
- 22 agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer of or consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) is in accordance with the Company's current Remuneration or Expenses Policy or Business Plan;
- 23 institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business, in accordance with the Debt Recovery Policy, or where the value of such claim is reasonably believed by the Company to be less than £50,000 instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan;
- 24 make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan.

Part 2 – Shareholder Committee Council Consent matters

The Company shall not, unless it has Council Consent do some or all of the following:

- 1 Adopt or amend the Policies;
- 2 alter its name or registered office;
- 3 Change its statutory auditors;
- 4 make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its accounts except as may be required to ensure compliance with relevant accounting standards under the Companies Act 2006 or any other generally accepted accounting principles in the United Kingdom;
- 5 establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family;
- 6 appoint (including setting terms of appointment), remove or dismiss any Director;
- 7 employ (including setting terms of employment) or dismiss the managing director;
- 8 acquire any land or assets with a value which would mean that the aggregate value of the land and assets held by it exceeds by 10% of the value set out in the current Business Plan; and
- 9 enter into, as lessor or as lessee, any finance lease which would mean that the aggregate value of such arrangements entered into exceeds by 10% of the value set out in the current Business Plan.

Schedule 2

First Business Plan

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Schedule 3 Company Covenants

The Company covenants with the Council as follows:

- 1 Only to acquire land or assets if any such acquisition is in accordance with both the Financial Model and the Business Plan.
- 2 To comply with the Policies.
- 3 To appoint the Council's auditors as its statutory auditors and maintain the Council's financial year end as the Company's financial year end.
- 4 To comply with the terms of this Agreement.

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Schedule 4

Shareholder Committee Terms of Reference

Lancaster City Council - subsidiary group

Shareholder Committee – Terms of Reference

1 Introduction

- 1.1 Morehomes for the Bay (Developments) Limited (**Development Company**) and Morehomes for the Bay (Investments) Limited (**Investment Company**) and any other companies which, by virtue of a Deed of Accession, are party to the Shareholder Agreement (together, the **Companies**) are companies limited by shares which are wholly owned by Lancaster City Council (the **Council**).
- 1.2 The Companies have been established with general commercial objects but shall only carry out the activities in accordance with clause 2 of the Shareholder Agreement.
- 1.3 The Council has reserved certain functions to itself, as shareholder, in the articles of association (the **Articles**) and the shareholder agreement in place between the Council and the Company (the **Shareholder Agreement**). The purpose of these terms of reference, which sit alongside the Articles and the Shareholder Agreement, is to set out the functions which are delegated by the Cabinet of the Council to the Shareholder Committee (the **Committee**) and the terms on which the Committee will operate.

2 Membership

- 2.1 Members of the Committee shall be the then current Council Cabinet members from time to time.
- 2.2 Members of the Committee shall be appointed for a term equal to that member's term appointed as a Cabinet member of the Council. Members of the Committee shall cease to be a member of the Committee at the end of their term as Cabinet member of the Council.
- 2.3 The Chair of the Committee shall be appointed by the Council.

3 Meetings

- 3.1 Meetings of the Committee shall be held at least quarterly, and as frequently as is necessary for it to exercise its delegated functions.
- 3.2 The quorum for Committee meetings shall be 3.
- 3.3 Decisions at meetings shall be made by a majority vote. The Chair of the Committee shall have a casting vote. Decisions may be taken electronically between meetings.
- 3.4 There shall be a representative of the Committee, who is nominated by the Committee to be responsible for notifying the Company of any decisions made by the Committee in relation to the Company. The Committee may nominate the "Council Representative" as such position is appointed under clause 3.8 of the Shareholder Agreement.

3.5 The Committee may invite any person (including Council officers, Directors of the Company and third party advisors) to attend meetings of the Committee in an advisory capacity, as the Committee deems appropriate.

4 **Sub-Groups**

4.1 To assist in its functions the Committee may:

4.1.1 establish and consult standing sub-groups, such as might be required in respect of:

- (a) audit and risk;
- (b) ethical practices; and
- (c) nominations and remuneration, and

4.1.2 may establish and consult ad-hoc or task and finish sub-groups in respect of any matter;

4.1.3 may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies; and

4.1.4 sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Committee sees fit.

5 **Relationship**

The Committee as it considers appropriate in accordance with its responsibilities and functions described above, may report and make formal recommendations to the Leader, directly or to the Cabinet of the Council.

6 **Minutes and reporting**

6.1 Draft minutes of meetings shall be circulated to the Chair of the Committee for approval within ten (10) working days of the meeting.

6.2 Minutes of meetings will be presented to the next Committee meeting and will also be made available to the Council.

6.3 There will be annual reporting to the Council on the activities of the Committee and operation of the Company, in accordance with the responsibilities set out in these Terms of Reference and the Shareholder Agreement.

7 **Responsibilities**

7.1 The Committee shall be responsible for:

7.1.1 the giving of consent in relation to the Council Consent Matters set out in Part 2 of Schedule 1 of the Shareholder Agreement from time to time. For ease of reference, these Council Consent Matters are set out at Appendix 1 to these terms of reference;

- 7.1.2 scrutinising and reviewing the Business Plan prior to the Cabinet's approval of it;
- 7.1.3 monitoring the operations and performance of the Company through the receipt and analysis of reports prepared and presented by officers of the Company in accordance with clause 7 of the Shareholder Agreement;
- 7.1.4 ensuring compliance with the Council's corporate objectives as set out in the Council's corporate plan;
- 7.1.5 receiving internal audit reports from directors and officers of the Company;
- 7.1.6 receiving quarterly borrowing reports for any lending of the Company; and
- 7.1.7 such other matters as decided by the Council from time to time.

8 Business Plan protocol

- 8.1 The Company shall send a revised version of the then current Business Plan to the Committee three (3) months prior to the expiry of the then current Business Plan and invite the Committee to provide comments on the proposed Business Plan.
- 8.2 Each Business Plan shall be substantially in the format of the previous Business Plan (unless otherwise stipulated by the Council).
- 8.3 The Committee shall consider the revised Business Plan at its next scheduled meeting (provided the Committee receives the revised Business Plan with sufficient time to consider the same).
- 8.4 Following the Committee's consideration of the revised Business Plan, the Committee shall respond to the Company with proposed revisions and/or comments and questions to the revised Business Plan.
- 8.5 The Company shall promptly consider the Committee's amendments, questions and/or comments and confirm their acceptance to the same to the Committee as soon as reasonably practicable.
- 8.6 Following such confirmation by the Company, the Committee shall refer the agreed Business Plan to the Council Cabinet for approval. The Company shall promptly respond to any requests, questions and/or comments from the Committee and/or Cabinet throughout the Business Plan approval process set out in this paragraph 8.
- 8.7 Subject to the receipt of Council Consent, before the end of each accounting period, the Directors shall (in accordance with this Agreement and this paragraph 8) consider and, if appropriate, adopt an updated and revised Business Plan for the relevant accounting period. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Council Consent.
- 8.8 All Parties shall use reasonable endeavours to enable the Company adopt an updated Business Plan by the expiry of each accounting period of the Company, however this shall not fetter the Committee's or the Cabinet's discretion in reviewing the proposed Business Plan. .

8.9 For any period when a proposed Business Plan sent by the Company to the Committee under paragraph 8.1 has not been approved by Council Consent and/or adopted by the Directors in accordance with this paragraph 8:

8.9.1 the relevant existing Business Plan shall continue to be the Business Plan of the Company; and

8.9.2 the Company shall be permitted to re-submit a revised Business Plan in accordance with the provisions of paragraph 8, but always complying with any direction, comment or request raised by the Committee.

9 **Review**

These terms of reference shall be reviewed at least annually, and any amendments shall be approved by the Council Cabinet.

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Schedule 5

Deed of Accession

Deed of Accession

dated [] 20[]

By [**Limited**] a company incorporated in England and Wales (registered number []) whose registered office is at [] (the **New Subsidiary**) in favour of the persons whose names and addresses are set out in the Schedule to this Deed (the **Continuing Parties**).

Introduction

- (A) This Deed is supplemental to a Shareholders' Agreement dated 20[] between [*insert details*] (the **Shareholders' Agreement**) and to [*insert details of any subsequent Deeds of Accession or Amendment*].
- (B) Provision is made in the Shareholder's Agreement for the New Subsidiary to accede as a party thereto as a further Subsidiary and it has agreed to do so.

Agreed terms

- 1 The New Subsidiary confirms that it has been given a copy of the Shareholders' Agreement and covenants with the Continuing Parties to observe, perform and be bound by every provision of the Shareholders' Agreement in the capacity of a Subsidiary with effect from the date of this Deed.
- 2 Unless the context requires otherwise, words and expressions defined in the Shareholders' Agreement shall have the same meanings when used in this Deed.
- 3 This Deed shall be governed by and construed in accordance with English law.
- 4 For the purpose of clause [18] of the Shareholder Agreement all notices served on the New Subsidiary shall be served to:
- Address: []
- Email: []
- marked for the attention of []

This Deed of Accession has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule

- 1 **Lancaster City Council** of Town Hall, Dalton Square, Lancaster, LA1 1PJ;
- 2 **[Morehomes for the Bay (Developments) Limited]** (company no [redacted]) whose registered office is at Town Hall, Dalton Square, Lancaster, LA1 1PJ (the **Development Company**);
- 3 **[Morehomes for the Bay (Investments) Limited]** . (company no [redacted]) whose registered office is at Town Hall, Dalton Square, Lancaster, LA1 1PJ(the **Investment Company**);

[Insert names and addresses of Continuing Parties]

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