

DATED

11 October

2023

THE COUNCIL OF THE BOROUGH OF KIRKLEES

- and -

STRATA HOMES LIMITED

AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 (as amended) in respect of land off Westgate, Cleckheaton, BD19 5DR

Application Reference: 2021/93567

THIS AGREEMENT is made the 11th day of October 2023

BETWEEN

THE COUNCIL OF THE BOROUGH OF KIRKLEES of Town Hall, Huddersfield, West Yorkshire HD1 2TA ("**the Council**"); and

STRATA HOMES LIMITED (Company registration No: 01709069) whose registered office is Quay Point, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL ("**the Owner**").

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner is freehold owner of those parts of the Site registered with HM Land Registry under, title numbers WYK471302, WYK482228, WYK743771, WYK408529, WYK523568, WYK539363, WYK763537, WYK78177, WYK809091, WYK818114, WYK842676 and WYK952627.
3. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("**the Act**") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land.
4. The Council would not have been willing to grant the Planning Permission but for this Agreement because of the need to:
 - 4.1. secure the provision of Affordable Housing to include 9 (nine) First Homes and 3 (three) Affordable Rented Units on the Site;
 - 4.2. secure the payment of the Biodiversity Contribution in the sum of £199,916.00 (one hundred and ninety-nine thousand, nine hundred and sixteen pounds);
 - 4.3. secure the payment of the Education Contribution in the sum of £102,770.28 (one hundred and two thousand, seven hundred and seventy pounds and twenty-eight pence);
 - 4.4. secure provision of management and maintenance of the Surface Water Drainage on the Site until adoption by the local sewerage undertaker;
 - 4.5. secure provision of management and maintenance of the culverts on the Site;

- 4.6. secure the management of the on-Site Public Open Space and Ecological Enhancement Works; and
- 4.7. secure the provision of an updated Viability Report.
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NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

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

“1990 Act” means the Town and Country Planning Act 1990

“the Application” means the application known by reference number 2021/93567 registered by the Council on 8 September 2021 for the Development.

“the Administrative Charge” means 1% (one percent) of the Financial Contribution.

“Additional First Homes Contribution” means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 3.9 and 3.10 of the First Schedule the lower of the following two amounts:

- a. 30% of the proceeds of sale; and
- b. the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which

has the same meaning given to it in annex 2 of the National Planning Policy Framework

“Affordable Housing Units” means 12 (twelve) of the total number of Dwellings to be provided as Affordable Housing which shall consist of 3 (three) Affordable Rented Units and 9 (nine) First Homes as shown on Plan 2.

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

“the Alternative Registered Provider” means such other Registered Provider as shall be nominated by the Council under Clause 4.11 of this Agreement.

“Affordable Rent”

means an affordable rent that is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) where the landlord is a registered provider and includes provisions to remain at an affordable price for future eligible households, as defined in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it) as calculated using the RICS Approved Valuation Methods;

“Affordable Rented Unit(s)” means 3 (three) x Dwellings on plots 27, 28 and 29 as shown on Plan 2 appended to this Agreement or in such other locations that may be agreed in writing between the Council and the Owner from time to time and provided at an Affordable Rent to be constructed in accordance with the Planning Permission;

“Armed Services Member” means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service.

“Biodiversity Contribution” means the sum of £199,916 (one hundred and ninety-nine thousand, nine hundred and sixteen pounds towards off-Site measures to achieve biodiversity net gain.

“Blacup Beck Watercourse” means the watercourse in open and culverted form within the red line boundary only as shown in blue on Plan 4;

“Compliance Certificate” means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.2 applies the Eligibility Criteria (Local)

“Contributions” means the Biodiversity Contribution and the Education Contribution which shall be Index-Linked.

“Development” means the demolition of existing commercial buildings and erection of 180 dwellings with associated works on the Site in accordance with the Planning Permission.

“Discount Market Price” means a sum which is the Market Value discounted by at least 30%.

“Disposal” means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- a. a letting or sub-letting in accordance with paragraph 1 of the First Schedule.
- b. a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- c. an Exempt Disposal

and **“Disposed”** and **“Disposing”** shall be construed accordingly.

“Dwellings” means the residential units that may be built on the Site as part of the Development.

“Ecological Design Strategy” means the strategy submitted to and approved by the Council pursuant to condition 22 of the Planning Permission for the Ecological Enhancements Works to be undertaken on the Site.

“Ecological Enhancement Works” means habitat retention, enhancement and creation measures to be implemented as part of the Development consistent with and based upon those measures identified in the Ecological Design Strategy.

“Ecological Enhancements Area” means the areas on the Site where the completed Ecological Enhancements Works are to be managed and maintained for a period of at least 30 years.

“Education Contribution” means the sum of £102,770.28 (one hundred and two thousand, seven hundred and seventy pounds and twenty-eight pence) to be paid by the Owner to the Council towards the provision of educational facilities or school places in the geographical vicinity of the Development the need for which directly arises from the Development.

“Eligibility Criteria (Local)” means criteria published by the Council in the document entitled “First Homes Provision Statement Kirklees Council December 2021” (or any subsequent updating/replacing documentation) at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- a. the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- b. any or all of criteria (i) (ii) and (ii) below are met:
 - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
 - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member or the spouse/civil partner of members/deceased members of veterans within 5 years of leaving the armed forces

“Eligibility Criteria (National)” means criteria which are met in respect of a purchase of a First Home if:

- a. the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

- b. the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

"Exempt Disposal" means the Disposal of a First Home in one of the following circumstances:

- a. Disposal to a spouse or civil partner upon the death of the First Homes Owner
- b. a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- c. Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- d. Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 6 of the First Schedule shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5 of the First Schedule.

"First Homes Administration Charge" means the reasonable and proper charges incurred by the Council in consideration of the evidence provided to it pursuant to paragraph 3.4.1 of this Agreement including:-

- i. The consideration of the evidence of any purchase meeting the First Homes Eligibility Criteria (National) and (Local);
- ii. The consideration of the evidence supplied by the Owner of the First Home in relation to the First Home Sale Price; and
- iii. Provision of any certificate to confirm that there has been compliance with paragraph 3.4.3 of the First Schedule of this Deed.

"First Home Unit" means 9 (nine) x Dwellings on plots 13, 66, 67, 72, 73, 93, 130, 131 and 132 as shown on Plan 2 appended to this Agreement which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a Qualifying Person who is a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap and reference to First Homes shall be construed accordingly;

“Financial Contribution” means the payment to be made by the Owner to the Council in lieu of the provision of an on-Site Affordable Rented Unit calculated as a financial contribution to the equal value of medium build costs for Kirklees recognised by the RICS Build Cost Information Service (BCIS) in respect of the relevant Affordable Rented Unit PROVIDED THAT such sum shall only be payable in respect of those Affordable Rented Units not transferred to a Registered Provider.

“First Home” means a dwelling which may be disposed of as a freehold or (in the case of flats only) a leasehold property to a First Time Buyer at the discount market price and which on its first disposal does not exceed the price cap.

“First Homes Mortgagee” means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entries which provide Shari’ah compliant finance for the purpose of acquiring a First Home.

“First Home Owner” means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- a. the Owner; or
- b. another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- c. the freehold owner a tenant or sub-tenant of a permitted letting under paragraph 4 of the First Schedule.

“First Time Buyer” means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;

“Homes England” means the national housing and regeneration delivery agency for England.

“Implementation” means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the 1990 Act save that the term “material operation” shall not include operations in connection with any works associated with demolition site clearance remediation works

environmental investigation site and soil surveys erection of fencing to site boundary and **"Implement"** and **"Implemented"** shall be construed accordingly.

"Income Cap (Local)" means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home, it being acknowledged that at the date of this agreement the Council has not set a local income cap.

"Income Cap (National)" means:

- a. in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London), ninety thousand pounds (£90,000); and
- b. in the case of any other First Home, eighty thousand pounds (£80,000) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home.

"Index" means the Building Costs Information All-In Tender Price Index published by the Royal Institution of Chartered Surveyors or any official publication substituted for it.

"Index Linked" means such increase to any sum or sums payable under this Agreement on an annual basis or pro rata per diem from the date of the resolution by the appropriate Plans Panel of the Council to approve the grant of Planning Permission or from the date of the delegated decision taken by the Council's chief planning officer to approve the grant of Planning Permission to the date of payment (or calculation as the case may be) based upon the relevant Index last published before the date of the decision to approve the grant of Planning Permission.

"Inspection Fee" means the sum of £750 for the inspection by the Council of the on-site POS provision.

"Key Worker" means a person employed or with a confirmed job offer in such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home

shall be the "Key Worker" criteria which shall apply to that disposal, it being acknowledged that at the date of this agreement the Council has not designated any categories of employment as Key Worker.

"Local Connection Criteria" means criteria which are met by a person who satisfied one of more of (i) to (vii) below:

- (i) Currently lives in Kirklees as their primary residence and has done so for the past 3 years.
 - (ii) Previously lived in Kirklees as their primary residence for at least 5 years accumulatively within the past 10 years.
 - (iii) Has close family ordinarily resident in Kirklees and that close family has been ordinarily resident in the Kirklees District Area for the past 3 years.
 - (iv) Needs to move to Kirklees to receive or provide care or support.
 - (v) Is employed full-time on a permanent basis for more than 16hrs per week in Kirklees or is about to take up an offer of permanent full-time employment in Kirklees.
 - (vi) Needs to move to Kirklees to move to local facilities because of a specific identified need.
 - (vii) Has some other connection to Kirklees as approved by the Council in writing
- OR**

Such other local connection criteria as may be published by the Council from time to time as its "First Homes Local Connection Criteria" (or equivalently so titled) and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal.

"Management Company" means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owners for the purposes of carrying out future maintenance of the Public Open Space and the drainage infrastructure:

- (1) which is incorporated in England and Wales or Scotland;
- (2) which has its registered office in England or Scotland; and
- (3) whose primary objects permit it to:
 - a. manage and maintain and renew the Public Open Space in perpetuity;
 - b. manage and maintain the Surface Water Drainage and the Blacup Beck Watercourse; and

- c. manage and maintain the ecological features on the Site.

“Market Dwelling” means any Dwelling that may be built on the Site as part of the Development and which is not a First Home or Affordable Housing Unit.

“Market Value” means the open market value as assessed by a Valuer of a dwelling as agreed between the Council and the Owner and assessed in accordance with the RICS Valuation Standards (General 2014 or any such replacement guidance issued by RICS) at which the sale of an interest in the property would have been completed unconditionally for cash consideration on the date of the valuation assuming:-

- i) a willing seller;
- ii) that any restrictions imposed on the dwelling by reason of this Deed are disregarded; and
- iii) that there are no restrictions as to the persons who may occupy the Affordable Housing Unit or to whom a transfer or lease may be granted or assigned; and
- iv) that both parties to the transaction had acted knowledgeably, prudently and without compulsion.

“Marketing Strategy” means the strategy to be approved by the Council pursuant to Clause 2 of the First Schedule of this Deed and to detail the marketing measures to be undertaken to dispose of the First Home to qualifying persons upon a first disposal and marketing materials shall be construed accordingly.

“Mortgagee” means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Sharia law compliant finance for the purpose of acquiring a First Home.

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

“Plan 1” means the plan of the Site so marked and annexed hereto.

“Plan 2” means the plan of the Affordable Housing so marked and attached hereto.

“Plan 3” means the plan of the POS Area edged in green and the Surface Water Drainage so marked (with drawing number R/2487/3) and attached hereto.

“Plan 4” means the plan of the Blacup Beck Watercourse shown in blue so marked and attached hereto.

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

“POS Area” means the land shown edged green on Plan 3 to be laid out in accordance with the Planning Permission and any other approved plans and made available for use by the general public.

“POS Management and Maintenance Scheme” means a scheme for the future maintenance and management of the POS Area to be submitted by the Owner in accordance with the provisions of paragraph 9.2 in the First Schedule of this Agreement and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council).

“Practical Completion” means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied.

“Price Cap” means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State.

“Qualifying Person” means a person (or if a joint purchase, all of the purchasers) who meets the Eligibility Criteria (National) and (unless paragraph 3.2 in the First Schedule applies) the Eligibility Criteria (Local).

“Registered Provider” means a social landlord registered with Homes England as set out on the ‘Council’s Approved list of Registered Provider’s’ which can deliver Affordable Housing as defined herein and in Annex 2 of the NPPF.

“Secretary of State” means the Secretary of State for Levelling Up, Housing and Communities.

“SDLT” means the Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing of like effect.

“Site” means the land off Westgate, Cleckheaton, BD19 5DR shown edged red on Plan 1.

“Surface Water Drainage” means the surface water drainage apparatus at the Site as indicated on Plan 3 insofar and to the extent and until the surface water drainage apparatus at the Site becomes adopted by the local sewerage undertaker under an agreement by way of S104 Water Industry Act 1990 or otherwise.

“Valuer” means a member or fellow of the Royal Institute of Chartered Surveyors being a registered valuer appointed by the First Homes Owner and acting in an independent capacity.

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

2. GENERAL

- 2.1. The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Agreement.
- 2.2. The provisions of this Agreement are planning obligations made pursuant to Section 106 of the 1990 Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site.
- 2.3. The expressions "the Council", and "the Ownwe" shall include their successors in title and assigns.
- 2.4. Words importing any gender include every gender; singular number only include the plural number and vice versa; persons include firms, companies and corporations and vice versa.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all powers so enabling.
- 3.2. The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and bind its interests in the Site so are enforceable by the Council as local planning authority against the Owner in accordance with the Act as set out in this Deed.

4. CONDITIONALITY

- 4.1. The obligations contained in this Deed are conditional upon:
 - 4.1.1 the grant of the Planning Permission; and
 - 4.1.2 the Commencement of Development save for clauses 7 to 21 which shall come into effect on the date hereof.

5. THE OWNERS' COVENANTS

- 5.1. The Owner covenants with the Council so as to bind its interest in the Site to fully observe and perform the obligations in this Deed including those obligations set out in the First Schedule and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act as set out in the First Schedule.

6. THE COUNCIL'S COVENANTS

- 6.1. The Council covenants with the Owner to observe and perform the obligations on its part in this Deed including those obligations set out in the First Schedule, the Second Schedule and the Third Schedule.

7. FEES

- 7.1. The Owner shall pay to the Council on completion of this Deed its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed, such costs not exceeding the sum of £1500

8. LOCAL LAND CHARGE

- 8.1. This Deed shall be registrable as a local land charge by the Council.
- 8.2. Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

9. COMMUNICATION AND COUNCIL'S CONSENT OR APPROVAL

- 9.1. Where the agreement, approval, consent or expression of satisfaction is required by the Owner 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 may be given on behalf of the Council by either an officer of the Housing Growth Team (or such successor team responsible for Affordable Housing) or by an officer of the Council's Legal Service 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.

10. TERMINATION OF THIS DEED

- 10.1. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn, or it is modified by any statutory procedure (without the consent of the Owner) or expires prior to the Commencement of Development.

11. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 11.1. Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council this Deed shall not be enforceable by any

third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

12. LIABILITIES AND EXEMPTIONS

12.1. No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed

12.1.1. after it shall have parted with its interest in the Site or all its interest in that part of the Site in which the breach occurs but this shall be without prejudice to that person's liability for any subsisting breach arising prior to parting with such interest;

12.1.2. In respect of any part of the Site in which they do not have an interest (and will therefore have no liability in respect of any covenant, obligations or restriction that relates to such part of the Site).

12.2. The provisions of this Deed shall not be binding on or enforceable against:

12.2.1. any owners or owner-occupiers or tenants of any individual Dwelling nor against those deriving title from any of them (save only in respect of the provisions of paragraphs 3 to 6 (inclusive) of the First Schedule in respect of the ongoing use of the Dwellings for the Affordable Housing purposes); nor

12.2.2. any mortgagee or any receiver appointed by such a mortgagee or any person deriving title through such a mortgagee or any receiver unless and until it become a mortgagee in possession (other than First Homes Mortgagee provisions which for the avoidance of doubt are covered in the First Schedule of this Agreement); nor

12.2.3. any statutory undertaker holding an estate or interest in the Site or part of the Site nor against plant equipment conduits or structures located there for its operational purposes; nor

12.2.4. anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant; nor

12.2.5. any Registered Provider acquiring an interest in the Site pursuant to Schedule 1 save that such Registered Provider shall be bound by the provisions of paragraph 6 of the First Schedule in so far as the provisions

relate to the ongoing use of the Dwellings for Affordable Housing purposes;
nor

12.2.6. a Management Company to whom any part of the Site is disposed save that such Management Company shall be bound by the provisions of paragraphs 9 to 12 (inclusive) of the First Schedule in so far as the provisions relate to the maintenance and management of the SUDS and/or the POS Area and / or Blacup Beck Watercourse that have been transferred to the Management Company.

12.3. 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 after the date of this Deed.

13. COUNCIL'S POWERS

13.1. Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.

14. WAIVER

14.1. 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.

15. CHANGE IN OWNERSHIP

15.1. The Owner agrees with the Council to give the Council written notice as soon as reasonably practicable after any change in ownership of any of its interests in the Site save in respect of any disposal to a plot purchaser of an Open Market Dwelling 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.

16. INDEXATION

- 16.1. Any Contribution payable under the provisions of this Deed shall be subject to Indexation from the date of the Planning Permission until the date on which the relevant part of the Contribution is payable.

17. DISPUTE PROVISIONS

- 17.1. In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed (save as to matter of law which shall remain the jurisdiction of the Courts) such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.2. In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 19.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 17.3. Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 17.4. The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written

submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

18. JURISDICTION

18.1. This Deed is governed by and interpreted in accordance with the law of England and Wales.

19. COUNTERPARTS

19.1. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same agreement.

20. GOVERNING LAW

20.1. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

21. FUTURE PERMISSION

21.1. In the event that a condition or conditions to the planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Deed shall continue in full force in respect of the planning Permission with the relevant condition or conditions so varied.

21.2. In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the planning Permission and planning permission is granted in respect of that application references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

THE FIRST SCHEDULE
THE OWNER'S COVENANTS

The Owner covenants with the Council as follows:-

1. Number of First Homes

- 1.1. That 9 (nine) of the total number of the dwellings on the site shall be identified, reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule and that the mix of First Homes provided within the Site shall be in accordance with the distribution on the plan of the Affordable Housing.

2. First Homes Obligations

- 2.1. The First Homes shall not be visually distinguishable from the Market Dwellings placed upon their external appearance.
- 2.2. The internal specifications of the First Homes shall not by reason of their being First Homes be inferior to the internal specifications of the equivalent Market Dwellings but subject to that requirement variations to the internal specifications of the First Homes shall be permitted.
- 2.3. All First Homes shall be constructed to no less than the standard applied to the Market Dwellings.
- 2.4. Prior to commencement of the Development the Owner shall submit to the Council the Marketing Strategy for the Council's approval and the Owner shall not commence development unless and until such Marketing Strategy has been approved by the Council, such approval not to be unreasonably withheld or delayed and thereafter the First Homes shall be disposed of according to the terms of the agreed marketing strategy.
- 2.5. Should the Council fail to approve or comment upon the Marketing Strategy within 48 days of receipt this shall be deemed to have been approved by the Council by the Developer in the first instance and then the current owner of the First Home for subsequent sales.
- 2.6. Not to permit or allow Occupation of the Market Dwellings as follows:

- 2.6.1. No more than 39 (thirty-nine) of the Market Dwellings shall be Occupied until 1 (one) of the First Homes Units has been constructed in accordance with Clause 2.3 hereof and made available for sale pursuant to Clause 3 of this First Schedule;
- 2.6.2. No more than 60 (sixty) of the Market Dwellings shall be Occupied until 2 (two) of the First Homes Units have been constructed in accordance with Clause 2.3 hereof and made available for sale pursuant to Clause 3 of this First Schedule;
- 2.6.3. No more than 92 (ninety-two) of the Market Dwellings shall be Occupied until 7 (seven) of the First Homes Units have been constructed in accordance with Clause 2.3 hereof and made available for sale pursuant to Clause 3 of this First Schedule; and
- 2.6.4. No more than 112 (one hundred and twelve) of the Market Dwellings shall be Occupied until all 9 (nine) of the First Homes Units have been constructed in accordance with Clause 2.3 hereof and made available for sale pursuant to Clause 3 of this First Schedule

unless agreed otherwise with the Council in writing.

- 2.7. It is agreed that in order to enable the Council to comply with its obligations in relation to monitor Affordable Housing for Central Government the Owner shall provide information regarding completion and sale of each First Home to the Council as and when requested and in any event within 14 (fourteen) days (or such other period) that may be agreed in writing by the Council (time being of the essence)

3. Delivery Mechanism

- 3.1. The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
 - 3.1.1. the Eligibility Criteria (National); and
 - 3.1.2. the Eligibility Criteria (Local) (if any).
- 3.2. If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 3.1.2 shall cease to apply.
- 3.3. Subject to paragraphs 3.6 to 3.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

3.4. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

3.4.1. The Council has been provided with evidence that:

3.4.1.1. the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.2 applies meets the Eligibility Criteria (Local) (if any)

3.4.1.2. the Dwelling is being Disposed of as a First Home at the Discount Market Price and

3.4.1.3. the transfer of the First Home includes:

a) a definition of the "Council" which shall be the Council of the Borough of Kirklees

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clauses 3.1 - 3.9 of the First Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the Council and (2) Strata Homes Limited

d) a provision that the property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

3.4.2. The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty-eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.3 and 3.4.1 have been met.

- 3.4.3. The First Homes Administration Charge has been paid to the Council by the Owner.
- 3.5. On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:
- “No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Council of the Borough of Kirklees of The Town Hall, Ramsden Street, Huddersfield HD1 2TA or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition.”*
- 3.6. The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:
- 3.6.1. the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 4.1 and 4.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 4.3.3 and 4.4.1; or
- 3.6.2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 3.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.
- 3.7. Upon receipt of an application served in accordance with paragraph 3.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.
- 3.8. If the Council is satisfied that either of the grounds in paragraph 3.6 above have been made it shall confirm in writing within twenty-eight (28) days of receipt of the written

request made in accordance with paragraph 3.6 that the relevant Dwelling may be Disposed of:

3.8.1. to the Council at the Discount Market Price; or

3.8.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

3.9. If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 3.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

3.10. Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 3.8 or 3.9 above the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

3.11. Upon receipt of the Additional First Homes Contribution the Council shall:

3.11.1. Within twenty working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title

3.11.2. apply all monies received towards the provision of Affordable Housing

3.12. Any person who purchases a First Home free of the restrictions in schedule 2 of this Deed pursuant to the provisions in paragraphs 3.9 and 3.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

4. Use

- 4.1. Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 4.1 – 4.4.
- 4.2. A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 4.3. A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

4.4. A letting or sub-letting permitted pursuant to paragraph 4.1 or 4.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

4.5. Nothing in this paragraph 4 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

5. Mortgagee Exclusion

5.1. The obligations in paragraphs 1-4 of this Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

- 5.1.1. such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 5.1.2. once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall

be free to sell that First Home at its full Market Value and subject only to paragraph 5.3.

5.1.3. following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.

5.1.4. following receipt of notification of the Disposal of the relevant First Home the Council shall:

5.1.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.5; and

5.1.4.2. apply all such monies received towards the provision of Affordable Housing

6. Provision of Affordable Rented Units

6.1. Not to permit or allow Occupation of more than 90 (ninety) Market Dwellings until the Affordable Rented Units have been constructed in accordance with Clause 6.2 hereof and made available for sale to the Registered Provider or Alternative Registered Provider unless agreed otherwise with the Council in writing.

6.2. To construct and deliver the Affordable Rented Units to Homes England's 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.

6.3. To inform the Council when it has offered the Affordable Rented Units to a Registered Provider at the Affordable Price together with providing details of the Registered Provider(s) to whom the Affordable Rented Units have been offered (the "Initial Offer")

6.4. If the Registered Provider shall not confirm in writing to the Owner its willingness subject to contract to accept the Affordable Rented Units at the Affordable Price within nine (9) 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 an Alternative Registered Provider and this provision may be repeated as often as is necessary (subject to Clause 6.6 below) until such time as one of the nominated Registered Providers shall have confirmed its willingness subject to contract to purchase the Affordable Rented Units.

6.5. If neither the Registered Provider nor an Alternative Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Rented Units at the Affordable Price within a period of twenty-four (24) calendar months from Implementation or such other period agreed between the Owner and the Council and the Owner shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made all reasonable but commercially prudent endeavours to secure acceptance of the Affordable Rented Units 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 6.6 and 6.7 shall apply.

6.6. If the Registered Provider or Alternative Registered Provider after confirming its willingness to purchase the Affordable Rented Units does not then contract to buy these within two (2) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor or the Solicitor of the Alternative Registered Provider or such other period as agreed between the Owner and the Council (such agreement not to be unreasonably withheld or delayed) then:-

6.6.1. if a period of twenty-four (24) calendar months from the Implementation has expired the Owner will be free to offer the Affordable Rented Units for sale on the open market but the provisions of Clause 6.7 below shall apply;

6.6.2. in any other circumstances the provisions of Clause 6.4 shall continue to apply

6.7. In the event that the Owner is free to offer the relevant Affordable Rented Units for sale on the open market pursuant to Clause 6.5 hereof the Owner shall serve a written notice on the Council confirming that they intend to sell some or all of the Affordable Rented Units on the Open Market (the Owner's Notice). The Owner shall within twenty-eight (28) working days of the date of the Owner's Notice pay to the Council:-

6.7.1. the Financial Contribution; and

6.7.2. the Administration Charge

- 6.8. It is agreed that the obligations in paragraphs 6.1 to 6.6 (inclusive) of this Schedule shall not apply or be binding:
- 6.8.1. following the exercise by any person of a statutory right to buy, right to acquire or upon any person or mortgagee, chargee or receiver (including and administrative receiver); or
 - 6.8.2. upon any 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 including a housing administrator (however appointed whether pursuant to statutory powers or the provisions of any mortgage or charge as required by Court Order or otherwise) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Rented Units or any persons deriving title through such mortgagee, chargee or Receiver provided that the Mortgagee/Chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing and shall have used reasonable endeavours over a period of 3 (three) months from the date of the written notice to complete a disposal of the Affordable Rented Unit to the 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 principle monies, interest and costs and expenses (for the purpose of this paragraph First Homes are excluded as covered by First Homes Provision) and if such disposal has not completed within the 3 (three) month period the Chargee shall be entitled to dispose of the relevant Affordable Rented Unit (which shall for the purpose of this paragraph exclude the First Homes Unit) free from the Affordable Housing provisions in this Deed which provisions shall determine exclusively; or
 - 6.8.3. any subsequent disposition of the Affordable Rented Units following a disposal falling within paragraph 6.8.1 to 6.8.2 of this First Schedule.

7. EDUCATION CONTRIBUTION

- 7.1. Not to cause or permit Occupation of more than 45 (forty-five) of the Dwellings until the Education Contribution has been paid to the Council.

8. BIODIVERSITY CONTRIBUTION

- 8.1. Not to cause or permit Occupation of more than 90 (ninety) of the Dwellings until the Biodiversity Contribution has been paid to the Council.

9. ON-SITE PUBLIC OPEN SPACE AREA

- 9.1. To provide the POS Area in accordance with the Planning Permission and Plan 3 and any other approved plans thereto.
- 9.2. Prior to completion of the POS Area on Site to submit to the Council a POS Management and Maintenance Scheme for written approval.
- 9.3. As soon as is reasonably practicable after the completion of the POS Area specified in paragraph 9.1 of the Agreement the Owner shall notify the Council in writing that such works have been completed and pay to the Council the Inspection Fee.
- 9.4. Not later than 1 (one) calendar month following receipt of the relevant notice referred to in paragraph 9.3 of this Agreement the Council shall inspect the POS Area and if it has been provided in accordance with the Planning Permission and approved plans thereto the Council shall issue a certificate confirming the POS Area has been satisfactorily completed ("POS Certificate") PROVIDED THAT it is agreed that in the event that the Council do not inspect the POS Area within 1 (one) calendar month following receipt of the relevant notice referred to in paragraph 9.3 of this Agreement the POS Area shall be deemed to have been completed to the satisfaction of the Council and a POS Certificate shall be triggered.
- 9.5. Where the Council inspects the POS Area and is not satisfied (acting reasonably) that the POS Area has been provided in accordance with the planning permission and approved plans the procedure in paragraph 9.4 of this First Schedule may be repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof or deemed approval has been achieved.
- 9.6. Following written confirmation or deemed approval by the Council of the satisfactory completion of the POS Area pursuant to paragraph 9.4 of this Agreement the Owner shall thereafter maintain and manage the POS Area in accordance with the approved POS Management and Maintenance Scheme and in any event not cause or permit the occupation of more than 90% of the Dwellings until such time as the responsibility for the management and maintenance of the POS Area thereof has been transferred to the Management Company.

- 9.7. Prior to occupation of more than 90% of the Dwellings and within 3 (three) months of the issue of a POS Certificate or the deemed triggering of a POS Certificate pursuant to paragraph 9.5 of this Agreement the Owner shall transfer the POS Area to the Management Company PROVIDED THAT it is agreed that the transfer shall contain a covenant so as to bind the POS Area into whomsoever hands the same may be transferred to maintain the POS Area in accordance with the approved POS Management and Maintenance Scheme and shall not permit it to be used for anything other than Open Space (within the meaning of Open Space Act 1906) and to allow the public reasonable access thereto.
- 9.8. The Owner shall pay the Inspection and Certification Charge of £750 to the Council prior to each transfer of a phase of the POS Area referred to in paragraph 9.7 of this Agreement.
- 9.9. The Owner will procure that public access is allowed to the part of the POS Area shown edged green on Plan 3 following the issue of a POS Certificate or the deemed triggering of a POS Certificate of the POS Area but subject to the following provisions:
- 9.9.1. Access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner 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 written approval;
- 9.9.2. Access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the POS Area for and during the construction of any building or land abutting it subject to the Council's prior approval.
- 9.10 The Owner may close the POS Area or any part thereof for reasonable periods by reason of:
- 9.10.1 Emergency;
- 9.10.2 Cleansing, maintenance and repair;
- 9.10.3 At the direction of the emergency services or other lawful authority; and /or
- 9.10.4 Construction activities whilst the Development is being built in the interests of health and safety.
- SUBJECT to the Council's prior approval except in the case of an emergency when the Council should be notified as soon as possible after the event.

- 9.11. Responsibility for the maintenance of the POS Area shall not at any time be transferred to an alternative management company unless the Council has been given a minimum of 28 (twenty-eight) working days written notice that such a transfer is to take place and has issued its approval in writing thereto.

10 MAINTENANCE AND MANAGEMENT OF THE SURFACE WATER DRAINAGE WORKS

- 10.1 The Owner shall set up a Management Company that shall manage and maintain the Surface Water Drainage in accordance with the details approved pursuant to condition 15 of the Planning Permission until such time as the Surface Water Drainage is adopted by the appropriate sewerage undertaker pursuant to an agreement between the owners of the Management Company (as the case may be) and the sewerage undertaker under Section 104 of the Water Industry Act 1991.

- 10.2 Following the adoption of the Surface Water Drainage by the sewerage undertaker the obligation in paragraph 10.1 of this Agreement shall cease to have effect.

11 BLACUP BECK WATERCOURSE

- 11.1 The Owner shall set up a Management Company that shall manage and maintain Blacup Beck Watercourse in accordance with the details approved pursuant to condition 12 of the Planning Permission and prior to Occupation of the first Dwelling
- 11.2 The Management Company shall maintain the Blacup Beck Watercourse (within the redline boundary as shown on Plan 4) for the lifetime of the Development.

12 ECOLOGICAL ENHANCEMENT WORKS

- 12.1 Following completion of Ecological Enhancements Works or an individual element of the Ecological Enhancement Works (as case may be) the Owner shall notify the Council of such completion by serving written notice upon the Council ("the Owner's Notice") who shall within 28 days arrange for inspection of the Ecological Enhancements Works or the particular element of the Ecological Enhancements Works that has been completed and if the Ecological Enhancements Works (or an element of them) have been carried out the recent satisfaction of the Council it shall promptly issue a certificate of completion ("Certificate Of Completion") of the Ecological Enhancements Works or the particular element of them that has been completed, such certificate to bear the date of inspection ("the Completion Date") provided that in the event that the Council does not inspect the

Ecological Enhancements Works or the particular element of them within 28 days of its receipt of the Owners Notice, then the date ending 28 days after date of the Owner's Notice shall be deemed to be the Completion Date.

12.2 If the Council's inspection of the Ecological Enhancements Works or a particular element of them reveals these have not been carried out to its reasonable satisfaction then the Council should provide the Owner with a written notice explaining the defect(s) following which the Owner shall rectify such defect(s) that are reasonable and accepted and invite further inspection by the Council in accordance with the procedure is set out in paragraph 12.1 of the First Schedule above and such procedure should be repeated as necessary until the Council issues (or is deemed to have issued) a Certificate of Completion for the Ecological Enhancements Works on a particular element that has been completed.

12.3 Following service of a Certificate of Completion pursuant to paragraphs 12.1 or 12.2 above the Ecological Enhancements Works shall be managed and maintained in accordance with details and approved Ecological Design Strategy.

12.4 If the Ecological Enhancements works (or a particular element thereof) are to be maintained and managed by a Management Company the Owner shall elect in writing to the Council whether or not to transfer the freehold of the Ecological Enhancements Area or a particular element of the Ecological Enhancements Area to a Management Company and if the Owner does so elect the following shall apply:

12.4.1 Following service of a Certificate of Completion in accordance with paragraphs 12.1 and 12.2 transfer the freehold of the Ecological Enhancements Area or a particular element of the Ecological Enhancements Area that has been completed to a Management Company on terms agreed between the Owner and the Management Company in consultation with the Council as soon as is reasonably practicable and all further management and maintenance are thereafter to be carried out by the Management Company provided that it is agreed that it should be a term of the transfer that the Management Company will maintain and manage to Ecological Enhancements Area (or any part there off) in accordance with the Ecological Design Strategy incorporating principles of good horticultural, ecological and estate management AND FURTHER PROVIDED that it is agreed the Owner will comply with the maintenance provisions set up a paragraph 12.2 respect of an element of the Ecological

Enhancements Works from receipt of a Certificate of Completion for that element until such time as the Management Company has been engaged to undertake the future management and maintenance of development Ecological Enhancements Area;

- 12.4.2 The approved Ecological Design Strategy may be amended from time to time with the written agreement of the Owner or the Management Company (as appropriate) and the Council but shall be subject to review at least every 10 years within a 30 year period from Commencement of Development, which includes an appraisal of the habitats present at the Site (based on the monitoring service surveys), assessment of the success of the Ecological Design Strategy to date and any required revisions to it. The first Ecological Design Strategy review will consider the success of initial habitat establishment; establish which management techniques have been successful and those that have not; and an assessment of whether the overall management has been effective.
- 12.4.3 The field assessments to be undertaken as part of the monitoring in paragraph 12.4.1 shall be carried out by a competent ecologist at an appropriate time of year. The condition of the Ecological Enhancements Area must be assessed using standard criteria available in the biodiversity metric version 3.1 technical supplement (or any updated version issues by Natural England if the Owner or the Management Company (as appropriate) and Council agree as such in writing.) The assessment methodology and the condition assessment criteria to be used should be set out the Ecological Design Strategy and should the monitoring highlight any deficits, a remediation programme must be agreed with the Council to ensure that the target habitats continue to be able to be met within a realistic timeframe. Any variations to individual habitat areas or conditions scores must be agreed with the Council in advance and must, as a minimum match the agreed number of habitat units to be delivered under the metric calculation for linear and area habitats.

THE SECOND SCHEDULE
VIABILITY REVIEW AND AFFORDABLE HOUSING

1. Interpretation of this Schedule

- 1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1

“Base Build Cost” Means the sum of £27,950,973 (twenty seven million, nine hundred and fifty thousand, nine hundred and seventy three pounds) as set out in the Baseline Viability Appraisal;

“Build Cost Inflation Percentage” Means the value calculated as follows:
$$(C-B) / B$$

Where
B = the figure published for the Index at the date of the issue of the Planning Permission; and
C = The figure published for the Index at the date closest to the Viability Review Date;

“Build Cost Inflation Value” means the value calculated as follows:
$$A \times D$$

Where:
A = Base Build Cost; and
D = Build Cost Inflation Percentage

“Baseline Viability Appraisal” means the independent assessment of the viability of the Development based on estimated expenditure and estimated income procured by the Borough Council in the report prepared by “align Property Partners” dated 17 March 2023 with reference KL2201 against which the Viability Review carried out pursuant to this Deed will be compared

“Commutated Sum” means an additional sum to be paid to the Council and calculated as part of the Viability Review and to be paid

to the Council (if applicable) and which shall not exceed the Commuted Sum Payment Cap;

"Commuted Payment Cap"	Sum	means the sum of £592,206.72 (five hundred and ninety two thousand, two hundred and six pounds and seventy two pence) which is the balance of contributions payable pursuant to Policy Compliant Contributions Amount;
"Final Development Value"	Gross	means the final achieved selling prices for the relevant Dwellings;
"Gross Development Value Baseline"		Means the sum of £42,483,490 (forty two million, four hundred and eighty three thousand, four hundred and ninety pounds) as set out in the Baseline Viability Appraisal;
"Index"		means the BCIS General Building Cost Index;
"Index Linked"		means such increase to any sum or sums payable under this agreement on an annual basis, or pro rata per diem from the date of the grant of the Planning Permission to the date of payment (or calculation as the case may be) based upon the relevant Index last published before the grant of the Planning Permission:
"Policy Compliant Contributions Amount"		means the sum of £894,893 (eight hundred and ninety four thousand, eight hundred and ninety three pounds) Index Linked
"Specialist"		means a person qualified to act as an expert in relation to a dispute relating to or arising out of the terms of this Deed having not less than 10 (ten) years' professional experience in the area to which the dispute relates and to be appointed pursuant to Clause 10
"Viability Review"		means a viability review which provides a calculation of the Commuted Sum to be paid to the Council (if any)

based upon the Viability Review Calculation.

“Viability Calculation”	Review Means (G – (F + E)) Where: G = the Final Gross Development Value F = the Gross Development Value Baseline E = Build Cost Inflation Value in £ (pounds sterling)
“Viability Review Date”	The date on which the Owners notify the Council that the Development has achieved 75% (seventy five percent) Occupation.

2. Viability Review

- 2.1. The Owner shall carry out the Viability Review and give the Council 6 (six) weeks' notice that the Viability Review is to be submitted prior to serving it on the Council no later than the Viability Review Date and the Owner shall not allow Occupation of more than 75% of the Dwellings on the Development until the Viability Review has been served on the Council
- 2.2. The Council shall use all reasonable endeavours to consider the Viability Review and consequent Commuted Sum (where applicable) within twenty (20) working days (unless a longer period is agreed in writing between the Owner and the Council) and shall either make a request to the Owner for further information if it is considered that the Viability Review is incomplete (the twenty working day period shall be paused and recommence when the relevant information is provide to the Council by the Owner) or confirm whether the Viability Review and/or the proposed Commuted Sum are agreed and if in either case they are not agreed setting out the reasons why the same are not agreed; if the Council fails to provide such confirmation within this timescale then Paragraph 2.3 shall not apply and the Owner may refer the matter to a Specialist for determination in accordance with Clause 18 and the following shall apply:
 - 2.2.1. the Specialist shall be appointed in accordance with Clause 18;
 - 2.2.2. the Specialist shall carry out a review of the Viability Review and/or proposed Commuted Sum and issue a decision confirming whether he agrees with the conclusions therein (including as to whether the Development may viably deliver the Affordable Dwellings) and if he does not so agree he shall set out his conclusions on such matters;

- 2.2.3. the Specialist shall carry out his review in accordance with the procedure in Clause 18; and
- 2.2.4. for the purposes of the further provisions of this Paragraph the Specialist's decision shall be deemed to constitute the agreed Viability Review and/or Commuted Sum.
- 2.3. If the Council serves notice on the Owner (in accordance with and within the timescale set out in Paragraph 2.2) confirming that the Viability Review and/or proposed Commuted Sum are not agreed then for a period of fifteen (15) Working Days (the "**Negotiation Period**") following the service of the Council's notice the Owner and the Council shall negotiate and shall use reasonable endeavours to achieve an approved Viability Review and/or Commuted Sum PROVIDED THAT if any such matters are still not approved at the end of the Negotiation Period then the matters in dispute shall be referred to a Specialist for determination pursuant to Clause 18 unless an extension of the Negotiation Period is agreed in writing between the Owner and the Council.
- 2.4. In the event that it is agreed or determined pursuant to the Viability Review that there is no surplus profit, the Owner shall not be required to provide any Commuted Sum arising out of the Viability Review.
- 2.5. In the event it is agreed or determined pursuant to the Viability Review that there is a Commuted Sum to be paid by the Owner to the Council the Owner must provide the Commuted Sum arising out of the Viability Review.
- 2.6. Any Commuted Sum payable pursuant to Paragraph 2.5 shall be paid to the Council within 4 (four) calendar months of the date of service of the notice confirming that the Commuted Sum is Agreed referred to in Paragraph 2.2 or within 4 (four) months of agreement being reached pursuant to clause 2.3. .

3. Worked Examples

- 3.1. A Worked example of how the Commuted Sum would be calculated in a hypothetical circumstance is appended to this Schedule

THE THIRD SCHEDULE
THE COUNCIL'S OBLIGATIONS

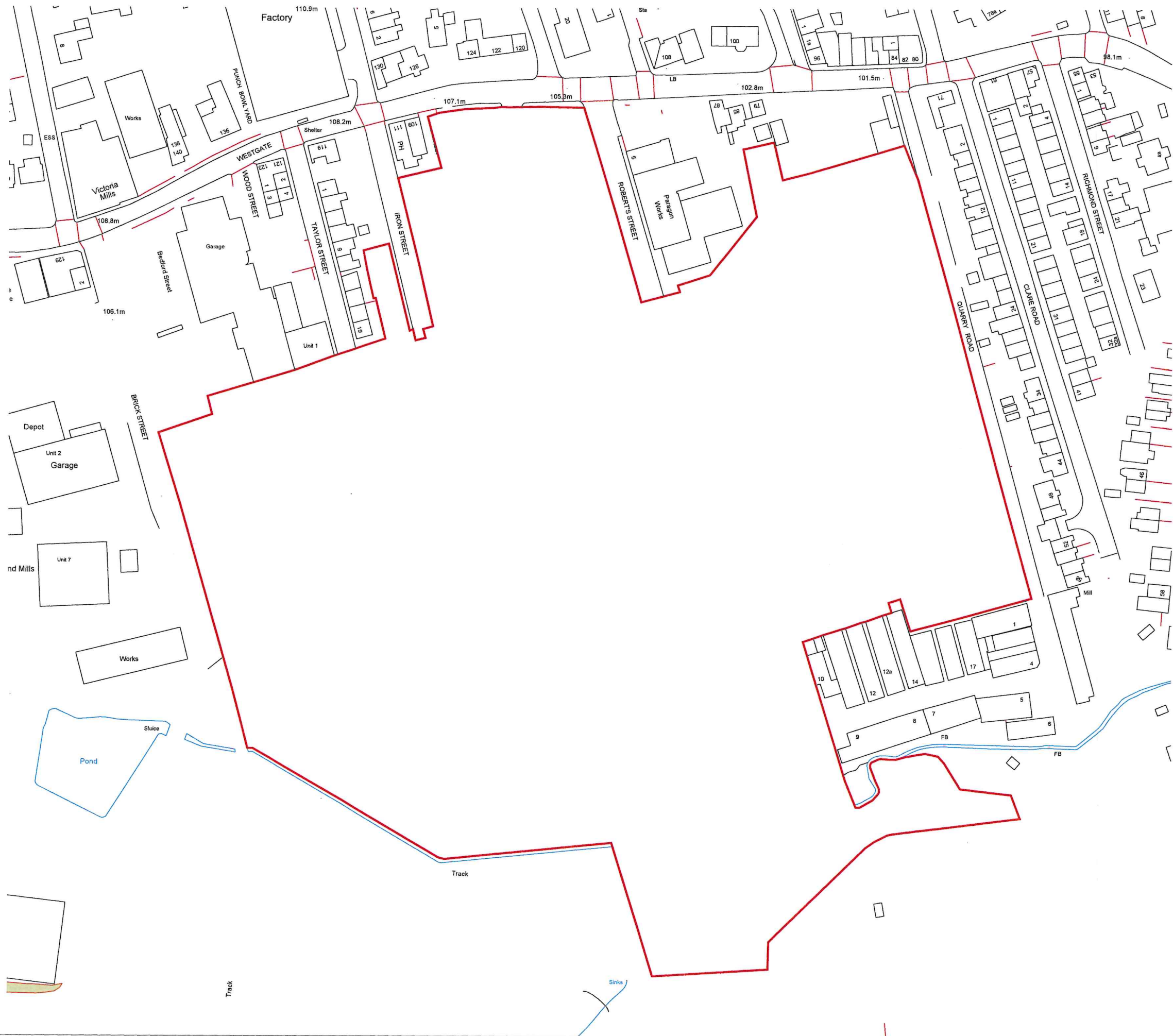
1. COUNCIL'S OBLIGATIONS

- 1.1. The Council hereby covenants to apply (if applicable) the Financial Contribution towards the provision of Affordable Housing in the administrative district of the Council **PROVIDED THAT** if the whole or any part of the sum has not been spent on such purpose within ten years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 1.2. The Council hereby covenants to apply the Contributions received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid **PROVIDED THAT** if the whole or any part of these sums have not been spent on such purposes within ten years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 1.3. The Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Agreement.
- 1.4. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

WESTGATE : CLECKHEATON

All work to be carried out in accordance with the requirements of the Building Regulations, Water Authority and the Construction (Design and Management) Regulations currently in force.
Do not scale from this drawing. Architect to be notified of any discrepancies.
Verify relevant dimensions on site before commencing work or preparing shop drawings. This drawing is copyright.

Rev	Date	Description	By	Checked
-	-	-	-	-



020844

PLAN 1 - LOCATION PLAN



strata homes limited | quay point | lakeside | doncaster | DN4 5PL
t: 01302 308508 www.strata.co.uk

scale: 1:1000 @A2 | drawn by: AW | date: 12.05.2021

Project: WESTGATE, CLECKHEATON BD19 5HT

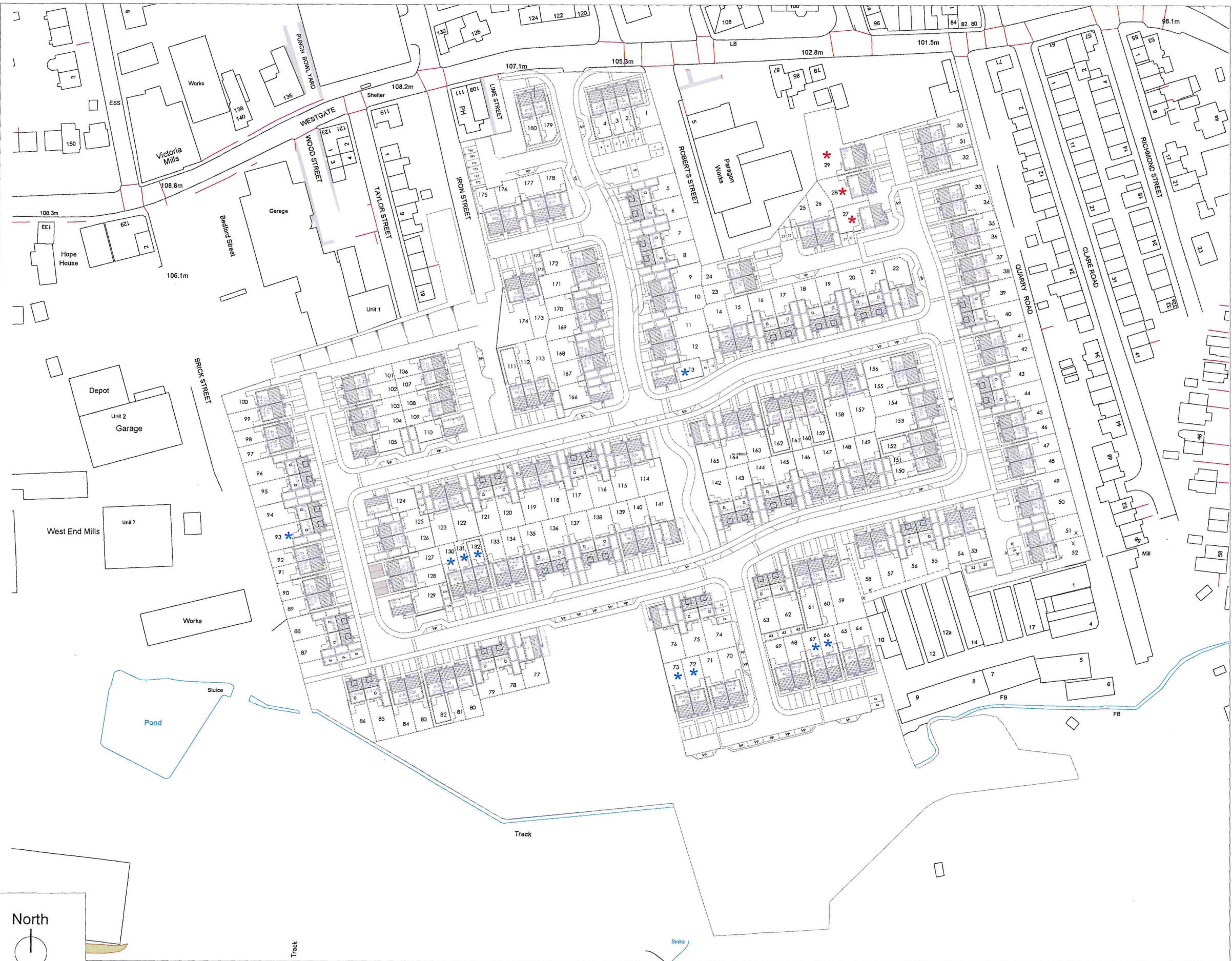
Drawing:

Planning Ref:	N/A
Drawing Number:	18-CL2-SEGB-WE-LP-01
Revision:	-

WESTGATE : CLECKHEATON

All work to be carried out in accordance with the requirements of the Building Regulations, Water Authority and the Construction (Design and Management) Regulations currently in force.
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Rev	Date	Description	By	Checked
A				



PLAN 2 - AFFORDABLE HOUSING

- * 9 FIRST TIME HOMES
- * 3 AFFORDABLE TO RENT



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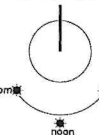
scale: 1:500@A0 | drawn by: AW | date: 27.03.2023

Project: WESTGATE, CLECKHEATON BD19 5HT

Drawing: AFFORDABLE HOUSING PLAN

Planning Ref:	N/A
Drawing Number:	18-CL2-SEGB-WE-AHP-01
Revision:	C

North

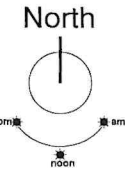




WESTGATE : CLECKHEATON | SECTION 106 BECK LOCATION PLAN

All work to be carried out in accordance with the requirements of the Building Regulations, Water Authority and the Construction (Design and Management) Regulations currently in force.
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Verify relevant dimensions on site before commencing work or preparing shop drawings. This drawing is copyright.

Rev	Date	Description	By	Checked
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PLAN 4
EXISTING BECK LOCATION



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t: 01302 308508 www.strata.co.uk

scale: 1:500@A0 | drawn by: SS | date: 19.06.23

Project: WESTGATE, CLECKHEATON BD19 5HT

Drawing: SECTION 106 BECK LOCATION PLAN

Planning Ref:	N/A
Drawing Number:	BY00099_PL001
Revision:	

Westgate Overage

	Total Sq Ft	173,402	
	Base Sales Value £/sqft	£245	
F	GDV baseline	£42,483,490	
	Build cost baseline	£27,950,973	
	Build cost baseline £ / sqft	£161	
A	Base Build Cost	£ 27,950,973	
B	Legal Completion BCIS Index	100 (example)	
C	Scheme Completion BCIS Index	110 (example)	
D	Build Cost Inflation % = (C-B)/B	10%	
E	Build Cost Infation Value (£) = A x D	£ 2,795,097	
G	Final GDV	£ 46,731,839	(have assumed 10% increase for worked example)

Overage Calculation

Final GDV - (Base Line GDV + BCIS)	
(G - (F + E))	£ 1,453,252

0208

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:-)



Director - Legal, Governance
& Monitoring /Authorised Signatory

EXECUTED AS A DEED by)
STRATA HOMES LIMITED)
acting by a Director in the presence of:)

Director

DATED _____ 2023

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

STRATA HOMES LIMITED

DEED

Under Section 106 of the Town & Country Planning Act 1990
relating to at Land off Westgate, Cleckheaton, BD19 5DR

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