

THIS AGREEMENT is made the 25th day of May Two Thousand and Sixteen
BETWEEN PROSPECT ESTATES LIMITED (Company Number 3189093) whose
registered office is at Prospect Court 2 Courthouse Street Otley Leeds (hereinafter called
"the Owner") of the first part **AND THE COUNCIL OF THE BOROUGH OF KIRKLEES** of
the Town Hall Huddersfield West Yorkshire (hereinafter called "the Council") of the
second part **AND SVENSKA HANDELSBANKEN AB (PUBL)** (hereinafter called "the
Mortgagee")

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 and the local highway authority for the purposes of the Highways Act 1980 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable
2. The Owner is the freehold owner of the Site registered under title numbers WYK378731 WYK854879 and WYK402843 subject to a mortgage in favour of the Mortgagee but otherwise free from incumbrances
3. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("the Act") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land
4. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to:-
 - 4.1 secure the provision of Affordable Housing as part of the Development in accordance with the policies of the Kirklees Unitary Development Plan;
 - 4.2 secure the provision and subsequent maintenance of on and off-site public open space to serve the Development in accordance with policies of the Kirklees Unitary Development Plan;
5. The Mortgagee is the registered proprietor of the charge dated 18 March 2016 and has agreed to enter into this Deed to give its consent to the terms of this Deed.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

1.1 In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

"Administration Charge" means 1% (one percent) of the Financial Contribution

"the Affordable Dwellings" "Affordable Housing" means dwellings falling within the definition of Affordable Housing set out in Annex 2 of National Planning Policy Framework published by the Department of Communities and Local Government and which includes includes social rented, affordable rented and intermediate housing provided to eligible households whose needs are not met by the market as defined by Annex 2 of the NPPF

"the Affordable Price" means the sum to be paid by the Registered Provider (or Alternative Provider) to the Owner which shall reflect the range of prices prevailing in SPD2 or such other sum as may be reasonably agreed between the Owner and the Council

Affordable Housing Scheme means the scheme identifying the location and type of Affordable Dwellings on the Site in accordance with Clause 3 of this Deed being six two bedroom Dwellings which shall be made available as intermediate housing

"the Alternative Provider " means any other such provider approved by the Council (such approval not to be unreasonably withheld) which can deliver affordable housing as defined in Annex 2 of NPPF as shall be nominated by the Council and Owner under Clause 3 of this Deed

"Default Works" means such works as the Council shall reasonably determine to be necessary to remedy the failure by the Owner to comply with any of its obligations in the circumstances described in Clause 4 of this Agreement

"Dwellings" means the Affordable Dwellings and the Market Dwellings

"Financial Contribution" means the payment to be made in lieu of the provision of on-site Affordable Dwellings (or a full complement thereof) calculated as described in paragraph 11.4 of SPD2

"First Occupation" means the first Occupation of a Dwelling under a sale lease licence or other arrangement excluding all subsequent occupation and reference to **"First Occupier"** shall be construed accordingly;

"Registered Provider" means a social landlord registered with the Homes and Communities Agency

"Homes and Communities Agency" means the national housing and regeneration delivery agency for England

"Huddersfield Market Area" means the Huddersfield housing market area as defined within the SHMA (Strategic Housing Market Assessment) published May 2012

"Implementation" means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the Act PROVIDED THAT the following shall not be regarded as material operations:

- (a) demolition of existing structures on the Site;
- (b) the erection of boundary structures, fencing and/or hoardings or other site security measures or safety measures;
- (c) diversion and laying of services;
- (d) site and ground investigations and/or surveys;
- (e) site clearance, preparation and levelling including ground earthworks;
- (f) archaeological investigations or works;
- (g) ecological, landscaping and/or noise attenuation mitigation measures;
- (h) remedial treatment of areas of contaminated land;
- (i) levelling and/or regrading of land in preparation for use or development;

- (j) any operations undertaken by the Council

and **Implement** and **Implemented** shall be construed accordingly

"Inspection and Certification Charge" "Inspection and Certification Charge" means £1000.00 (one thousand pounds) towards the administrative costs to the Council in inspecting the works undertaken on the POS Area and certifying that they are in accordance with the scheme of works set out in the Approved POS Management Scheme;

"Occupation" means the beneficial occupation under a sale lease licence or other arrangement for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or marketing and reference to **"Occupy"** shall be construed accordingly;

"Management Company" means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes carrying out future maintenance of the POS Area, in accordance with paragraph 5 of the First Schedule, and:-

1. which is incorporated in England and Wales or Scotland;
2. which has its registered office in England or Scotland; and
3. whose primary objects permit it to maintain and manage the POS Area;

"Market Dwellings" means those Dwellings within the Development excluding the Affordable Dwellings

"Plan" means the plan annexed hereto showing the Site

"Planning Permission" means the outline/full planning permission to be granted under Ref No. 2015/93824 for

"POS Area" means an area of land to be provided in accordance with the Planning Permission and approved plans to be made available for use by the general public;

"POS Management Scheme" means a scheme for initial preparation and the future maintenance and management of the POS Area to be submitted by the Owner in accordance with the provisions of clause 4 of this Agreement and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council);

"SHMA" means the Kirklees Strategic Housing Market Assessment, published May 2012, and the housing market areas designated within that Assessment, as may be varied by further market updates

"Site" means the land at former Midlothian Garage New Mill Road Holmfirth as shown on the Plan annexed hereto

"SPD2" means the Council's Supplementary Planning Document number 2 – Affordable Housing adopted by Kirklees Council on 18 November 2008

2. GENERAL

2.1 The Owner and the Mortgagee covenant with the Council to observe the restrictions and perform the obligations contained in this Deed

- 2.2 The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site
- 2.3 The expressions "the Council" and "the Owner" and "the Mortgagee" shall include their successors in title and assigns
- 2.4 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 2.5 This Deed shall not be binding upon the owner/occupiers of the Dwellings nor (save for the provisions of Clause 3 hereof) upon the Registered Provider or any Alternative Provider nor against any statutory undertaker or authority who acquires any part of the Site or interest in it for the purposes of its statutory undertakings or functions
- 2.6 This Deed shall come into effect upon the date hereof
- 2.7 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date
- 2.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed
- 2.9 This Deed is a local land charge and shall be registered as such
- 2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

- 2.11 The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed
- 2.12 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to creation of the Mortgagee's interest in the Property
- 2.13 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed at a time when the Mortgagee is in possession of all or part of the Property

3. AFFORDABLE HOUSING

The Owner covenants with the Council:-

- 3.1 Prior to Implementation to submit to the Council for its approval in writing a scheme identifying the number and type of Affordable Dwellings on the Site (the Affordable Housing Scheme) and once approved not to permit in excess of 28 Market Dwellings to be substantially completed until the Affordable Dwellings identified in the approved Affordable Housing Scheme have been constructed in accordance with Clause 3.2 hereof and made available for sale to the Registered Provider or Alternative Registered Provider
- 3.2 To construct the Affordable Dwellings to Homes and Communities Agency design and quality standards or Housing Corporation scheme development standards (or such other standards as may be agreed between the Owner and the Registered Provider or Alternative Registered Provider in accordance with the Planning Permission and approved plans unless otherwise agreed with the Registered Provider or the Alternative Registered Provider
- 3.3 If the Registered Provider or the Alternative Registered Provider shall not confirm in writing to the Owner its willingness subject to contract to accept the Affordable Dwellings at the Affordable Price within twelve (12) calendar months of Implementation then the Council upon receipt of notice in writing from the Owner to

that effect shall as soon as reasonably practicable nominate another Registered Provider and this provision may be repeated as often as is necessary (subject to Clause 3.4 below) until such time as one of the nominated Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings

3.4 If neither the Registered Provider or Alternative Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings at the Affordable Price within a period of twenty four (24) calendar months from Implementation and the Owner shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made all reasonable endeavours to secure acceptance of the Affordable Dwellings by an Alternative Registered Provider then the Owner will be free to offer such Dwellings for sale on the open market but the provisions of Clause 3.7 and 3.8 shall apply

3.5 If the Registered Provider or Alternative Registered Provider after confirming its willingness to purchase the Affordable Dwellings does not then contract to buy the Affordable Dwellings within two (2) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor or the Solicitor of the Alternative Registered Provider then:-

3.5.1 if a period of 24 (twenty four) calendar months from the Implementation has expired the Owner will be free to offer the Affordable Dwellings for sale on the open market but the provisions of Clauses 3.7 and 3.8 below shall apply

3.5.2 in any other circumstances the provisions of Clause 3.3 shall continue to apply

3.6 In the event that the Owner is free to offer the Affordable Dwellings for sale on the open market pursuant to Clause 3.4 or 3.5.1 hereof the Owner shall within 28 (twenty eight) days thereof pay to the Council:-

3.6.1 the Financial Contribution; and

3.6.²~~3~~ the Administration Charge

3.7 The Open Market Value of the Affordable Dwellings shall be determined in the first instance between the Owner and the Council and in default of such deed shall be the average of two (2) valuations provided by two (2) valuers one of which shall be selected by the Owner and the other by the Council and the parties shall each bear their own costs in respect of such valuations

3.8 The transfer to the Registered Provider or the Alternative Provider shall contain the following provisions:-

3.8.1 A covenant that the Affordable Dwellings shall be made available for letting at a rent level no higher than the Housing Corporation target rents in operation from time to time

3.8.2 A covenant that the Registered Provider or the Alternative Provider shall not use the Affordable Dwellings otherwise than for the purpose of providing housing to persons in need who meet the objectives of that Registered Provider or Alternative Provider

3.8.3 A declaration that the covenants referred to in clauses 3.6.1 and 3.6.2 shall not be binding upon:-

3.8.3.1 a mortgagee or chargee of the Affordable Dwellings or any of them or any receiver appointed by such mortgagee or chargee or any persons deriving title from them

3.8.3.2 any person acquiring any Affordable Dwelling pursuant to any statutory right to acquire the same

4 PUBLIC OPEN SPACE AREA

4.1 To provide the POS Area in accordance with the Planning Permission and approved plans thereto and not to implement the Planning Permission until it has submitted for the written approval of the Council a draft POS Management Scheme for works of initial woodland habitat management on the POS Area and arrangements future maintenance and management of the POS Area and not to permit First Occupation until the POS Management Scheme has been approved in writing by the Council.

- 4.2 To implement and thereafter comply with the approved POS Management Scheme prior to Occupation of the 28th Dwelling
- 4.3 As soon as is reasonably practicable after the completion of works of initial woodland habitat management and preparation on the POS Area specified in paragraph 4.1 and in accordance with the approved POS Management Scheme the Owner shall notify the Council in writing that such works have been completed.
- 4.4 Not later than one calendar month following receipt of the relevant notice referred to in paragraph 4.3 the Council shall inspect the POS Area and if has been provided in accordance with the Planning Permission and approved plans and initial works of woodland habitat management and preparation have been completed in accordance with approved POS Management Plan to the Council's reasonable satisfaction the Council shall notify the Owner in writing thereof **PROVIDED THAT** it is agreed that in the event that the Council do not inspect the POS Area within one calendar month following receipt of the relevant notice referred to in paragraph 4.3 of this Schedule it will be deemed that the Council has approved the POS Area.
- 4.5 If upon notification by the Owner pursuant to paragraph 4.4 the initial works to the POS Area have not been carried out in accordance with the Planning Permission and approved plans and approved POS Management Plan to the reasonable satisfaction of the Council it shall notify the Owner specifying the measures necessary to satisfactorily complete the POS Area initial works and the Owner shall within such period as specified by the Council carry out those works and shall notify the Council pursuant to paragraph 4.3 of this Schedule (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof).
- 4.6 Following written confirmation or deemed approval by the Council of the satisfactory completion of the POS Area initial works pursuant to paragraph 4.4 of this Schedule the Owner shall thereafter maintain the POS Area in accordance with the approved POS Management Scheme until such time as it shall be transferred to a Management Company.

4.7 Within three months of receipt of written confirmation or deemed approval by the Council of the satisfactory completion of the POS Area pursuant to paragraph 4.4 the Owner shall transfer the POS Area to the Management Company **PROVIDED THAT** it is agreed that the transfer shall contain a covenant so as to bind the POS Area into whomsoever hands the same may be transferred to maintain the POS Area in accordance with the approved POS Management Scheme and shall not permit it to be used for anything other than open space (within the meaning of Open Spaces Act 1906) and to allow the public reasonable access thereto.

4.8 The Owner shall pay the Inspection and Certification Charge to the Council prior to the transfer of the POS Area referred to in paragraph 4.7.

4.9 Responsibility for the maintenance of the POS Area shall not at any time be transferred to an alternative management company unless the Council has been given a minimum of 28 Working Days written notice that such a transfer is to take place and has issued its approval in writing thereto.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be executed as a Deed

NEW MILL ROAD, HOLMFIRTH

CDM 2015

PERCEIVED SIGNIFICANT RESONAL. RISK THAT ARE EITHER UNARY COMBINATION OF THE FOLLOWING: NOT OBVIOUS & UNUSUAL & DIFFICULT TO MANAGE

NO	NO	NO
1	2	3
4	5	6
7	8	9
10	11	12
13	14	15
16	17	18
19	20	21
22	23	24
25	26	27
28	29	30
31	32	33
34	35	36
37	38	39
40	41	42
43	44	45
46	47	48
49	50	51
52	53	54
55	56	57
58	59	60
61	62	63
64	65	66
67	68	69
70	71	72
73	74	75
76	77	78
79	80	81
82	83	84
85	86	87
88	89	90
91	92	93
94	95	96
97	98	99
100	101	102
103	104	105
106	107	108
109	110	111
112	113	114
115	116	117
118	119	120
121	122	123
124	125	126
127	128	129
130	131	132
133	134	135
136	137	138
139	140	141
142	143	144
145	146	147
148	149	150
151	152	153
154	155	156
157	158	159
160	161	162
163	164	165
166	167	168
169	170	171
172	173	174
175	176	177
178	179	180
181	182	183
184	185	186
187	188	189
190	191	192
193	194	195
196	197	198
199	200	201
202	203	204
205	206	207
208	209	210
211	212	213
214	215	216
217	218	219
220	221	222
223	224	225
226	227	228
229	230	231
232	233	234
235	236	237
238	239	240
241	242	243
244	245	246
247	248	249
250	251	252
253	254	255
256	257	258
259	260	261
262	263	264
265	266	267
268	269	270
271	272	273
274	275	276
277	278	279
280	281	282
283	284	285
286	287	288
289	290	291
292	293	294
295	296	297
298	299	300
301	302	303
304	305	306
307	308	309
310	311	312
313	314	315
316	317	318
319	320	321
322	323	324
325	326	327
328	329	330
331	332	333
334	335	336
337	338	339
340	341	342
343	344	345
346	347	348
349	350	351
352	353	354
355	356	357
358	359	360
361	362	363
364	365	366
367	368	369
370	371	372
373	374	375
376	377	378
379	380	381
382	383	384
385	386	387
388	389	390
391	392	393
394	395	396
397	398	399
400	401	402
403	404	405
406	407	408
409	410	411
412	413	414
415	416	417
418	419	420
421	422	423
424	425	426
427	428	429
430	431	432
433	434	435
436	437	438
439	440	441
442	443	444
445	446	447
448	449	450
451	452	453
454	455	456
457	458	459
460	461	462
463	464	465
466	467	468
469	470	471
472	473	474
475	476	477
478	479	480
481	482	483
484	485	486
487	488	489
490	491	492
493	494	495
496	497	498
499	500	501
502	503	504
505	506	507
508	509	510
511	512	513
514	515	516
517	518	519
520	521	522
523	524	525
526	527	528
529	530	531
532	533	534
535	536	537
538	539	540
541	542	543
544	545	546
547	548	549
550	551	552
553	554	555
556	557	558
559	560	561
562	563	564
565	566	567
568	569	570
571	572	573
574	575	576
577	578	579
580	581	582
583	584	585
586	587	588
589	590	591
592	593	594
595	596	597
598	599	600
601	602	603
604	605	606
607	608	609
610	611	612
613	614	615
616	617	618
619	620	621
622	623	624
625	626	627
628	629	630
631	632	633
634	635	636
637	638	639
640	641	642
643	644	645
646	647	648
649	650	651
652	653	654
655	656	657
658	659	660
661	662	663
664	665	666
667	668	669
670	671	672
673	674	675
676	677	678
679	680	681
682	683	684
685	686	687
688	689	690
691	692	693
694	695	696
697	698	699
700	701	702
703	704	705
706	707	708
709	710	711
712	713	714
715	716	717
718	719	720
721	722	723
724	725	726
727	728	729
730	731	732
733	734	735
736	737	738
739	740	741
742	743	744
745	746	747
748	749	750
751	752	753
754	755	756
757	758	759
760	761	762
763	764	765
766	767	768
769	770	771
772	773	774
775	776	777
778	779	780
781	782	783
784	785	786
787	788	789
790	791	792
793	794	795
796	797	798
799	800	801
802	803	804
805	806	807
808	809	810
811	812	813
814	815	816
817	818	819
820	821	822
823	824	825
826	827	828
829	830	831
832	833	834
835	836	837
838	839	840
841	842	843
844	845	846
847	848	849
850	851	852
853	854	855
856	857	858
859	860	861
862	863	864
865	866	867
868	869	870
871	872	873
874	875	876
877	878	879
880	881	882
883	884	885
886	887	888
889	890	891
892	893	894
895	896	897
898	899	900
901	902	903
904	905	906
907	908	909
910	911	912
913	914	915
916	917	918
919	920	921
922	923	924
925	926	927
928	929	930
931	932	933
934	935	936
937	938	939
940	941	942
943	944	945
946	947	948
949	950	951
952	953	954
955	956	957
958	959	960
961	962	963
964	965	966
967	968	969
970	971	972
973	974	975
976	977	978
979	980	981
982	983	984
985	986	987
988	989	990
991	992	993
994	995	996
997	998	999
1000	1001	1002

CASE HOME

1479 SQ M / 15920 SQ FT GMA

AREAS

HOUSING

GROSS - CIVIL INCLUDING EMBANKMENTS, TRENCHES, ETC.

5.557 ACRES / 23.01 HECTARES

NET - EXCLUDING EMBANKMENTS, TREES, ETC. & RESOURCES /

1.653 HECTARES

CASE HOME

GROSS 0.29 ACRES / 0.12 HECTARES

NET

0.73 ACRES / 0.29 HECTARES

PUBLIC FOOTPATH

0.133 ACRES / 0.06 HECTARES

PARKING

100-120 APARTMENTS & PLOTS 110-6

2005-17 ALL OTHER HOUSES

100-120 APARTMENTS & PLOTS 110-6

DEVELOPMENT

HOUSING

15314 SQ FT / ACRES

2844 SQ FT / HECTARE

CASE HOME

33000 SQ FT / ACRES

126275 SQ FT / HECTARE

PDS

13% OF THE GROSS HOUSING AREA

SEE OF THE NET HOUSING AREA

PUBLIC FOOTPATH

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

NET

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereunto affixed)
but not delivered until the date hereof)
In the presence of:-)



008266

~~Acting Assistant Director - Legal, Governance
& Monitoring / Authorised Signatory~~

EXECUTED AS A DEED by 1
PROSPECT ESTATES
acting by a Director in tl

Signature of Witness.....

Name of Witness (in block capitals) D.J. Evans

Address..... 44 Whitehall Woodhead

..... 2 Avenue Way

..... Leeds LS1 4EB

Signed as a deed for and on behalf of)
SVENSKA HANDELSBANKEN AB (PUBL))

Signature (1).....

Name MICHAEL HARVEY
PRIME AUTHORISED SIGNATORY

in the presence of

Witness's signature

Witness's name KAREN BAINES

Address

Occupation

Svenska Handelsbanken AB (publ)
9th Floor
West One
114 Wellington Street
Leeds LS1 1BA
Tel: 0113 2452307

Signature (2)

Name

✓ DAVID ROBERTSON

~~NAME~~/ADDITIONAL*AUTHORISED SIGNATORY

in the presence of

Witness's signature

Witness's name

KAREN BAINES

Address.....

Occupation

Svenska Handelsbanken AB (publ)
9th Floor.....
WestOne
114 Wellington Street
Leeds LS1 1BA
Tel: 0113 2452307

DATED 25th May **2016**

THE COUNCIL OF THE BOROUGH OF
KIRKLEES (1)

PROSPECT ESTATES LIMITED (2)

SVENSKA HANDELSBANKEN AB (PUBL) (3)

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to land at former
Midlothian Garage New Mill Road Holmfirth**

Julie Muscroft Assistant Director: Legal,
Governance & Monitoring
Kirklees Council
Fourth Floor
Civic Centre I
Huddersfield
HD1 2NF