

DATED 21st November 2016

(1) THE COUNCIL OF THE BOROUGH OF KIRKLEES

(2) BDW TRADING LIMITED

(3) FLOCKTON GREEN LIMITED

PLANNING OBLIGATION

by deed of agreement Section 106 of the Town and Country
Planning Act 1990 (as amended) relating to development on land
at Flockton Green Working Men's Club, Barnsley Road, Flockton

THIS AGREEMENT is made the 21st day of November Two Thousand and Sixteen **BETWEEN THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire (hereinafter called "the Council") of the first part **BDW TRADING LIMITED** of Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, LE67 1UF (hereinafter called "the Developer") of the second part and **FLOCKTON GREEN LIMITED** (an industrial and provident society) incorporated and registered in England and Wales with company number IP032248 of 157 Barnsley Road, Flockton, Wakefield, WF4 4AA (hereinafter called "the Owner") of the third part

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner holds the freehold title of the Site registered under Land Registry title number WYK808518.
3. The Developer has an interest in the Site by virtue of a conditional contract made between the Owner and the Developer dated 16 June 2016.
4. 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.
5. The Council would not have been willing to grant the Planning Permission but for this Agreement because of the need to:-
 - (i) secure the provision of Affordable Housing on part of the Site as agreed by the Council;
 - (ii) secure a financial contribution towards the provision of education facilities;
 - (iii) secure a financial contribution towards the provision of public open space;
 - (iv) secure a financial contribution towards the provision of sustainable travel measures including bus stop improvements; and

- (v) secure a financial contribution to secure the repair and/or renewal of existing surface water drainage infrastructure serving the Development

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

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

“the Affordable Dwellings” means 17 Dwellings of Affordable Housing consisting of Affordable Rented Dwellings and Intermediate Dwellings PROVIDED THAT the number of Affordable Rented Dwellings and/or Intermediate Dwellings may be amended by written agreement between the Council and the Developer to make alternative provision for Starter Homes

“Affordable Housing” means for the purpose of this Agreement housing that will be made available to people whose income is insufficient to enable them to afford housing locally on the open market as defined in Annex 2 of the National Planning Policy Framework (as may be updated or superseded)

“the Affordable Housing Commuted Sum” means the payment to be made in lieu of the provision of on-site Affordable Dwellings calculated as described in paragraph 11.4 of SPD 2

“Affordable Housing Scheme” means a scheme showing the location, house type and tenure of the 17 Affordable Dwellings to be provided on the Site to be submitted to and agreed by the Council in writing in accordance with the provision of clause 3 (together with any variation of such scheme agreed in writing from time to time between the Developer and the Council)

“the Affordable Price” means the price to be paid by the Registered Provider or the Alternative Registered Provider to the Developer for the Affordable

Dwellings to be calculated in accordance with the range of prices prevailing in Appendix 1 of SPD2 annexed hereto in the First Schedule

"the Alternative Registered Provider" means such other Registered Provider as shall be nominated by the Council under Clause 3 of this Agreement

"Affordable Rent" means an affordable rent of no more than 80% of the local market rent within the Kirklees district.

"Affordable Rented Dwellings" has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing within the glossary at Annex 2 of the National Planning Policy Framework for Affordable Rent such properties to be made available at an Affordable Rent in accordance with the Registered Provider's policy

"Application" means the application reference number 2016/62/91158/E for the residential development of 87 dwellings on the Site

"Bus Stop Improvement Contribution" means the sum of £10,000 (ten thousand pounds)

"Development" means the development of the Site in accordance with the Planning Permission

"Commencement of Development" means the date upon which the Development shall commence by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly

"Dwellings" means the Affordable Dwellings and the Market Dwellings

“Education Contribution” means the sum of £292,247 (two hundred and ninety two thousand two hundred and forty seven pounds) towards the provision of education facilities in the vicinity of the Development the need for which directly arises from the Development

“First Occupation” means the date following completion of the Development to the extent that the Development is capable of beneficial occupation and use for the purposes permitted by the Planning Permission, upon which any part of the Development is first Occupied for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in constructions fitting out of decoration or occupation for marketing or display or occupation in relation to security operations

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

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

“Intermediate Dwellings” has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and can include shared equity (shared ownership and equity loans) or discounted sale

“Market Dwellings” means those Dwellings within the Site excluding the Affordable Dwellings

“NPPF” means the National Planning Policy Framework published by the Department for Communities and Local Government

“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

"Plan 1 Location" means the plan annexed hereto with drawing number FL - 02A marked "Location Plan"

"Planning Permission" means the planning permission to be granted pursuant to the Application

"Public Open Space Contribution" means the sum of £231,150 (two hundred and thirty one thousand one hundred and fifty pounds) towards the provision of public open space

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

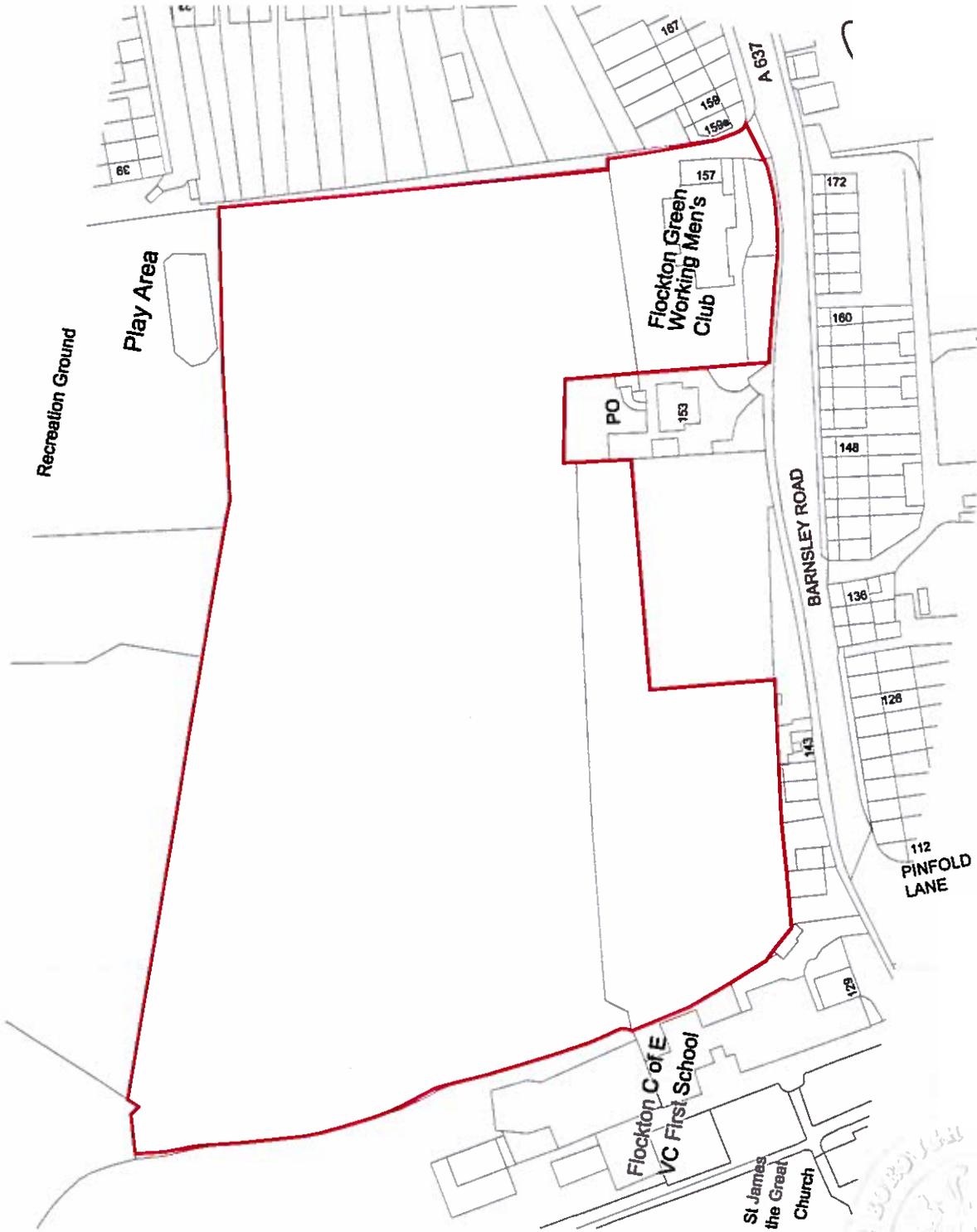
"Site" means the land at Flockton Green Working Men's Club, Barnsley Road, Flockton, comprising the land shown edged red on Plan 1 Location

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

"Starter Homes" means new dwellings only available for purchase by qualifying first-time buyers and made available at a price which is at least 20% less than its market value but which is below the appropriate price cap as defined at section 2 of the Housing and Planning Act 2016

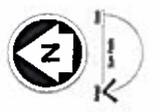
"Surface Water Drainage Contribution" means the sum of £70,000 (seventy thousand pounds) to be applied by the Council towards works to secure the repair and/or renewal of the existing sewer within Barnsley Road and Pinfold Lane the need for which directly arises from the Development

"Sustainable Travel Fund Contribution" means the sum of £41,000 (forty one thousand pounds)



Residential development off
 Barnsley Road, Flockton
 Location Plan

scale 1-1000 @ a3 Jan 2016 dwg. no. FL -02A



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“Working Days” means Monday to Friday in each week excluding bank holidays and reference to **“Working Days”** shall be construed accordingly

- 1.2 Clause headings are for reference only and shall not affect the construction of this Agreement.
- 1.3 Where more than one person is included in the expressions “the Council” and “the Owner” and “the Developer” agreements and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.
- 1.4 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.5 Any reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it which is for the time being in force.
- 1.6 A reference to a clause or schedule or paragraph is a reference to a clause or schedule or paragraph contained in this Agreement and does not affect the interpretation or construction of this Agreement.

2. GENERAL

- 2.1 The Owner and the Developer covenant with the Council to observe the restrictions and perform the obligations contained in this Agreement
- 2.2 The provisions of this Agreement 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”, “the Developer” and “the Owner” shall include their successors in title and assigns

- 2.4 No person shall be liable for breach of any covenant contained in this Agreement 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 Agreement shall not be binding upon:
- a) the owner/occupiers of the Dwellings or their mortgagee; or
 - b) any purchaser of occupier (or person claiming title from such person) of any of the Affordable Dwellings in the event of such person having acquired or having an interest in 100% of the equity of the Affordable Dwellings pursuant to the provisions of the Housing Act 1985 or the Housing Act 1996 (or any legislation amending or relating the same with like or similar effect) or under any future equivalent legislation conferring such a right which is binding on any Registered Provider of any mortgagee, charge or receiver of such Affordable Dwellings
- 2.6 This Agreement shall not become effective (save for clause 2.12) until the following conditions are satisfied:
- a) the Planning Permission shall have been granted
 - b) except where otherwise stated in this Agreement, the Planning Permission has been Implemented
- 2.7 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner or their successors in title this Agreement 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 Agreement 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 Agreement
- 2.9 This Agreement is a local land charge and shall be registered as such

- 2.10 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
- 2.11 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement
- 2.12 The Developer shall pay to the Council its legal fees reasonably incurred in the negotiation and completion of this Agreement not exceeding £500.
- 2.13 No person shall be liable for breach of any covenant contained in this Agreement which relates to land that they do not have a legal interest in.
- 2.14 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this Agreement such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Development and Building Control. Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

3. AFFORDABLE HOUSING

The Developer covenants with the Council as follows:-

- 3.1 To submit the Affordable Housing Scheme to the Council prior to the Commencement of Development
- 3.2 Not to cause or permit the Occupation of more than 43 Market Dwellings until the Developer has entered into a legally binding contract with a Registered Provider (or the Alternative Registered Provider) for the sale of all of the Affordable Dwellings at the Affordable Price.

- 3.3 If a Registered Provider shall not confirm in writing to the Developer 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 Developer to that effect shall as soon as reasonably practicable nominate an Alternative Registered Provider and this provision may be repeated subject to Clause 3.4 below until such time as either the Registered Provider or Alternative 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 Developer shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made reasonable and commercially prudent endeavours to secure acceptance of the Affordable Dwellings by an Alternative Registered Provider then the Developer will be free to offer such Dwellings for sale on the open market but the provisions of Clause 3.6 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 Developer will be free to offer the Affordable Dwellings for sale on the open market but the provisions of Clause 3.6 shall apply;
- 3.5.2 in any other circumstances the provisions of Clause 3.3 and 3.4 shall continue to apply
- 3.6 In the event that the Developer is free to offer the Affordable Dwellings for sale on the open market pursuant to Clause 3.4 or 3.5.1 hereof the Developer shall

within 28 (twenty eight) days of the expiration of the 24 (twenty four) calendar month period referred to in Clauses 3.4 or 3.5.1 pay to the Council the Affordable Housing Commuted Sum

3.7 A mortgagee seeking to dispose of any Affordable Dwellings pursuant to any default under the terms of its mortgage or charge give not less than 20 working days prior notice of its intention to dispose and:

3.7.1 in the event that the Council responds in writing within 20 working days from receipt of the notice indicating that arrangements can be made for the transfer of the Affordable Dwellings in a way to safeguard them as Affordable Housing then the mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer

3.7.2 if the Council does not serve its response in writing to the notice under clause 3.7 within 30 working days the mortgagee shall be entitled to dispose of the Affordable Dwellings on the open market free from the restrictions within this Agreement.

3.7.3 if the Council or any other person cannot within 30 working days of its notice in writing under paragraph 3.7.1 above secure such transfer then provided the mortgagee shall have complied with its obligations under this clause 3.7 the mortgagee shall be entitled to dispose of the Affordable Dwellings on the open market free from the restrictions within this Agreement

PROVIDED THAT a mortgagee shall not be obliged to dispose of the Affordable Dwellings for any sum less than that monies outstanding pursuant to the said mortgage or charge (including interest and costs incurred by the mortgagee)

4. EDUCATION CONTRIBUTION

4.1 The Developer covenants not to cause or permit the Occupation of more than 43 Dwellings until the Developer has paid to the Council the Education Contribution.

5. PUBLIC OPEN SPACE CONTRIBUTION

5.1 The Developer covenants not to cause or permit the Occupation of more than 43 Dwellings until the Developer has paid to the Council the Public Open Space Contribution.

6 SUSTAINABLE TRAVEL FUND CONTRIBUTION

6.1 The Developer covenants not to cause or permit the Occupation of more than 43 Dwellings until the Developer has paid to the Council the Sustainable Travel Fund Contribution

7. BUS STOP CONTRIBUTION

7.1 The Developer covenants not to cause or permit the Occupation of more than 43 Dwellings until the Developer has paid to the Council the Bus Stop Improvement Contribution

8. SURFACE WATER DRAINAGE CONTRIBUTION

8.1 The Developer covenants as follows:

8.1.1 Not to Commence Development until £35,000 (thirty five thousand pounds) of the Surface Water Drainage Contribution has been paid to the Council.

8.1.2 Not to permit First Occupation until £35,000 (thirty five thousand pounds) of the Surface Water Drainage Contribution has been paid to the Council.

9. COUNCIL'S OBLIGATIONS

9.1 The Council hereby covenants to apply the Education Contribution towards the provision of education facilities in the vicinity of the Development the need for which directly arises from the Development provided that if the

whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.

- 9.2 The Council hereby covenants to apply the Public Open Space Contribution towards the provision of public open space provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 9.3 The Council hereby covenants to apply (if applicable) the Affordable Housing Commuted Sum towards the provision of Affordable Housing in the administrative district of the Council provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 9.4 The Council hereby covenants to apply the Sustainable Travel Fund Contribution towards the provision of sustainable travel measures the need for which directly arises from the Development provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 9.5 The Council hereby covenants to apply the Bus Stop Improvement Contribution towards the improvement of bus stop number 20698 the need for which directly arises from the Development provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.

- 9.6 The Council hereby covenants to apply the Surface Water Drainage Contribution towards works to secure the repair and/or renewal of the existing sewer within Barnsley Road and Pinfold Lane the need for which directly arises from the Development provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee
- 9.7 The Council shall provide to the Developer such evidence as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.
- 9.8 At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

10. WAIVER

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

11. VAT

- 11.1 All consideration given in accordance with the terms of this Agreement shall be inclusive of any value added tax properly payable.

12. JURISDICTION

12.1 This Agreement is governed by an interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

13. DELIVERY

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

IN WITNESS whereof the parties hereto have executed this Agreement on the day and year first before written.

FIRST SCHEDULE
(Appendix 1 of SPD 2)



Local Development Framework

Appendix 1

The table below sets out the price to be paid to the developer by the RSL for the affordable element of a scheme. The figures represent the price which will be paid per square metre of gross internal floorspace.

Per m2	Social Rented	Intermediate
House	£588	£999
Flat	£698	£1171

These prices will be reviewed at 12 monthly intervals and the latest figures will be available on the Council's web site (see Local Development Framework – adopted Supplementary Planning Documents) or by contacting the Development Plans Section of the Planning Department.

EXECUTED AS A DEED by affixing
THE CORPORATE COMMON SEAL of
THE COUNCIL OF THE BOROUGH
OF KIRKLEES in the presence of:-



008840

Assistant Director – Legal Governance & Monitoring/Authorised Signatory

EXECUTED as a DEED by)
BDW TRADING LIMITED acting by)
its attorneys [D. POE] and A. DONAGHIE)
[])
in the presence of:

Witness name:

Address:

Occupation:

EXECUTED as a Deed by
FLOCKTON GREEN LIMITED
acting by :

.....
HARRY MARSDEN,

Secretary

In the presence of: DAVID LODGE
Signature of witness D. POE
Name (in BLOCK CAPITALS): DAVID LODGE
Address: 74 ABBEY RD SHEPHERD
HDS SEL

Member

In the presence of: JOAN LAYCOCK
Signature of witness J. Laycock
Name (in BLOCK CAPITALS): JOAN LAYCOCK
Address: 14 PARKSIDE, FLOCKTON,