

DO NOT DATE

THIS AGREEMENT is made the 17th day of June 2019

BETWEEN CELLARS CLOUGH PROPERTIES LIMITED (Co Regn. No: 9144788) of Richmond House 1 Bridge Street Todmorden OL14 5AQ (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.

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 WYK653165
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 permission but for this Agreement because of the need to:
 - 4.1 secure the provision of Affordable Housing on the Site (11 dwellings with a tenure split to be agreed in accordance with Council Policy);
 - 4.2 secure the payment of the Education Contribution in the sum of £130,967 (one hundred and thirty thousand nine hundred and sixty seven pounds);
 - 4.3 secure the provision of on-site Public Open Space;
 - 4.4 secure the payment of the Inspection and Certification Charge in the sum of £1,000 (one thousand pounds) in connection with the Council's costs in respect of the inspection of the works undertaken to the POS Area.

- 4.5 secure the payment of the Offsite Public Open Space Contribution in the sum of £82,967 (eighty two thousand nine hundred and sixty seven pounds);
 - 4.6 contribution of £26,468.75 towards the provision of a bus shelter and its maintenance at bus stop no. 19375
 - 4.7 secure an arrangement to cover the future maintenance and management responsibilities of the "SuDS" (sustainable drainage system) drainage system covering both surface water and foul drainage, all associated drainage infrastructure and the mill pond on the Site.
- 5 In the event that Yorkshire Water ultimately adopt the SuDs drainage system then the requirement for a management company will fall away, but will remain in perpetuity for the mill pond.
 - 6 The Council has resolved to grant the Planning Permission subject to completion of this Deed and to the conditions to which the Planning Permissions are expressed to be subject

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

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

“the Affordable Dwellings” means the 11 Dwellings to be provided as Affordable Housing and which shall consist of 5 Affordable Rent and 6 Intermediate Housing

“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 in in Annex 2 of the NPPF.

“Affordable Housing Scheme” means scheme for the type and location of the Affordable Housing to be provided on the Site to be submitted by the Owner in accordance with the provisions of paragraph 3.1 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).

“the Affordable Price” means the sum to be paid by the Registered Provider (or Alternative Registered Provider) to the Developer as may be reasonably agreed between the Developer and the Council and the recipient Registered Provider.

“Affordable Rented Dwelling” has the same meaning as the term "Affordable housing for rent" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the NPPF and comprises 5 Dwellings of Affordable Housing to be provided and 'Affordable Rented Dwellings' shall be construed accordingly.

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

“the Application” means the application known by reference number 2016/91573 for demolition of existing redundant mill buildings and erection of 55 dwellings with associated parking and access from Manchester Road on the Site

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

“Dwellings” means the Affordable Dwellings and the Market Dwellings.

“Education Contribution” means the sum of £130,967 (one hundred and thirty thousand nine hundred and sixty seven pounds) to be paid by the Owner to the Council towards the provision of educational facilities or school places in the following proportion : at Marsden I & N School £56,129 and £74,838 to Marsden Junior school the need for which directly arises from the Development.

“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 a financial contribution to the equal value of median build costs for Kirklees recognised by the RICS Build Cost Information Service (BICS) in respect of the relevant Affordable Dwellings **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Dwellings not transferred to a Registered Provider.

“Homes England” 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 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.

“Inspection and Certification Charge” means the sum of £1,000 (one thousand pounds) towards the administrative costs to the Council in inspecting the works undertaken to the POS Area and certifying that they are in

accordance with a scheme of works set out in the approved POS Management Scheme.

“Interest” means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

“Intermediate Dwelling” has the same meaning as the terms “Discounted market sales housing” and “Other affordable routes to home ownership” contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the NPPF and comprises 6 Dwellings of Affordable Housing to be provided and ‘Intermediate Dwellings’ 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 of the management at the Development (until the SuDS is adopted by the Water Company) and the carrying out of future maintenance of the SuDS and POS Area serving the Development in accordance with paragraph 3 below 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 renew the SuDs and he POS Area serving the Development including the mill pond;

“Market Dwellings” means those Dwellings within the Development excluding the Affordable Dwellings.

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

“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.

“Plan 2” means the plan so marked with drawing number SHF 1330.001.L.D.002.C dated August 2018 and attached hereto.

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

“POS Area” means the area of land shown coloured green on Plan 2 to be provided in accordance with the Planning Permission and approved plans to be made available for use by the general public.

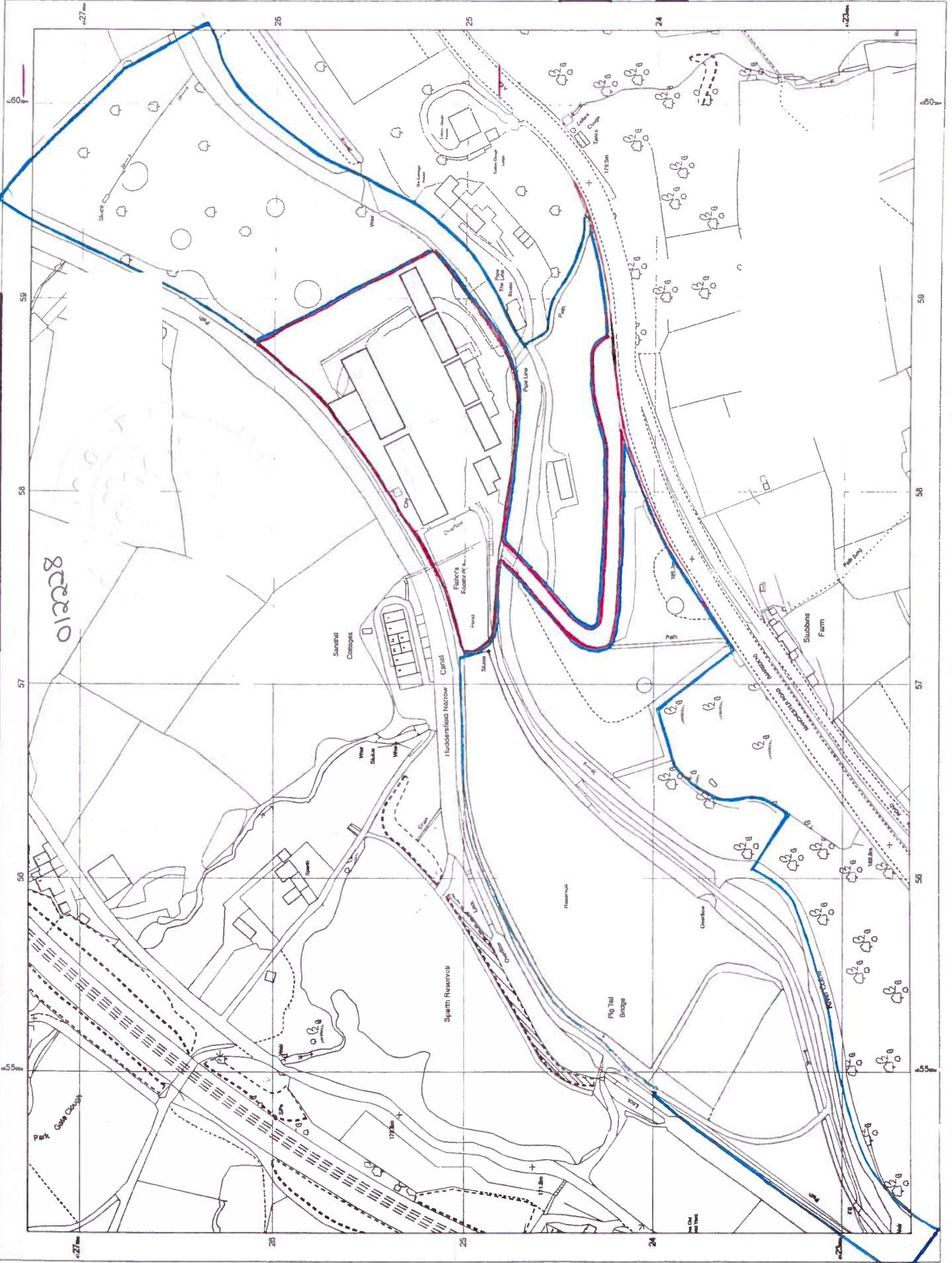
“POS Management Scheme” means a scheme for the future maintenance and management of the POS Area to be submitted by the Owner in accordance with the provisions of paragraph 5.3 of this Agreement and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council).

“Registered Provider” means a social landlord registered with Homes England or any such housing provider approved by the Council at its absolute discretion which can deliver Affordable Housing as defined herein and in Annex 2 of the NPPF.

“Site” means the land at Cellars Clough Mill Manchester Road Marsden Huddersfield, shown edged red on Plan 1.

“Schedule” means the schedule annexed hereto

SITE LAYOUT PLAN 9th OCTOBER 2018



CELLARS CLOUGH MILL
MANCHESTER ROAD
MANSDEN

DWG N° G1 T 1 (R)

OS MasterMap 100/2500/10000
 24 June 2015 ID: MDP-0041187
 www.malcolmhughes.co.uk
 1:1250 Scale print at A2, Centre:
 487120 E, 711487 N
 Malcolmhughes.co.uk
 Survey No: 100019800
 Date: 01/10/18
 Scale: 1:1250
 Survey

MALCOLM HUGHES
 LAND SURVEYORS
 105, THE STREET, BRISTOL, AVON, BRISTOL, AVON, BRISTOL
 Tel: 0161 926 0650

CELLARS CLOUGH PROPERTIES, MARSDEN LANDSCAPE MASTERPLAN 1:250 @ A1

LANDSCAPE STRATEGY

The landscape proposals seek to provide an attractive setting to the residential units and improve access to recreational space, balanced alongside vehicular use.

The site layout provides an open framework of amenity areas which seek to complement the design. Substantial spaces for recreation and leisure has been included alongside the transport routes.

The grid structure of the site layout has been used to reference the sites history as an industrial yard. The design centres around a central public open space, which creates a focal point for the properties.

This central square is separated from the shared surface via raised seating, incorporating a change in level to form a stepped bench. The area is scattered with trees providing sculptural form and creating an intimate space to relax.

The materials and form of the design are sympathetic to the industrial history of the site. The treatment of hard landscape references the local vernacular and the use of reclaimed building materials for the construction of the properties. These are used to create a uniformity of style and distinctive character for the development.

PLAY EQUIPMENT LIST

- EARLY YEARS PLAY EQUIPMENT**
- PE1 - Timber Play Ltd. 'Standing Sheep' (Product no. 4.24135)
 - PE2 - Timber Play Ltd. 'Rocky' (Product no. 6.04000)
 - PE3 - Timber Play Ltd. 'Little Play' (Product no. 4.08110)
 - PE4 - Proleak Ltd. 'Climbing and Balancing Trails' (Product no. J4904)
 - PE5 - Timber Play 'Dwarf Hill' (Product no. 4.06000)

STANDARD PLAY EQUIPMENT

- PE6 - Russell Play Ltd. Silhouettes Series 'Armadillo' (Product no. CP-01.5004)
- PE7 - Russell Play Ltd. Silhouettes Series 'Snake' (Product no. CP-01.0040)
- PE8 - Russell Play Ltd. Silhouettes Series 'Things' (Product no. CP-01.0130)



KEY

- Ownership Boundary
- Application Boundary
- EA 8m Buffer Zone
- Environment Agency 8m easement from river
- Existing & retained trees
- Trees to be retained and protected, where needs be during capital works
- Water-bodies
- General soft landscape
- General soft landscape adjacent to river, or otherwise not inclusive of landscape proposals
- Existing fence-line/site boundary
- Proposed buildings
- See architect's plans for details & elevations
- Resaining walls
- Including both pre-proposal retaining walls, and existing/unretained walls to site boundary
- Steps
- Raised planters
- Raised above ground level by no more than 900mm, featuring a mix of ornamental planting and shrubs
- Benches & seating
- Seating to be inclusive of both formal benches and upright walls to the edge of the public open space

TRAFFIC & ACCESS

- Resident's parking
- 5m x 2.5m with a min. reversing distance of 6m
- Visitor parking
- 5m x 2.5m with a min. reversing distance of 6m
- Direction of traffic
- See Highways consultant details for information
- Accessibility ramps

PROPOSED HARD LANDSCAPE

- Feature paving type 1
- Ruff covering paving to shared surfaces and permeability only routes, used throughout site to create sense of unity and distinctive character
- Feature paving type 2
- Grills sets used to provide a textured surface
- Trafficable and used to define edges and reduce foot speed when approaching public open space & frontages properties
- kerbs
- driveways & parking
- paving slab arrangements formation to all areas and use of permeable materials
- Self Binding Gravel to public open space
- Self-Binding gravel to create amenity areas within the site
- Play equipment
- indicative locations and equipment shown, to be evolved prior to construction. Please refer to Play Equipment List for further details.

PROPOSED SOFT LANDSCAPE

- Proposed specimen trees
- Native trees, used to form strong avenue and sense of intimacy. Selected species growing to a max. height of 10m to form a closed canopy

INDICATIVE PLANT LIST

Any subsequent detailed planning scheme will be developed with reference to the principles set out in the following plantings lists.

Plant species have been selected for their flexibility, ease of management, aesthetic quality and suitability to the character of the site.

Botanical Name	Common Name	Height (m)	Notes
Milium x caudatum	Caucasian lime	250-300	Clear stem Standard
Quercus ilex	Hibern oak	250-300	Clear stem Standard
Alnus conferta	Italian alder	250-300	Clear stem Light standard

Botanical Name	Common Name	Height (m)	Notes
Carpinus betulus	Common hornbeam	250-300	Clear stem U
Acetabularia Queen Elizabeth	Pied maple	Queen Elizabeth	Clear stem U
Morus nigra	Black mulberry	250-300	Clear stem U
Prunus avestera 'Nigra'	Purple-leaved cherry	250-300	Clear stem U



“SuDS” means the sustainable drainage measures to be provided by the Owner as part of the Development;

“SuDS Maintenance and Management Plan means a detailed management plan setting out measures to be undertaken to ensure SuDS are properly maintained and managed, which shall include the information set out in the Schedule to this Deed;

“Water Company” means Yorkshire Water Services Limited whose registered office is at Western House, Halifax Road, Bradford, BD6 2SZ and its statutory successors in title

“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” 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 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 not be binding upon the owner/occupiers of the Dwellings nor upon the Registered Provider or any Alternative Registered Provider nor against a mortgagee, charge or receiver (including an administrative receiver) of the Affordable Dwellings or any person acquiring the same under a statutory right to acquire the same or any lessee under a shared ownership lease who has acquired 100% equity in the Dwelling, or any successor in title to any of the parties mentioned in this clause.
- 2.6 This Agreement shall come into effect upon the date of Implementation save for clause 2.11 which shall have immediate effect.
- 2.7 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.
- 2.8 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 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 2.11 The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Agreement.

2.12 If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment

3. AFFORDABLE HOUSING

The Developer covenants with the Council:-

- 3.1 Prior to Occupation of any Dwelling on the Site to submit the Affordable Housing Scheme for approval to the Council
- 3.2 Not to permit or allow in excess of 20 the Market Dwellings to be occupied until the Affordable Dwellings have been constructed in accordance with Clause 3.2 hereof and made available for sale to the Registered Provider or Alternative Registered Provider.
- 3.3 To construct the Affordable Dwellings to Homes England's design and quality standards or Housing Corporation scheme development standards (or such other standards as may be agreed between the Developer 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.
- 3.4 To deliver the Affordable Dwellings based on 5 Affordable Rented Dwellings and 6 Intermediate Dwellings
- 3.5 If the 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 as

often as is necessary (subject to Clause 3.5 below) until such time as one of the nominated Registered Providers shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings.

- 3.6 If neither the Registered Provider nor an 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 or such other period agreed between the Developer and the Council and the Developer shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made all reasonable but 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 and 3.7 shall apply

- 3.7 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 or such other period as agreed between the Developer and the Council (such agreement not to be unreasonably withheld or delayed) then:-
 - 3.7.1 if a period of twenty four (24) 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 3.7 below shall apply

 - 3.7.2 in any other circumstances the provisions of Clause 3.5 shall continue to apply

3.8 In the event that the Developer is free to offer the relevant Affordable Dwellings for sale on the open market pursuant to Clause 3.5 hereof the Developer shall within 12 months days thereof pay to the Council:-

3.8.1 the Financial Contribution; and

3.7.2 the Administration Charge

4. EDUCATION CONTRIBUTION

4.1. The Developer covenants not to cause or permit Occupation of more than 20 of the Dwellings until the Education Contribution has been paid to the Council.

5. On-Site POS

The Developer covenants with the Council:-

5.1. Prior to the Occupation of any Dwelling on the Site to submit to the Council for approval a scheme for the laying out of the POS Area in accordance with Plan 2 (such approval not to be unreasonably withheld).

5.2. To provide the POS Area in accordance with the Planning Permission and Plan 2 and any other approved plans thereto.

5.3. Not to allow Occupation of more than 50 percent of the Dwellings until it has provided on Site the POS Area it has submitted for the written approval of the Council a draft POS Management Scheme for the future maintenance and management of the POS Area.

5.4. As soon as is reasonably practicable after the completion of the POS Area specified in paragraph 5.2 of this Agreement the Developer shall notify the Council in writing that such works have been completed.

- 5.5. Not later than 1 (one) calendar month following receipt of the relevant notice referred to in paragraph 5.4 of this Agreement the Council shall inspect the POS Area and if has been provided in accordance with the Planning Permission and approved plans thereto **PROVIDED THAT** in is agreed that in the event that the Council do not inspect the POS Area within 1 (one) calendar month following receipt of the relevant notice referred to in paragraph 5.3 of this Agreement (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof).
- 5.6. Following written confirmation or deemed approval by the Council of the satisfactory completion of the POS Area pursuant to paragraph 5.5 of this Agreement the Developer 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.
- 5.7. Within 3 (three) months of receipt of written confirmation or deemed approval by the Council of the satisfactory completion of the POS Area pursuant to paragraph 5.5 of this Agreement the Developer 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.
- 5.8. The Owner shall pay the Inspection and Certification Charge to the Council prior to the transfer of the POS Area referred to in paragraph 5.7 of this Agreement.
- 5.9. 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.

5.10 When the POS Area is transferred to a Management Company in accordance with the provisions of paragraph 5.8 of this Agreement the Developer will procure in either case that public access is allowed to the POS Area

6. SuDs DRAINAGE

The Owner covenants with the Council as follows: -

- 6.1 Prior to the Commencement of Development the Developer shall submit to the Council for approval the SuDS Maintenance and Management Plan covering the issues in the Schedule (it being acknowledged by the parties that the intention of the Developer is that the SuDS is to be offered for adoption by the Water Company).
- 6.2 The Developer covenants that Development shall not be commenced unless and until the SuDS Maintenance and Management Plan has been approved by the Council. In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of SuDS Maintenance and Management Plan then the Developer shall submit a revised version to the Council, taking into account any comments that the Council has provided, for their approval. Such procedure shall be repeated as often as is necessary until the Council approve the SuDS Maintenance and Management Plan.
- 6.3 The Developer covenants with the Council to fully comply with the approved SuDS Maintenance and Management Plan from the Commencement of Development and at all times thereafter to manage and maintain the SuDS in accordance with the details set out in the approved SuDS Maintenance and Management Plan until the earlier of the date that the SuDS is transferred to

the Management Company and the date when the SuDS has been adopted by the Water Company.

- 6.4 Until such time as the SuDS is adopted by the Water Company the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the approved SuDS Maintenance and Management Plan.
- 6.5 In the event that the Council considers (acting reasonably) that the requirements of the approved SuDS Maintenance and Management Plan are not being complied with and unless the SuDS has been adopted by the Water Company then the Council may serve a notice on the Developer or the Management Company as the case may be requiring the Developer or the Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.
- 6.6 The Developer or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 7.5 above within 28 days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.
- 6.7 The approved SuDS Maintenance and Management Plan shall only be varied or amended with the written approval of the Council.
- 6.8 No part of the Site upon which the SuDS are located shall be transferred or leased to any Management Company (as apart from the Water Company in which case any transfer or lease may proceed without the approval of the Council) unless the identity of that Management Company has been approved by the Council (acting reasonably). In seeking approval of any Management Company the Developer shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, structure, voting rights and such other information as the Council (acting reasonably) shall require.

- 6.9 The Developer shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and e-mail address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the SuDS **SAVE ALWAYS THAT** the provisions of this paragraph 7.9 shall not apply in the event that the SuDS are adopted by the Water Company.

7. COUNCIL'S OBLIGATIONS

- 7.1 The Council hereby covenants to apply (if applicable) the Financial Contribution 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.
- 7.2 The Council hereby covenants to apply the Education Contribution towards the provision or improvement of educational facilities at Marsden I & N School £56,129 and £74,838 to Marsden Junior School to accommodate pupil growth which directly arises from the Development **PROVIDED THAT** if the whole or any part of these sums have not been spent on such purposes 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.
- 7.3 The Council hereby covenants to apply the Inspection and Certification Charge towards the administrative costs to the Council in inspecting the works undertaken to the POS Area and certifying that they are in accordance with a scheme of works set out in the approved POS Management Scheme **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.

- 7.4 The Council covenants to apply the off-site POS Contribution towards recreational facilities' improvement/provision at Marsden Park **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.
- 7.5 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.
- 7.6 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.

8. WAIVER

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.

9. VAT

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

10. **JURISDICTION**

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.

11. **DELIVERY**

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:-)



012228

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

EXECUTED AS A DEED by)
CELLARS CLOUGH PROPERTIES LIMITED)
acting by a sole director)

in the presence of:-

Witness Signature....

Witness Name.....

Address.....

.....

.....

Occupation.....

THE SCHEDULE

(Issues to be Covered in the SuDS Maintenance and Management Plan)

The SuDS Maintenance and Management Plan shall include detailed measures setting out how the SuDS will be maintained and managed and will include:-

1. Details and a programme for the long term management and maintenance works to cover all aspects of the SuDS to include:-
 - a detailed maintenance schedule and methodology for all individual SuDS components to maintain the functionality of the SuDS, water storage and treatment;
 - a detailed schedule and methodology for the inspection and measuring of water levels in any detention basin to ensure the stated drain down times are accurate;
 - a detailed schedule and methodology for the inspection, maintenance and replacement as required of engineering features including inlet and outlet structures, flow controls tanks and channels;
 - a detailed schedule and methodology for the inspection, maintenance and replacement as required of any other SuDS features;
 - a detailed schedule and methodology for litter and debris removal, landscape and grass cutting, weeding and sediment removal.
 - details of the procedure in place for dealing with extreme rainfall events (both prior and post event)
 - plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Yorkshire Water sewers and details of whether the SuDS feature is a designated asset under the Flood & Water Management Act 2010.

2. Detailed maintenance schedules will be provided which must include details of the frequency of all actions and routine maintenance activities, the timing of all inspections (including annual inspections) and the timing of management works arising from inspections.
3. Details of the maintenance regime that will be adopted during the construction phase up until the point that the SuDS is signed off as complete in accordance with the approved design.
4. Details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of the SuDS.

DATED 17th June 2019

**THE COUNCIL OF THE BOROUGH OF
KIRKLEES**

and

CELLARS CLOUGH PROPERTIES LIMITED

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to at Cellars
Clough Mill Manchester Road Huddersfield**

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