

THIS AGREEMENT is made the 28th day of June Two Thousand and Eighteen

BETWEEN:

- (1) **ROUSE HOMES LIMITED** of 12a-16 North Street, Wetherby LS22 6NN (hereinafter called "the Owner") of the first part; and
- (2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire (hereinafter called "the Council") of the second part; and
- (3) **SVENSKA HANDELSBANKEN AB (PUBL)** of 4M Building, Malaga Avenue, Manchester Airport, Manchester M90 3RR (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 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 number YY98371.
3. The Chargee is the registered proprietor of a charge dated 9 February 2018 over title number YY98371 and has agreed to enter into this Agreement to give its consent to the terms of this Agreement.
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 Deed because of the need to:-
 - 5.1 secure the provision of affordable housing as part of the Development in accordance with the policies of the Kirklees Unitary Development Plan SPD2 and NPPF;

- 5.2 secure the provision of a financial contribution to off-site open space
- 5.3 secure the provision of open space within the Development
- 5.4 secure a financial contribution towards educational facilities to accommodate pupil growth which directly arises from the Development
- 5.5 secure a financial contribution towards the provision and maintenance of a bus shelter at stop number 14043 adjacent to the Development
- 5.6 secure the cost of the provision of Residential MetroCards for residents within the Development to encourage sustainable travel

NOW IT IS HEREBY AGREED as follows:-

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 provision of 1 x 3 bedroom Bedale house (on plot 9) as an Affordable Rented Dwelling and 1 x 3 bedroom Bedale house (on plot 10) as an intermediate Dwelling

"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 Affordable Rented Dwelling" means the Affordable Dwelling to be constructed in accordance with the planning permission to be made available to eligible persons for an Affordable Rent. Affordable Rented Housing is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

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

"Approved Scheme" means the landscaping scheme comprised in Drawing Number R/2054/1B annexed hereto

"Bus Shelter Contribution" means the sum of not more than £10,000 (ten thousand pounds) for the Council to procure a bus shelter at bus stop number 140343

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

"Dispose" means the sale or grant of a long lease in excess of 125 years

"Dwellings" means the Affordable Dwellings and the Market Dwellings

"Education Contribution" means the sum of £127,322.00 (one hundred and twenty seven thousand three hundred and twenty two pounds) to be applied by the Council towards the provision of or improvement to education facilities at Birkenshaw Primary School and Whitcliffe Mount School to accommodate pupil growth as a consequence of 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 described in paragraph 11.4 of SPD2

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

"Intermediate Dwelling" means the Affordable Dwelling on Plot 10 to be made available as shared ownership housing or shared equity housing or such other form of affordable/intermediate housing that meets the criteria of Annex 2 of the NPPF including Affordable Housing at prices and rents above those of Social Rented Housing, but below market price or rents, including shared equity products or other low cost homes for sale

and intermediate rent, but not including Affordable Rented Housing, and not excluding homes provided by private sector bodies or provided without grant funding. For the avoidance of doubt it excludes 'low cost market' housing

"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 but for the avoidance of any doubt, the following operations will not be deemed to be Implementation: demolition works; Site clearance: ground investigations; Site survey works; temporary access constructions works; archaeological investigation; and erection of any fences and hoardings around the Site and **Implement** and **Implemented** shall be construed accordingly

"Inspection Fee" means the sum of £1000.00 (One thousand pounds) to inspect the implementation of open space on the Site and the application of the Off-Site Open Space Financial Contribution

"Interest" means interest at 3 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

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

"MetroCard" means a limited period travel ticket which provides travel on transport services within the West Yorkshire Area

"MetroCard Contribution" means the sum of £14,850.00 (fourteen thousand eight hundred and fifty pounds) for the Council to procure MetroCard for residents within the Development

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

"Occupation" 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

"Open Market Value" means the open market value agreed between the Council and the Owner as being the open market value of an Affordable Dwelling or if not agreed shall mean an average price based on the opinions of two (2) independent surveyors (working in the locality and in any event within 5 miles of the Site) of the price at which the sale of an interest in the property would have been completed unconditionally on the date of valuation assuming:

- (a) a willing seller;
- (b) that there are no restrictions as to the persons who may occupy the Affordable Dwelling or to whom a transfer or lease may be granted or assigned; and
- (c) that both parties to the transaction had acted knowledgeably prudently and without compulsion.

"Open Space Area" means that area of land within the Development shown tinted green on Drawing Number R/2054/1B or such other area as may be agreed between the Council and the Owner

"Off-Site Open Space Financial Contribution" means the sum of £102,374.07 (One hundred and two thousand three hundred and seventy four pounds seven pence) as a contribution towards improving the existing facilities at Birkenshaw Park

"Planning Permission" means the planning permission to be granted under Ref No. 2017/94129 for the demolition of existing buildings and the erection of 30 dwellings with associated garages and parking

"Practically Completed" means the stage when a Dwelling has been constructed and fitted out and is ready for Occupation

"Registered Provider" means a social landlord registered with Homes England

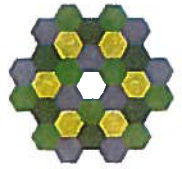
"Site" means the land at Bradford Road, Birkenshaw shown edged red on the Site Plan

"Site Plan" means the plan of the Site annexed hereto

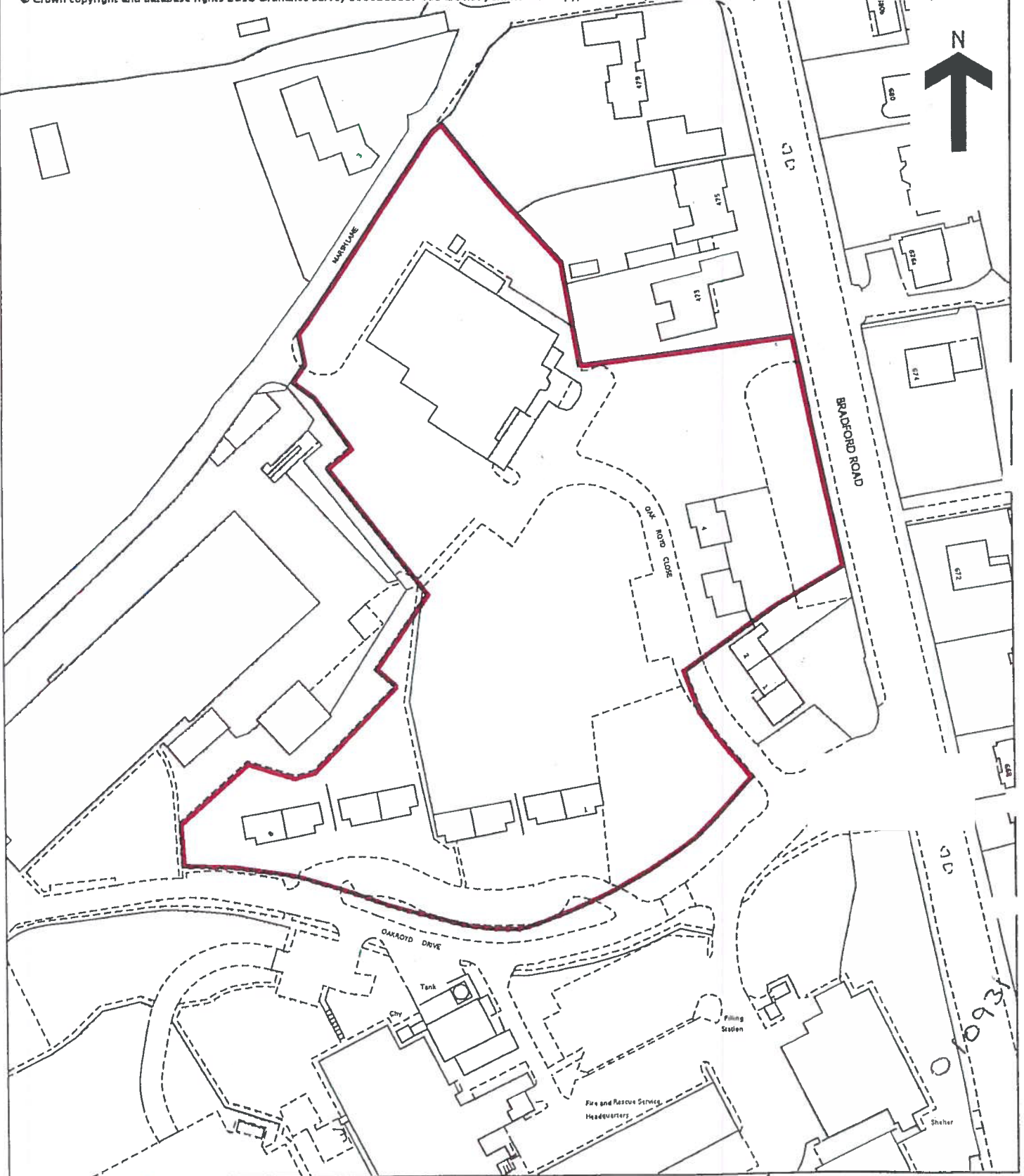
- 2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.2 The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site
- 2.3 The expressions "the Council", "the Owner" and the "Chargee" 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 but the covenants shall not take effect until the date of Implementation of the Planning Permission by the Owner
- 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 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 2.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance

HM Land Registry
Official copy of
title plan

Title number **YY98371**
Ordnance Survey map reference **SE2028SW**
Scale **1:1250**
Administrative area **West Yorkshire : Bradford**



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with a planning permission granted (whether or not on appeal) after the date of this Deed

- 2.10 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council under the terms of this Deed 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 by the Council and 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.
- 2.11 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
- 2.12 This Deed is a local land charge and shall be registered by the Council as such
- 2.13 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.14 The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed not exceeding £584.00 (five hundred and eighty four pounds).

AFFORDABLE HOUSING

The Owner covenants with the Council:-

- 3.1 Not to permit in excess of 21 of the Market Dwellings to be Practically 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
- 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 reasonable endeavors 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 and 3.7 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

3.7 The Open Market Value of the Affordable Dwellings for the purposes of paragraph 11.4 of SPD2 shall be determined in the first instance between the Owner and the Council and in default of agreement shall be the average of two (2) valuations provided by two (2) valuers (working in the locality and within 10 miles of the Site) 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

OFF-SITE OPEN SPACE FINANCIAL CONTRIBUTION

The Owner covenants not to have Practically Completed in excess of 14 of the Market Dwellings until it has paid to the Council the Off-Site Open Space Financial Contribution and the Inspection Fee

OPEN SPACE AREA

- 5.1 The Owner covenants to implement the Open Space Area as part of the Development in accordance with the Approved Scheme
- 5.2 Following the completion of the Open Space Area to notify the Council by serving a notice in writing upon the Council who shall not later than one calendar month inspect the Open Space Area and if the Open Space Area has been completed to the reasonable satisfaction the Council it shall notify the Owner in writing thereof
- 5.3 If upon notification by the Owner pursuant to Clause 5.2 above the Open Space Area has not been carried out to the satisfaction of the Council it shall notify the Owner specifying the measures necessary to satisfactorily complete the Open Space Area and the Owner shall within such period as specified by the Council carry out those works and shall notify the Council pursuant to Clause 5.2 hereof (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof)
- 5.4 Following written confirmation by the Council of the satisfactory completion of the Open Space Area clause 5.3 above, the Owner shall thereafter maintain the Open Space Area in accordance with the with the principles of good horticultural and estate management until the Residents' Management Company takes over the maintenance of the Open Space Area

RESIDENTS' MANAGEMENT COMPANY

- 6.1 The Owner shall not cause or permit or suffer Occupation of any Market Dwelling within the Development until a Residents' Management Company has been incorporated
- 6.2 On the Disposal of each Market Dwelling within the Development to transfer a share in the Residents' Management Company to the purchaser of each Dwelling
- 6.3 The Transfer for each Dwelling shall contain a covenant on the part of the Residents'

Management Company to maintain the Open Space Area in accordance with the rules of good horticulture and husbandry keeping it properly maintained and shall contain a further covenant on the part of each Market Dwelling purchaser to pay a service charge in respect of the Residents' Management Company's maintenance of the Open Space Area

- 6.4 The Transfer shall further contain appropriate provisions to ensure that successors in title to each Dwelling on the date of their acquisition of the Dwelling enter into a deed of covenant with the Residents' Management Company to discharge and perform the covenants referred to in
- 6.5 To transfer the Open Space Area to the Residents' Management Company on the later of the sale of the final Dwelling or within 3 months from the date of the notice given by the Council under clause 5.3 above that the Open Space Area have been carried out to its satisfaction whichever is the later and will not cause permit or suffer occupation of the final Dwelling until the Residents' Management Company has accepted such a transfer.
- 6.6 The Transfer of the Open Space Area to the Residents' Management Company shall contain a covenant for the benefit for the Council pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to maintain the Open Space Area in perpetuity and maintain it in reasonable condition and in accordance with the principles of good horticultural and estate management.
- 6.7 As soon as is reasonably practicable after the completion of the Transfer of the Open Space Area the Owner shall notify the Council in writing and provide to the Council a copy of the Transfer.
- 6.8 Responsibility for the maintenance of the Open Space Area shall not at any time be transferred to an alternative management company unless firstly 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 and secondly as part of the terms of the transfer the alternative management company supplies the Council with a deed of covenant whereby the alternative management company agrees to discharge and perform the obligations contained in clause 6.3
- 6.9 In the event of the Residents' Management Company ceasing to exist or any successor alternative management company ceasing to exist then the owners shall be responsible for the discharge of the obligations contained in clause 6.3 until such time as another alternative management company acquires the freehold ownership of the Open Space Area and has the benefit of a covenant on the part of the owner of each Dwelling that the owner will pay a service charge to the alternative management company in respect of the alternative management

company's obligations to maintain the Open Space Area

EDUCATION CONTRIBUTION

The Owner covenants not to Dispose of in excess of 14 of the Market Dwellings until it has paid to the Council the Education Contribution

METROCARD CONTRIBUTION

The Owner covenants to pay the MetroCard Contribution to the Council prior to Occupation of the first Dwelling

BUS SHELTER CONTRIBUTION

The Owner covenants with the Council not to Dispose of in excess of 14 of the Market Dwellings until it has paid to the Council the Bus Shelter Contribution

COUNCIL'S COVENANTS

10.1 The Council covenants not to use any part of the Bus Shelter Contribution, the Education Contribution, the Financial Contribution and the Metrocard Contribution other than for the purposes for which it was paid

10.2 In the event that the Bus Shelter Contribution, the Education Contribution, the Financial Contribution or the MetroCard Contribution has not been spent or committed for expenditure by the Council within five years following the date of receipt of the Bus Shelter Contribution, the Education Contribution, the Financial Contribution or the MetroCard Contribution the Council shall refund to the Owner any part of parts of the Bus Shelter Contribution, the Education Contribution, the Financial Contribution or the MetroCard Contribution (as relevant) which has not been spent or committed for expenditure together with Interest

CHARGEES CONSENT

The Chargee consents to the completion of this Agreement and acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by

the obligations contained in this Agreement and the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Chargee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

12. DETERMINATION OF THIS DEED

The obligations in this deed (with the exception of clause 2.12) shall cease to have effect if before Implementation, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

13. LOCAL LAND CHARGES ENTRIES

13.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will issue a written confirmation of such performance or discharge

13.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 8 the Council will on the written request of the Owner note in the local land charges register the performance of the obligations in respect of this deed

14. INVALIDITY

If any clause in this agreement is found to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this agreement

5. DETERMINATION OF DISPUTES

If any dispute arises in connection with Clauses 3 - 8 (inclusive) of this Agreement the parties shall within 28 days of a written request from either party meet in good faith in an effort to resolve the dispute

15.1 In the event that the parties fail to resolve the dispute in accordance with clause 14.1 hereof

the parties shall agree a mediator and in default a mediator shall be nominated by the President of the Royal Institution of Chartered Surveyors

- 15.2 No party shall commence any court proceedings in relation to any dispute arising out of the Agreement until it has attempted to settle the dispute by mediation
- 15.3 In the event that the dispute shall not have been resolved by mediation within 56 days of referral (or such extension of time as shall be agreed between the Council the Owner and the mediator) this clause 12 (save for clause 12.5) shall cease to have effect and the matter in dispute shall be dealt with in accordance with clause 12.6
- 15.4 The mediator's fee shall be borne equally between the Council and the Owner
- 15.5 If any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination or the legal relationships established by this deed, has not been resolved pursuant to clauses to 12.4 inclusive it shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:
- (a) the tribunal shall consist of one arbitrator appointed jointly by the parties;
 - (b) in default of the parties' agreement as to the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
 - (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and
 - (d) the seat of the arbitration shall be Leeds.

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:-)



~~Assistant Director - Legal, Governance
& Commissioning /~~ Authorised Signatory

EXECUTED AS A DEED by)
ROUSE HOMES LIMITED)
By a Director)
In the presence of:)

Witness Signature:

Witness Name: ANDREW SPIERS

Witness Address: 5 BANKS AVENUE
ACKWORTH WF7 7JU

Witness Occupation: FESTIVAL DIRECTOR

Executed as a deed by
SVENSKA HANDELSBANKEN AB (PUBL) a
company incorporated in Sweden, acting by
MICHAEL TEW
and
DAVID BRADY
who, in accordance with the laws of that territory,
are acting under the authority of the company

Signature in the name of the
company
**SVENSKA HANDELSBANKEN AB
(PUBL)**

.....
Signature of authorised signatory

.....
Signature of authorised signatory

DATED 28th June 2018

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

ROUSE HOMES LIMITED

and

SVENSKA HANDELSBANKEN AB (PUBL)

DEED

**Under Section 106 of the Town & Country Planning
Act 1990 relating to land at Bradford Road
Birkenshaw**
