

DATED

13 June

2022

THE COUNCIL OF THE BOROUGH OF KIRKLEES

AND

YORKSHIRE HOUSING LIMITED

DEED OF VARIATION

**made pursuant to Section 106 and 106A
of the Town and Country Planning Act 1990
(as amended)**

relating to

Land at Broad Oak Farm, Linthwaite, Huddersfield HD7 5TE

Application Reference: 2021/62/91571/W

EVG/BEH/47797/100

THIS DEED is made the

13 June

2022

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Civic Centre, 3 High Street, Huddersfield, HD1 2TG ("**the Council**");
- (2) **YORKSHIRE HOUSING LIMITED** a company incorporated in England and Wales and a registered society under the Co-operative and Community Benefit Societies Act 2014 with registration numbered 30443R (and an exempt charity) whose registered office is at The Place, 2 Central Place, Leeds, England, LS10 1FB ("**the Developer**").

WHEREAS

1. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
2. The Developer is now the legal and beneficial owner of the Land following a transfer to it dated 21 February 2022.
3. The parties have agreed to enter into this Deed in order to vary the planning obligations contained in the Section 106 Agreement as provided for in the definition of "Affordable Rented Dwelling" at clause 2 of the Section 106 Agreement.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Deed the following words and expressions shall have the following meanings:

"the Act" means the Town and Country Planning Act 1990 as amended;

"Deed" means this deed of variation;

“the Land”

means the land now registered under title number WYK915402 being formerly (and in the Section 106 Agreement) referred to as the Land at Broad Oak Farm, Linthwaite, Huddersfield HD7 5TE;

“the Section 106 Agreement”

means the agreement pursuant to Section 106 of the Act dated 17 December 2021 and made by (1) the Council (2) Stephen Howard Roberts & Alan John Roberts (3) P. Casey & Co., Limited and (4) the Developer a copy of which is annexed hereto at Appendix 1.

1.2 Where the context so requires:

- 1.2.1 all the words and expressions beginning with capital letters in this Deed shall have the same meanings ascribed to them in either clause 1.1 of this Deed or the Section 106 Agreement and shall be construed accordingly;
- 1.2.2 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.3 a reference to an Act of Parliament refers to the Act as it applies at the date of this Deed;
- 1.2.4 references to any party includes the successors in title of that party;
- 1.2.5 where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.6 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed and are for reference only and shall not affect the construction of this Deed.

2. VARIATIONS TO THE AGREEMENT

The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement so that the Section 106 Agreement shall from the Date of this Deed be amended as follows:

- 2.1 The definition of **"Affordable Rented Units"** at clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"the forty seven (47) Affordable Units which shall be provided at an Affordable Rent shown coloured purple in Plan 2".

- 2.2 The definition of **"Affordable Units"** at clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"(subject to the provisions of paragraph 1.4 of Schedule 2) the 125 Dwellings authorised by the Planning Permission to be provided as Affordable Housing in accordance with the provisions of Schedule 2 in the locations and house -types identified on Plan 2 of which 47 Dwellings will be provided as Affordable Rented Units, 44 Dwellings will be provided as Intermediate Units on a shared ownership basis (shown coloured orange on Plan 2) and 34 Dwellings to be provided as Intermediate Units let on a rent to buy basis (shown coloured yellow on Plan 2)";

- 2.3 The definition of **"POS Contribution"** at clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following definition:

"POS Contribution" means the sum of £173,180 (one hundred and seventy three thousand one hundred and eighty pounds) Index Linked to be applied by the Council towards off site public open space works comprising but not limited to the Broad Oak and Kinder play area and / or other facilities in the vicinity, the need for which directly arises from the Development to be paid by the Owners to the Council in accordance with the provisions of Schedule 3 and Schedule 4."

- 2.4 Plan 2 in the Section 106 Agreement is to be deleted and replaced with the plan attached at Schedule 1 of this Deed;

- 2.5 Paragraph 1.4 of Schedule 2 of the Section 106 Agreement shall be amended by deleting the existing clause and replacing it with the following new paragraph 1.4:

"Notwithstanding the provisions of paragraph 1.1:

- 1.4.1 the Registered Provider may at any time during the period of 5 years from and including the date the relevant Intermediate Unit initially let on a rent to buy basis is let, either:

- 1.4.1.1 convert such Intermediate Units to Intermediate Units let on a shared ownership basis; or
 - 1.4.1.2 offer any such Intermediate Unit for sale to the tenant in occupation of any such unit;
 - 1.4.2 the Registered Provider may at any time after the expiry of the period of 5 years from and including the date the relevant Intermediate Unit initially let on a rent to buy basis is let, offer that Intermediate Unit for sale provided always that the tenant in occupation of that unit is given the right of first refusal before the relevant Intermediate Unit is offered for sale on the open market; and
 - 1.4.2 in the event the Registered Provider retains ownership of any Intermediate Units offered as rent to buy units after the period of 5 years from the date of the relevant Intermediate Unit first being let, the Registered Provider may convert such Intermediate Units to Affordable Rented Units or as Intermediate Units on a shared ownership basis.
- 2.6 Schedule 4 of the Section 106 Agreement shall be renamed "**Schedule 4 – Public Open Space**" and shall be amended by:
 - 2.6.1 Renaming the existing paragraph 1 "**1. Provision of Public Open Space and Managed Areas**";
 - 2.6.2 Deleting paragraph 1.1 and replacing it with the following new paragraph 1.1:

"1.1 Prior to Occupation of any Dwelling a scheme for the laying out of the POS Area together with a financial appraisal for the costs of delivering the proposed scheme shall be submitted by the Owner for approval by the Council (such approval not to be unreasonably withheld or delayed).";
 - 2.6.3 A new paragraph 1.2 shall be deemed to be inserted as follows and the remaining paragraphs of Schedule 4 renumbered accordingly:

"1.2 The POS Contribution shall be reduced by the amount of the approved costs of delivering the layout scheme referred to in paragraph 1.1 of this Schedule 4 and such sum shall be paid to the Council in accordance with the provisions of paragraph 1 of Schedule 3."

3. OPERATIVE PROVISIONS

- 3.1 This Deed is made pursuant to section 106 and section 106A of the Act and all other powers so enabling and is a planning obligation for the purposes thereof.
- 3.2 This Deed is supplemental to the Section 106 Agreement and varies the Section 106 Agreement only to the extent set out in this Deed.

4. AGREEMENTS AND DECLARATIONS

It is hereby agreed and declared that:

- 4.1 This Deed shall be construed as one with the Section 106 Agreement.
- 4.2 The provisions of the Section 106 Agreement continue to be enforceable by the Council and to bind the Land in all respects save for as varied by this Deed, but for the avoidance of doubt the alterations and amendments hereby made shall to the extent only that they are material supersede specific provisions to the contrary in the Section 106 Agreement and by this Deed and the Section 106 Agreement and by this Deed shall always be read together (mutatis mutandis) with the latter to that extent predominating.
- 4.3 This Deed does not nor is it intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 4.4 This Deed is a Local Land Charge and shall be registered as such.
- 4.5 The Developer shall pay to the Council on completion of this Deed the sum of £448,310 being a contribution to the reasonable legal costs of the Council incurred in the negotiation, and execution of this Deed.

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

SCHEDULE 1 – NEW PLAN 2



EXECUTED as a DEED by the affixing of THE
CORPORATE SEAL of THE COUNCIL OF
THE BOROUGH OF KIRKLEES in the
presence of:

)
)
)



014884

EXECUTED as a DEED by the affixing of THE
COMMON SEAL of YORKSHIRE HOUSING
LIMITED in the presence of two authorised
signatories:



YH210483

Authorised Signatory

Authorised Signatory

APPENDIX 1
(COPY S.106 AGREEMENT)

DATED

17 December

2021

- (1) THE COUNCIL OF THE BOROUGH OF KIRKLEES
- (2) STEPHEN HOWARD **ROBERTS** & ALAN JOHN ROBERTS
- (3) P. CASEY & CO., LIMITED
- (4) **YORKSHIRE** HOUSING LIMITED

DEED OF AGREEMENT

made pursuant to Section 106 of the Town and Country Planning Act 1990 relating to

LAND AT **BROAD OAK FARM, LINTHWAITE, HUDDERSFIELD HD7 5TE**

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THIS DEED is made on

17 December

2021

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Civic Centre, 3 High Street, Huddersfield HD1 2TG ("**Council**");
- (2) **STEPHEN HOWARD ROBERTS AND ALAN JOHN ROBERTS** both of Broad Oak Farm, Cowlersley Lane, Linthwaite, Huddersfield HD7 5TE ("**Owners**");
- (3) **P. CASEY & CO., LIMITED** a company incorporated and registered in England and Wales with company number 01074194) whose registered office is at Rydings Road, Wardle, Rochdale, OL12 9PS ("**Developer**"); and
- (4) **YORKSHIRE HOUSING LIMITED** (a registered society under the Co-operative and Community Benefit Societies Act 2014 with registration number 30443R) and an exempt charity whose registered office is at The Place, 2 Central Place, Leeds, LS10 1FB ("**YHL**").

BACKGROUND

- (A) By virtue of section 1 of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations hereby created are enforceable.
- (B) The Owners are the proprietors of the freehold title to the Site which is registered at the Land Registry under Title Number WYK915402.
- (C) The Developer has an interest in the Site by way of a conditional contract for sale dated 2 July 2020 and made **between** the Owner and the Developer.
- (D) YHL has an interest in the Site by way of a contract for sale dated on or before the **date** of this deed and made between the Developer and YHL and also as the Registered Provider.
- (E) The Developer has submitted the Application to the Council for planning permission for the Development.
- (F) The Council **resolved** on 23 September 2021 to grant the Planning Permission subject to the prior completion of this deed.
- (G) The parties by entering into this deed do so to create planning obligations in **respect** of the Site pursuant to **section** 106 of the 1990 Act and agree to be bound by and to **observe** and **perform** the covenants agreements conditions and stipulations hereinafter contained.
- (H) The Council would not have been willing to grant planning permission for the Development but for the **provision** of the Planning Obligations as set out in this deed.

AGREED TERMS

1 Definitions and Interpretation

- 1.1 In this deed, the following words and expressions shall have the following meanings, unless otherwise **stated**:

"Act"	the Town and Country Planning Act 1990
"Affordable Housing"	affordable housing as defined in Annex 2 of the NPPF;
"Affordable Rent"	affordable housing let at a rent and which complies with the definition of "Affordable housing for rent" as set out within Annex 2 of the NPPF, namely:

	(a) the rent is set in accordance with the government's rent policy for affordable rent or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider; (c) includes provision to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision;
"Affordable Rented Units"	the 41 Affordable Units which shall be provided at an Affordable Rent shown coloured purple on Plan 2;
"Affordable Units"	(subject to the provisions of paragraph 1.4 of Schedule 2) the 125 Dwellings authorised by the Planning Permission to be provided as Affordable Housing in accordance with the provisions of Schedule 2 in the locations and house-types identified on Plan 2 of which 41 Dwellings will be provided as Affordable Rented Units, 51 Dwellings will be provided as Intermediate Units on a shared ownership basis (shown coloured orange on Plan 2) and 33 Dwellings to be provided as Intermediate Units let on a rent to buy basis (shown coloured yellow on Plan 2);
"Application"	the application for planning permission for the Development and which was validated by the Council on 16 April 2021 under reference number 2021/62/91571/W;
"Chargee"	a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver;
"Commencement of Development"	the date upon which the Development is begun 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 for the purposes of this Deed the term "material operation " shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations , investigations for the purpose of assessing ground conditions , remediation works, environmental investigation, site and soil surveys, diversion and laying of services , erection of a contractor's work compound, erection of a site office, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly;
"Contributions"	together the POS Contribution, the Education Contribution, the Sustainable Travel Fund Contribution and the Travel Plan Monitoring Fee;
"Default Interest Rate"	4% per annum above the base rate from time to time of the Bank of England;
"Development"	the construction of 125 dwellings which are all Affordable Housing, landscaping and associated infrastructure upon the Site;
"Drainage Management and Maintenance Plan"	a detailed management plan submitted by the Owner and approved by the Council setting out measures to be undertaken to ensure that the Drainage Works are properly maintained and managed until such

time as the Drainage Works are adopted by Yorkshire Water and/or the Kirklees Council Highways Authority;

"Drainage Works"	the works to provide a sustainable urban drainage system, together with associated infrastructure, to be installed within the Site in accordance with the Planning Permission;
"Dwelling"	a residential unit that may be built on the Site pursuant to the Planning Permission and the term " Dwellings " shall be construed accordingly;
"Education Contribution"	the sum of £424,606 to be paid by the Owner to the Council as a contribution towards the provision of additional school places at schools within the vicinity of the Site to accommodate pupil growth which directly arises from the Development;
"Expert"	a person of at least 10 years' post-qualification continual and continuing experience in the subject matter of the dispute;
"Homes England"	the Homes and Communities Agency (trading as Homes England) or any other body or bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part 1 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);
"Index Linked"	increased in accordance with the following formula: Amount payable = the payment specified in this deed x (A/B) where: A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and B = the figure for the Retail Price Index published by the Office for National Statistics that applied when that index was last published prior to the date of this deed;
"Inspection and Certification Charge"	the sum of £1,000 towards the cost to the Council in inspecting the POS Area Scheme (as defined in paragraph 1.1 of Schedule 4) and certifying they are in accordance with the approved POS Area Scheme;
"Intermediate Units"	means the Affordable Housing Units for sale or rent provided at a cost above social rent, but below market levels, as defined as Discounted Market Sales Housing and Other Affordable Routes to Home Ownership in Annex 2 of the NPPF and shall include shared equity (shared ownership and equity loans) or discounted sale (PROVIDED THAT in the event that the Developer or YHL are unable to dispose of the Intermediate Units, and if first approved in writing by the Council (such approval not to be unreasonably withheld or delayed), the Intermediate Units may be let at an Affordable Rent as Affordable Rented Units to persons in accordance with the registered Provider's policy) and reference to "Intermediate Unit" shall be construed accordingly;
"NPPF"	the Government's National Planning Policy Framework, February 2019 (or as redefined by any amendment, replacement or re-enactment thereof);
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration , marketing, display or security operations and the term " Occupy " and " Occupied " shall be construed accordingly;
"Plan 1"	the plan appended hereto at Schedule 1;

"Plan 2"	the drawing reference 911277/76/P2 appended hereto at Schedule 1;
"Planning Obligations"	the obligations, conditions and stipulations set out in this deed and schedules and the term Planning Obligation shall be construed accordingly;
"Planning Permission"	a planning permission permitting the Development granted by Council pursuant to the Application;
"POS and Managed Areas"	those parts of the Site to be provided as public open space as part of the Development as well as areas of incidental landscaping shown shaded green on the Plan;
"POS Contribution"	the sum of £173,180 to be paid by the Owner to the Council as a contribution towards the cost of providing public open space on the Site;
"POS Management Scheme"	a scheme for the future maintenance and management of the POS and Managed Areas to be submitted by the Owner in accordance with the provisions of paragraph 1.1 of Schedule 3 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);
"Protected Tenant"	any tenant including their successors in title, charges, mortgagees, receivers and administrative receivers) who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Rent Unit or acquires the relevant Affordable Rent Unit pursuant to a voluntary sales policy of his landlord; or (b) has exercised any other statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Rent Unit;
"Reasonable Endeavours"	in relation an obligation in this deed that the party under such obligation shall not be required to take proceedings (including any appeal) in any court, public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) are reasonable;
"Registered Provider"	YHL or any other registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England under Chapter 3 of that Act;
"Site"	all that land forming part of the land at Broad Oak Farm, Linthwaite, Huddersfield HD7 5TE registered under title number WYK915402 and shown edged red on Plan 1;
"SPD2"	the Council's Supplementary Planning Document number 2 - Affordable Housing adopted by the Council on 18 November 2008 or such other policy concerning affordable housing which shall supersede or modify it;
"Statutory Undertaker"	any company corporation board or authority at the date of this deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity , gas, water, or drainage and any authorised successor to any such undertaking ;

"Sustainable Transport Contribution"

the sum of £63,938 to be paid by the Owner to the Council as a contribution towards the cost of the provision of MetroCards to first occupiers of each Dwelling and/or the upgrading of existing bus shelters serving the Development;

"Travel Plan"

the document entitled 'Residential Travel Plan - Broad Oak Farm, Linthwaite' (Paragon Highways April 2021) submitted as part of the Application to promote the use of sustainable modes of transport by occupants of the Development and any subsequent travel plan to be agreed with the Council;

"Travel Plan Monitoring Fee"

the sum of £10,000 to be paid by the Owner to the Council as a contribution towards the cost of monitoring the Travel Plan for a period of 5 years; and

"Working Day"

any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

- 1.2 Reference in this deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.4 Any words denoting natural persons shall include legal persons and vice versa.
- 1.5 References to clauses, paragraphs and schedules are references to clauses, paragraphs and schedules to this deed.
- 1.6 The expression **"Owners"** shall include their successors in title and assigns.
- 1.7 The expression **"Council"** shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8 Where a party includes more than one person, any obligations of that party shall be joint and several.
- 1.9 Clause headings shall not affect the construction of this deed.
- 1.10 Any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 Statutory Basis

- 2.1 This deed secures planning obligations made pursuant to section 106 of the 1990 Act and is enforceable pursuant to **section 106(3)** of the 1990 Act against the Owner and any **person** claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this deed.
- 2.2 This deed is enforceable by the Council as local planning authority for the **purposes** of the 1990 Act.
- 2.3 **To the extent that** the covenants, restrictions and requirements in this deed are not made under section 106 of the 1990 Act they are made under **section 1** of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3 Conditions Precedent

Save for the provisions of paragraph 1 of Schedule 5 and **clause 14**, this deed is conditional upon and does not become effective unless and until Commencement of Development save for **clause 14** which shall be effective from the date hereof.

4 Covenants and Declarations

- 4.1 The Owners covenants with the Council to comply with the Planning Obligations.
- 4.2 The Council covenants with the Owners to comply with the obligations in Schedule 7.
- 4.3 The Developer and YHL hereby acknowledge that their respective interests in the Site are bound by the covenants, restrictions and obligations in this deed.
- 4.4 The Developer and YHL respectively and by way of separate covenants, covenant to indemnify and keep indemnified the Owners in respect of any loss or damage, costs, claims, damages or proceedings arising out of any breach of the Planning Obligations by the Developer and/or YHL.

5 Exclusions and Release

- 5.1 No party shall be bound by the terms of this deed or be liable for the breach of any Planning Obligation:
 - 5.1.1 after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest);
 - 5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
 - 5.1.3 if that party is an owner or **occupier** of an individual Dwelling or a Chargee.
- 5.2 If the Planning Permission:
 - 5.2.1 expires before the Commencement of Development; or
 - 5.2.2 is at any time revoked or modified (without the consent of the Owner) pursuant to Part IV of the 1990 Act,this deed shall determine and cease to have effect.
- 5.3 No obligation in this deed shall be binding on or enforceable against any chargee or any mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it shall also be bound by the covenants, restrictions and obligations in this deed as if it were a person deriving title from an original covenanting party.
- 5.4 For the avoidance of doubt, the provisions contained in clause 5.3 do not apply to a Chargee.

6 Registration

- 6.1 This deed is a local land charge and shall be registered as such by the Council.
- 6.2 Following either:
 - 6.2.1 the performance and satisfaction of all the Planning Obligations contained in this deed; or
 - 6.2.2 the determination of this deed in accordance with clause 5.2,

the Council shall upon the written request of the Owners as soon as reasonably practicable effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.

7 Non-fetter and Waiver

- 7.1 Nothing in this deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.
- 7.2 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 7.3 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this deed.

8 Indexation

- 8.1 All Contributions payable to the Council shall be Index Linked.
- 8.2 Where reference is made in this deed to an Index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owner in writing.

9 VAT

All payments given in accordance with this deed shall be exclusive of any value added tax properly payable.

10 Severance

If any provision in this deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this deed and shall not affect the validity or enforceability of the remaining provisions of this deed.

11 Change of Ownership

The Owners agree with the Council to give written notice to the Council within 20 Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan provided that this obligation shall not apply to a Disposal of an individual Dwelling.

12 Notification

- 12.1 Any notice, request, demand or other written communication to be given or served under this deed must be in writing and must be:
- 12.1.1 delivered by hand; or
- 12.1.2 sent by pre-paid first class post or other next working day delivery service.
- 12.2 Any notice, request, demand or other written communication to be given or served under this deed must be sent to the relevant party as follows:
- 12.2.1 to the Council at Legal Services, High Street Buildings, High Street, Huddersfield HD1 2ND;
- 12.2.2 to the Owners at the details provided on page 1 of this deed; and
- 12.2.3 to the Developer at the details provided on page 1 of this deed; and

12.2.4 to YH at the details provided on page 1 of this deed,

or as otherwise specified by the relevant party by notice in writing to each of the other parties.

12.3 Any notice, request, demand or other written communication given or served in accordance with clause 12.1 or clause 12.2 shall be **deemed** to have been received:

12.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00am on the next Working Day; or

12.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.

12.4 A notice, request, demand or other written communication given under this deed shall not be validly given if sent by email or fax.

12.5 This clause 12 does not apply to the service of any proceedings or other documents in any legal action.

13 Third Party Rights

No person who is not a party to this deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this deed has been lawfully assigned or becomes vested in law including **successors** in title to the Site.

14 Costs

The Developer shall on (or prior to) the date hereof pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this deed not exceeding the sum of £750.00.

15 Jurisdiction

This deed is governed by and **interpreted** in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

This deed has been entered into as a deed on the date stated at the beginning of it.

Schedule 1 - Plans

- a) Site plan – edged red
- b) Layout plan showing the affordable house types and the public open space



Grading: Master
A - Planning; B - Design; C - Construction; D - All Phases

For Approval: _____

For Approval:

tadw architects 

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Class	Yorkshire Housing
	County Council
Job	Business Development

File: C:\Users\joe\Documents\...

Score 1600 (2 A1)

[illegible]

Job Number	Original Number	Name
911277	23	P3

01	Constraints Plan
02	Stocks 1,600 (2 A)

04570



Cricket Ground

- Highways for adoption by the Local Highway Authority
- Domestic and private roads to be maintained by the Housing Group
- Other roads, including streets, to be maintained by the Housing Group
- Other roads, including streets, to be maintained by the Housing Group
- Other roads, including streets, to be maintained by the Housing Group

- Proposed S106 Site Plan
- Scale 1:500 @ A1

Inset A Scale 1:1000 @ A1

Inset B Scale 1:1000 @ A1

tadw architects

Yorkshire Housing
Casey Group

Broadacre Farm
Linthwaite

Proposed S106 Site Plan

Scale 1:500 @ A1

For Planning

911277 76 P3

Lower
Slais

Schedule 2 - Affordable Housing

1 Provision of On-Site Affordable Units

- 1.1 The Owner shall not transfer the Land otherwise than to a Registered Provider.
- 1.2 The Owner or the Registered Provider (as the case may be) shall procure that the Affordable Units are:
 - 1.2.1 provided in accordance with the Planning Permission; and
 - 1.2.2 meet Homes England's design and quality standards (or such other standards as may be agreed in writing between the Council and the Registered Provider).
- 1.3 Subject to paragraph 2 each of the Affordable Units shall (unless the Council agrees otherwise in writing, such agreement not to be unreasonably withheld or delayed) initially be allowed by the Owners or the Registered Provider (as the case may be) to be Occupied only as Affordable Housing owned or managed by the Registered Provider;
- 1.4 Notwithstanding the provisions of paragraph 1.4:
 - 1.4.1 the Registered Provider may at any time after the expiry of the period of 5 years from and including the date the relevant Intermediate Unit initially let on a rent to buy basis is let, offer that Intermediate Unit for sale provided always that the tenant in occupation of that unit is given the right of first refusal before the relevant Intermediate Unit is offered for sale on the open market; and
 - 1.4.2 in the event the Registered Provider retains ownership of any Intermediate Units **offered** as rent to buy units after the period of 5 years from the date of the relevant Intermediate Unit first being let, the Registered Provider may convert such Intermediate Units to Affordable Rented Units or as Intermediate Units on a shared ownership basis.

2 Exclusions and Release

- 2.1 The obligations in this Schedule 2 shall not be binding on:
 - 2.1.1 any **Protected** Tenant or any mortgagee or chargee, receiver or administrative receiver of the **Protected** Tenant or any person deriving title from the **Protected** Tenant or any successor in title thereto and their **respective** mortgagees and chargees or receivers of administrative receivers;
 - 2.1.2 any Chargee (subject only to paragraph 2.2), or
 - 2.1.3 any purchaser of an individual Affordable Unit from a mortgagee or chargee, pursuant to any default by an individual mortgagor of an Affordable Unit or any person deriving title from that individual mortgagor;
 - 2.1.4 any tenant who staircases out of a shared ownership lease to 100% nor any mortgagee or chargee of such tenant nor any receiver appointed by any such mortgagee or chargee (including administrative receivers); or
 - 2.1.5 any mortgagee or chargee of a **Registered** Provider who acquires the **Affordable** Units by exercising its power of sale or any **receiver** appointed by any such mortgagee or chargee; or
 - 2.1.6 any persons deriving title from any tenant, mortgagee or chargee or receivers referred to in this Schedule 2.
- 2.2 This Schedule 2 shall not be binding on a Chargee provided that:
 - 2.2.1 such Chargee has first given written notice to the Council of its intention to dispose of the relevant Affordable Unit(s) and thereafter has **used** reasonable endeavours over a period of three months from the date of the written notice to **complete** a

disposal of the relevant Affordable Unit(s) to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 2.2.2 If such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Unit(s) free from the obligations in this schedule which thereafter will determine absolutely in respect of such Affordable Unit(s).

Schedule 3 - Financial Contributions

1 POS Contribution

- 1.1 The Owner will not allow or permit the Occupation of more than 49 Dwellings until 50% of the POS Contribution has been paid to the Council.
- 1.2 The Owner will not allow or permit the Occupation of the final Dwelling until the remaining 50% of the POS Contribution has been paid to the Council.

2 Education Contribution

- 2.1 The Owner will not allow or permit the Occupation of any Dwelling until a third of the Education Contribution has been paid to the Council.
- 2.2 The Owner will not allow or permit the Occupation of more than 49 Dwellings until the second third of the Education Contribution has been paid to the Council.
- 2.3 The Owner will not allow or permit the Occupation of more than 99 Dwellings until the remaining third of the Education Contribution has been paid to the Council.

3 Sustainable Travel Fund Contribution

- 3.1 The Owner will not allow or permit the Occupation of more than 49 Dwellings until 50% of the Sustainable Travel Fund Contribution has been paid to the Council.
- 3.2 The Owner will not allow or permit the Occupation of the final Dwelling until the remaining 50% of the Sustainable Travel Fund Contribution has been paid to the Council.

4 Travel Plan Monitoring Fee

The Owner will not allow or permit the Occupation of any Dwelling until the Travel Plan Monitoring Fee has been paid to the Council.

5 Inspection and Certification Charge

The Owner will not allow or permit the Occupation of any Dwelling until the **Inspection** and Certification Charge has been paid to the Council.

Schedule 4 - On-Site Public Open Space

1 Provision of On-site Public Open Space and Managed Areas

- 1.1 Prior to Occupation of any Dwelling a scheme for the laying out of the POS Area shall be submitted by the Owner for approval by the Council (such approval not to be unreasonably withheld or delayed) and which shall be deemed to have been given in the absence of any **material** indication to the contrary by the date 28 days from and including receipt of the draft POS Management Scheme by the Council for approval.
- 1.2 The Owner will provide the POS Area and Managed Areas in accordance with the scheme **approved** by the Council pursuant to paragraph 1.1 and shall notify the Council in writing when such works have been completed.
- 1.3 Not later than one calendar month following receipt of the relevant notice referred to in paragraph 1.2 of this schedule the Council shall inspect the POS Area and if it has been **provided** in accordance with the scheme approved by the Council under paragraph 1.1 of this schedule to the Council's reasonable satisfaction and the Council shall notify the Owner in writing thereof.
- 1.4 If upon notification by the Owner pursuant to paragraph 1.2 of this schedule the works to the POS and **Managed** Areas have not been carried out in accordance with paragraph 1.2 of this schedule to the **reasonable satisfaction** of the Council it shall notify the Owner specifying the **measures necessary** to **satisfactorily** complete the POS and Managed Areas and the Owner shall within such period as specified by the Council carry out those works and shall notify the **Council** pursuant to paragraph 1.2 of this schedule (such procedure being repeated as often as is **necessary** until such time as the Council confirms satisfactory completion thereof).
- 1.5 Following written confirmation or deemed approval by the Council of the satisfactory completion of the POS and Managed Areas pursuant to paragraph 1.3 of this schedule, the Owner shall **thereafter** maintain the POS and Managed Areas in accordance with the scheme **approved** by the Council pursuant to paragraph 1.1 until such time as it shall be transferred to a Registered Provider.

2 Management and Maintenance of the Public Open Space and Managed Areas

- 2.1 The Owner shall not allow the Occupation of any Dwelling unless and until the Council has approved in **writing the scheme** submitted pursuant to paragraph 1.1, or such scheme is deemed to be **approved** in accordance with the provisions of paragraph 1.1.
- 2.2 **Responsibility** for the maintenance of the POS and Managed Areas shall not at any time by **transferred** to a 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, such approval not to be unreasonably withheld or delayed.
- 2.3 The Owner and the **Registered** Provider shall allow public access to the POS and Managed **Areas** subject always to the following provisions:
 - 2.3.1 access to the POS and Managed Areas shall be subject to such requirements and **regulations** as may from time to time be imposed by the Owner or the **Registered** Provider having regard to **overriding** reasons of safety, security and prudent building **management** (provided that such requirements and regulations shall not be imposed without the Council's prior approval);
 - 2.3.2 the Owner or the Registered Provider may close the POS and Managed Areas or any **part** thereof for reasonable **periods** by reason of:
 - 2.3.2.1 emergency;
 - 2.3.2.2 cleansing, maintenance and repair (including of any drainage or **other** mains services **infrastructure** laid underneath the POS and Managed Areas);

2.3.2.3 at the direction of the emergency services or other lawful authority; and

2.3.2.4 construction activities whilst the Development is being carried out,

Schedule 5 - Drainage Works

1 Approval of Drainage Maintenance and Management Plan

1.1 Prior to the later of:

1.1.1 the date being 3 months from the date of this deed; or

1.1.2 the Commencement of Development,

the Owner shall submit to the Council for approval the Drainage Maintenance and Management Plan and in doing so shall submit a parallel application to discharge conditions 17 and 18 of the Planning Permission.

1.2 The Drainage Maintenance and Management Plan shall include detailed measures setting out how the Drainage Works will be maintained and managed and will include:

1.2.1 details and a programme for the long term management and maintenance works to cover all aspects of the Drainage Works to include:

1.2.1.1 a **detailed** maintenance schedule and methodology for all individual components to maintain the functionality of the Drainage Works;

1.2.1.2 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;

1.2.1.3 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;

1.2.1.4 a detailed schedule and methodology for the inspection, maintenance and replacement as required of the Drainage Works; and

1.2.1.5 plans at 1:200 scale which show the extent of the Drainage Works, the extent of the landscape features, details of connections to Yorkshire Water;

1.2.2 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;

1.2.3 details of the maintenance regime that will be adopted during the construction phase up until the point that the Drainage Works is signed off as **complete** in accordance with the **approved** design; and

1.2.4 details of vehicular and **pedestrian** access arrangements relating to the **inspection** and maintenance of the Drainage Works.

1.3 In the event that the Council **considers** (acting reasonably) that it is unable to approve the **submitted version** of the Drainage Maintenance and Management Plan **then the Owner** may either:

1.3.1 submit a **revised version** of the Drainage Maintenance and Management Plan to the Council taking into account any comments that the Council has provided for its approval; or

1.3.2 **appeal** the **refusal** (or deemed refusal) of the application to discharge conditions 17 and 18 of the Planning Permission and in the event that the **appeal** is allowed the **Drainage Maintenance and Management Plan** shall be deemed **to** be approved for the **purposes** of this deed.

1.4 The Owner covenants not to carry out any above-ground works comprised in the Development unless and until the Drainage Maintenance and Management Plan has been approved by the Council.

1.5 The approved Drainage Maintenance and Management Plan shall only be varied or amended with the written approval of the Council (such approval not to be unreasonably withheld or delayed and which shall be deemed to have been given in the absence of any material indication to the contrary within 28 days of receipt by the Council of the request for approval of the relevant variation or amendment).

2 Provision of the Drainage Works

2.1 As soon as is reasonably practicable after the completion of the Drainage Works the Owner shall notify the Council in writing that such works have been completed.

2.2 Not later than 1 calendar month following receipt of the notification referred to in paragraph 2.1 of this schedule, the Council shall inspect the Drainage Works and if it has been provided in accordance with paragraph 1 of this schedule to the Council's reasonable satisfaction the Council shall notify the Owner in writing thereof **provided** that it is agreed that in the event that the Council does not inspect the Drainage Works within 1 calendar month following receipt of the relevant notice **referred** to in paragraph 2.1 of this schedule it will be deemed that the Council has approved the Drainage Works.

2.3 If upon notification by the Owner pursuant to paragraph 2.1 of this schedule the works to the Drainage Works have not been carried out in accordance with paragraph 2.1 of this schedule to the reasonable satisfaction of the Council it shall notify the Owner **specifying** the measures necessary to satisfactorily complete the Drainage Works and the Owner shall within such period as specified by the Council carry out those works and shall notify the Council pursuant to paragraph 2.1 of this schedule (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion **thereof**).

3 Maintenance and Management of the Drainage Works

3.1 The Owner covenant with the Council to fully comply with the approved Drainage Maintenance and Management Plan **from the** date that it is approved by the Council and at all times **thereafter** to manage and maintain the Drainage Works in accordance **with** the details set out in **the** approved Drainage Maintenance and Management Plan until the date when the Drainage Works has been adopted by Yorkshire Water and/or the Council in its capacity as local highway authority.

3.2 Until such time as the Drainage Works are adopted by Yorkshire Water and / or the Council in its **capacity** as local highway authority the Council may upon reasonable **notice** **enter** the **Site** in order to check and monitor compliance **with the approved** Drainage Maintenance and Management Plan.

3.3 In the event that **the** Council **considers** (acting reasonably) that the requirements of the approved Drainage Maintenance and Management Plan are not **being** complied with and (unless the Drainage Works have been **adopted** by Yorkshire Water and / or the Council in its capacity as local highway authority) the Council may serve a notice on the Owner requiring the Owner to **undertake** such remedial steps as are specified in the notice.

3.4 The Owner shall comply with the terms of any notice served by the Council pursuant to paragraph 3.3 within 20 Working 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.

3.5 No **part** of the Land upon which **the** Drainage Works are located shall be **transferred** or **leased** to any other body (as apart from Yorkshire Water or YH in which case any **transfer** or lease may **proceed** without the **approval** of the Council) unless **the identity** of that other body has been approved by the Council (acting reasonably).

3.6 In **seeking** approval from the Council of **any transferee** to whom the Owner intends to transfer or **lease** any **part** of the Land on which **the** Drainage Works are located **the** shall provide the Council with details of the **assets**, how **the** ongoing maintenance and management works will be **funded**, **structure**, any voting rights and **such other** information as the Council (acting reasonably) shall require.

- 3.7 The Owner 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 Drainage Works.

4 Adoption of the Drainage Works

Upon receipt by the Council of satisfactory evidence that the Drainage Works have been transferred to Yorkshire Water and/or the Council in its capacity as local highway authority the obligations within this schedule shall cease.

Schedule 6 – Biodiversity Provisions

- 1 Prior to the commencement of any superstructure works on the Property, the Owner shall make an assessment which identifies and calculates the impacts on biodiversity calculated in accordance with the DEFRA Metric Version 3.0 and which shall include full details of the measures to be taken in respect of the Development (whether on-site and/or off-site for the purposes of achieving a measurable biodiversity net gain of 10% above the existing baseline) ("the **Biodiversity Strategy**").
- 2 Where any off-site measures are proposed in the Biodiversity Strategy submitted under paragraph 1 of this schedule, the Strategy shall, as far as possible, demonstrate that such measures shall be implemented on land in the Council's administrative area which is within the ownership or control of the Owner and/or on land within Council's administrative area which is the subject of an appropriate agreement between the Owner and a third party which secures the required measures.
- 3 In the event that the Biodiversity Strategy prepared under paragraph 1 of this schedule demonstrates that a measurable biodiversity net gain of 10% above the existing baseline is not to be achieved by the implementation of measures on the Site and/or on land within the Owner's ownership or control within Council's administrative area, then the Owner shall make a balancing payment to the Council in accordance with DEFRA Metric Version 3.0 to account for any shortfall between the measures to be implemented and the figure representing a measurable biodiversity net gain of 10% above the existing baseline in respect of the Development.
- 4 Any Biodiversity Strategy submitted pursuant to paragraph 1 above shall include:
 - 4.1.1 an explanation of how the ecological mitigation hierarchy has been applied, so as to avoid, mitigate or **compensate** for loss of biodiversity;
 - 4.1.2 an up to date baseline assessment of the land and a measured assessment of the proposed strategy to demonstrate the net gain achieved;
 - 4.1.3 a programme for the implementation of the strategy any management and monitoring measures to be undertaken to ensure the relevant strategy achieves the desired outcome; and
 - 4.1.4 a calculation of any balancing sum payable in accordance with paragraph 3 of this schedule.
- 5 The strategy shall be implemented in full in accordance with the approved details.

Schedule 7 - Council's Covenants

- 1 The Council shall issue separate receipts on request for any sum paid to it under this deed.
- 2 The Council shall place the Contributions in an interest-bearing account or in separate accounts as the Council shall at its discretion decide.
- 3 The Council shall not apply the Contributions for any purpose other than for the purposes set out within clause 1.1 of this deed.
- 4 In the event that any Contribution (excluding the Education Contribution) (or any part or parts thereof) are not expended within 5 years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee, and in the case of Education Contributions are not expended within 10 years of the date of payment then the sum or sums not expended plus interest **accrued** shall be repaid to the party or their nominee.
- 5 The Council shall respond to any request to account for the sums expended within 28 Working Days of that request being made provided that request was made within 2 years from the expiration of the relevant period mentioned in paragraph 4 of this schedule and repay any unexpended sums to the person who made the payment (or to that persons nominee) within 28 Working Days of such response.

EXECUTED as a **DEED** by affixing the Corporate
Common seal of **THE COUNCIL OF THE**
BOROUGH OF KIRKLEES in the presence of:



Authorised Signatory

014570

SIGNED as a **DEED** by **STEPHEN HOWARD**
ROBERTS in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

SIGNED as a **DEED** by **ALAN JOHN ROBERTS** in
the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED as a **DEED** by **P. CASEY & CO., LIMITED** acting by a Director in the presence of:

.....
Director

Witness Signature:

Witness Name:

.....
NAME

Witness Address:

Witness Occupation:

EXECUTED as a **DEED** by affixing the common seal of **YORKSHIRE HOUSING LIMITED** in the presence of two authorised signatories:

.....
Authorised Signatory



YHL 9977

.....
Authorised signatory