

**THIS AGREEMENT** is made the 16<sup>th</sup> day of May Two Thousand and Eighteen **BETWEEN ALAN DAVID BATLEY** of Springhead Taylor Lane Scapegoat Hill Huddersfield (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 **EDWARD JULIAN HOLROYD** of Two Pleasant Pastures, New Hey Road, Scammonden, Huddersfield, HD3 3FT (hereinafter called "the **First Mortgagee**") of the third part and **SIMPSON WOOD CHARTERED ACCOUNTANTS** of Bank Chambers, Market Street, Huddersfield HD1 2EW (hereinafter called "the **Second Mortgagee**") of the fourth 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 Deed are enforceable
2. The Owner is the freehold owner of the Site registered under title number WYK696772
3. The First Mortgagee is the proprietor of a legal charge registered against the Site dated 31 August 2017.
4. The Second Mortgagee is the proprietor of a legal charge registered against the Site dated 31 August 2017.
5. 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
6. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to secure the provision of affordable housing as

part of the Site in accordance with the policies of the Kirklees Unitary Development Plan SPD2 and NPPF;

**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"** means the Dwellings shown edged red on Plan 2 being two 1-bedroom social rented Dwellings and one 2-bedroom intermediate Dwelling to be 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 Registered 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

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

**"Development"** means the development of the Site in pursuance of the Planning Permission

**"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

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

**“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

**“Plan 1 and Plan 2”** means the plans annexed hereto and marked “Plan 1” and “Plan 2”

**“Planning Permission”** means the planning permission to be granted under Ref No.2017/62/93396/W

**“Registered Provider”** means a social landlord registered with Homes England

**“Site”** means the land at Vale Works 25 Morley Lane Milnsbridge Huddersfield shown edged red on Plan 1

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

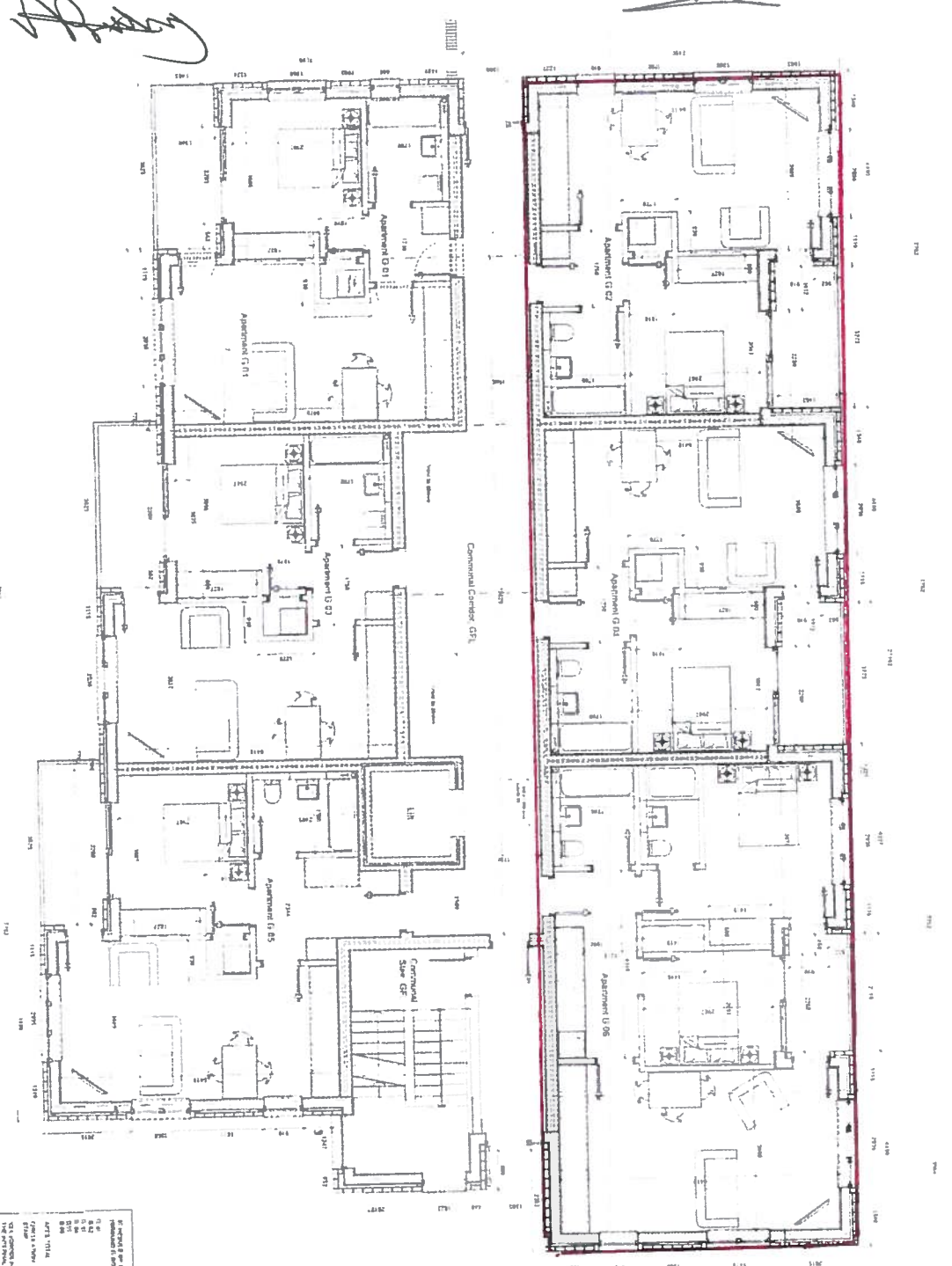
## **2. GENERAL**

- 2.1 The Owner covenants 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" 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 upon the Registered Provider or any Alternative Registered Provider nor against a mortgagee or chargee of the Affordable Dwellings or any person acquiring the same under a statutory right to acquire the same
- 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



E. Julian Hobbs *Handwritten Signature* **Structural Steel Plan 2**

*Handwritten Signature*



Color	Description
Blue	Structural Steel
Red	Concrete
Green	Other

1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
 2. DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.  
 4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.  
 5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.  
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 7. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.  
 8. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.  
 9. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.  
 10. ALL DIMENSIONS ARE TO CENTERLINE UNLESS NOTED OTHERWISE.

**DAWSON WILLIAMSON ARCHITECTS**

1500 PINE STREET, SUITE 2000, PHOENIX, AZ 85016  
 1 500 461 1100 @ 43  
 dwwilliamson.com R1558-111 REV. 4

**REVISIONS**

NO.	DATE	DESCRIPTION
1	11/11/11	ISSUED FOR PERMIT
2	11/11/11	ISSUED FOR PERMIT
3	11/11/11	ISSUED FOR PERMIT
4	11/11/11	ISSUED FOR PERMIT
5	11/11/11	ISSUED FOR PERMIT

- 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

### **3. AFFORDABLE HOUSING**

The Owner covenants with the Council:-

- 3.1 Not to permit in excess of 10 (ten) Market Dwellings to be substantially completed 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
- 3.2 To construct the Affordable Dwellings to Homes England 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 3.6 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 Owner will be free to offer the Affordable Dwellings for sale on the open market but the provisions of Clauses 3.6 and 3.7 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 the Administration Charge

#### 4. MORTGAGEE'S CONSENT

The First Mortgagee and the Second Mortgagee acknowledge and declare that this Deed has been entered into by the Owner with their consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgages over the Site shall take effect subject to this Deed PROVIDED THAT the First Mortgagee and the Second Mortgagee shall otherwise have no liability under this Deed unless they take possession of the Site in which case they too will be bound by the obligations as if they were a person deriving title from the Owner.

**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:- \



Service Director - Legal, Governance  
& Commissioning/Authorised Signatory

**EXECUTED AS A DEED** by  
**ALAN DAVID BATLEY**  
in the presence of:-

Name..... Julia Dawn Lees  
Ramsdens Solicitors LLP  
Oakley House  
Address..... 1 Hungerford Road  
Huddersfield  
HD3 3AL  
.....

**EXECUTED AS A DEED** by )  
EDWARD JULIAN HOLROYD )  
in the presence of:- ^ )  
)

Name..... Julia Dawn Lees.....  
Ramsdens Solicitors LLP  
Oakley House  
Address..... 1 Hungerford House...  
Huddersfield  
HD3 3AL  
.....

Signed as a Deed by )  
**SIMPSON WOOD CHARTERED ACCOUNTANTS** )  
acting by )  
)  
)  
(print name) )  
a director, MARK FIELDING )

in the presence of :- )

Name MARIAN JE EVANS.....  
Address SIMPSON WOOD, BANK CHAMBERS  
MARKET ST, HUDDERSFIELD, HD1 2EW

DATED 16<sup>th</sup> May 2018

**THE COUNCIL OF THE BOROUGH OF KIRKLEES**

and

**ALAN DAVID BATLEY**

and

**EDWARD JULIAN HOLROYD**

and

**SIMPSON WOOD CHARTERED ACCOUNTANTS**

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**DEED**

**Under Section 106 of the Town & Country Planning  
Act 1990 relating to land at Vale Works, 25 Morley  
Lane, Milnsbridge, Huddersfield**

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Julie Muscroft  
Service Director: Legal, Governance & Commissioning  
Kirklees Council  
Second Floor  
High Street Buildings  
High Street  
Huddersfield  
HD1 2ND