

THIS AGREEMENT is made the
BETWEEN

DO NOT DATE
29th day of August

2019

FMB INVESTMENTS LIMITED (Company Registration No. 09051386) of 9 Bierley Hall Grove, Bradford, BD4 6DH of (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 **CAMBRIDGE & COUNTIES BANK LIMITED** (Co. Reg. No.07972522) of Charnwood Court, 5b New Walk, Leicester, LE1 6TE (hereinafter called "the Chargee") 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 is the freehold owner of the Site registered with HM Land Registry under title numbers WYK551955 and YY37762.
3. The Chargee has the benefit of a charge on the Site dated 9th August 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:
secure the provision of the management and maintenance of the drainage of the Site; and
secure the payment of the Affordable Housing Contribution in the sum of £20,000; and
secure the payment of the Public Open Space Contribution in the sum of £45,000

NOW IT IS HEREBY AGREED as follows:-

1. **INTERPRETATION**

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

"1990 Act" means the Town and Country Planning Act 1990

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in Annex 2 of the NPPF.

"Affordable Housing Contribution" means the sum of £20,000 (Twenty Thousand Pounds) to be paid by the Owner to the Council and to be used by the Council for the provision of Affordable Housing within the Kirklees district.

"the Application" means the outline application known by reference number 2016/92664 for residential development Oak Mill, Cliff Hollins Lane, East Bierley BD12 7ER on the Site

"Approved Drainage Management Scheme" means a scheme approved by the Council for the future maintenance and management of the drainage of the Site to be submitted by the Owner in accordance with the provisions of paragraph 3 of this Agreement **PROVIDED THAT** any amendment to the scheme must be agreed with the Council in writing

"the Public Open Space Contribution" means the sum of £45,000 to be used by the Council to benefit both the existing Oakenshaw Rest Garden towards the existing play facility at Hunsworth.

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

"FRA Addendum" means the report entitled Flood Risk Assessment and dated 20th February 2017 under reference: 116/D2/OMFRA/ADD/0217 Rev1 annexed hereto at Schedule 1

"Implementation" means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the 1990 Act; save that the term "material operation" shall not include operations in connection with any works associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of fencing to site boundary and **"Implement"** and **"Implemented"** shall be construed accordingly.

"Management Company" means a limited company 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 drainage system on the Site in accordance with paragraph 3 of this Agreement and:

1. Which is incorporated in England and Wales or Scotland;
2. Which has its registered office in England and Wales or Scotland; and
3. Whose primary objects permit it to maintain and manage the drainage of the Site.

"Occupation and Occupied" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **"Occupy"** and **"Occupants"** shall be construed accordingly.

"Plan 1" means the plan so marked and annexed hereto.

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

"Public Open Space Contribution" means the sum of £45,000 (Forty Five Thousand Pounds) towards the upgrade of existing play facilities

"Site" means the land at Oak Mills Cliff Hollins Lane East Bierley BD1 7ER shown edged red on Plan 1.

"Working Day" means any day except Saturdays Sundays or bank holidays and reference to **"Working Days"** shall be construed accordingly.

2. GENERAL

- 2.1. The Owner covenants 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 1990 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 "Chargee" 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 his or its 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 come into effect upon the date hereof
- 2.6. If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner 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.
- 2.7. 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.
- 2.8. This Agreement is a local land charge and shall be registered as such.
- 2.9. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

NOTES
 1. CONSULT WITH LOCAL AUTHORITIES FOR THE RELEVANT CONVEYANCES AND RIGHTS OF WAY.
 2. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE RELEVANT CONVEYANCES AND RIGHTS OF WAY.
 3. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE RELEVANT CONVEYANCES AND RIGHTS OF WAY.
 4. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE RELEVANT CONVEYANCES AND RIGHTS OF WAY.

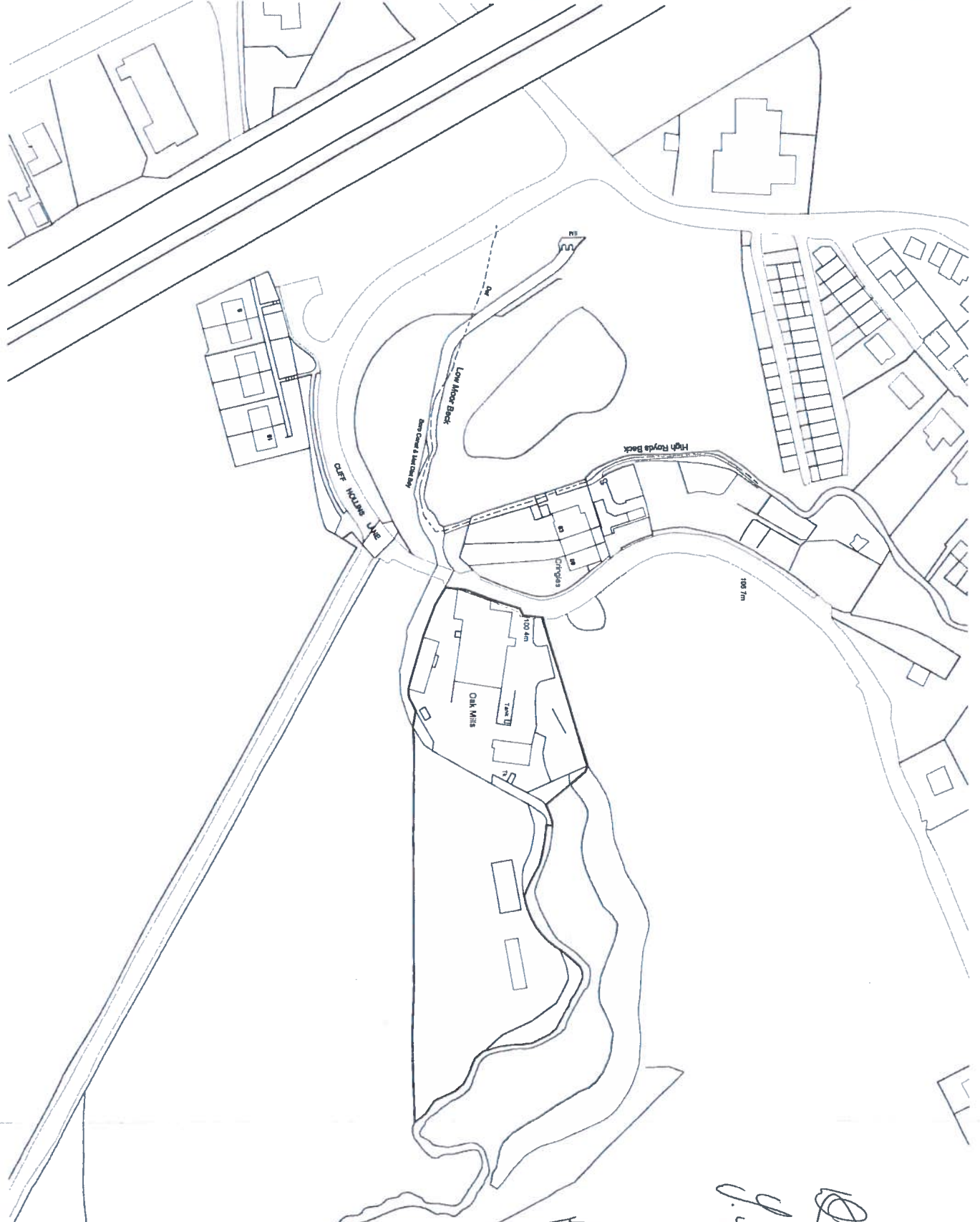
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Project Status	PLANNING	
Project	Oakenshaw, Oak Hill	
Client		
Drawing No.	PL-001	Rev A
Scale	1:250@A3	
Drawn	DP	



2.10. The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Agreement.

2.11 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the charge over the Site shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case the Mortgagee will be bound by the obligations in this Deed as if it were a person deriving title from the Owner

3. Drainage scheme

The Owner covenants with the Council:-

- 3.1. Prior to Implementation to set up the Management Company to manage and maintain the drainage of the Site in accordance with the Approved Drainage Management Scheme
- 3.2 To submit to the Council for approval a draft scheme for the management and maintenance of the drainage scheme ("Drainage Management Scheme") in accordance with the FRA Addendum principles
- 3.3 To provide within the Approved Drainage Management Scheme a plan detailing that part of the Site which is to be transferred to the Management Company ("the Drainage Scheme Area")
- 3.4 To provide the drainage system in accordance with the Planning Permission and to confirm to the Council the details of the Management Company
- 3.4 To maintain the drainage on the Site in accordance with the Approved Drainage Management Scheme until such time as it shall be transferred to a Management Company.
- 3.5 Prior to Occupation the Owner shall transfer the Drainage Scheme Area to the Management Company **PROVIDED THAT** it is agreed that the transfer shall contain a covenant so as to bind the Drainage Scheme Area into whomsoever hands the same may be transferred to maintain the Drainage Scheme Area in accordance with the Approved Drainage Management Scheme.
- 3.6 Responsibility for the maintenance and management of the Drainage Scheme 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.

- 3.7 Not to allow Occupation until the submitted Drainage Management Scheme has been approved in writing by the Council ("the Approved Drainage Scheme") and the Drainage Scheme Area has been transferred to the Management Company

4. CONTRIBUTIONS

- 4.1 Prior to Occupation the Owner covenants to pay the Public Open Space Contribution and the Affordable Housing Contribution to the Council.
- 4.2 The Council covenants to return to the payer of the Public Open Space Contribution and the Affordable Housing Contribution any of the Contributions (or part thereof) that remains unspent Ten (10) years after the date of payment.

5. JURISDICTION

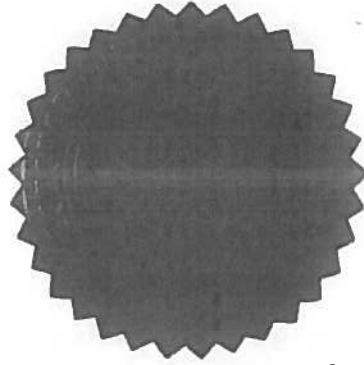
- 5.1 This Agreement is governed by an interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

6. DELIVERY

- 6.1 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 caused this Deed to be executed as a Deed

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:-)



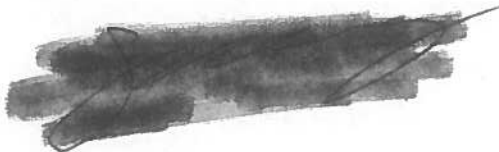
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.....
Assistant Director - Legal, Governance
& Monitoring /Authorized Signatory

EXECUTED AS A DEED by)
FMB INVESTMENTS LIMITED)
acting by)

.....)
Director
.....)
Director / Secretary
in the presence of:-

EXECUTED AS A DEED by
CAMBRIDGE & COUNTIES BANK LIMITED
acting by



WITNESS SIGNATURE
.....

WITNESS NAME

.....

.....

Cambridge & Counties Bank Limited
Charnwood Court
New Walk
Leicester
LE1 6TE
Sort Code 60-95-86

DATED *29th August* 2019

THE COUNCIL OF THE BOROUGH OF
KIRKLEES

and

FMB INVESTMENTS LIMITED

and

CAMBRIDGE & COUNTIES BANK LIMITED

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to Oak Mill, Cliff
Hollins Lane, East Bierley, BD12 7ER**

Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND