Dated 20th September 2024

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

KENNETH SCOTT HALL

And

TOGETHER COMMERCIAL FINANCE LIMITED

Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

Land at Lindley Moor Road, Huddersfield

Application Ref: 2022/91477

ward hadaway

Contents

Clause		Page
1.	DEFINITIONS AND INTERPRETATION	2
2.	STATUTORY BASIS	8
3.	CONDITIONS PRECEDENT	8
4.	COVENANTS & DECLARATIONS	8
5.	EXCLUSIONS & RELEASE	9
6.	REGISTRATION	9
7.	NON-FETTER & WAIVER	9
8.	VAT	10
9.	SEVERABILITY	10
10.	CHANGE OF OWNERSHIP	10
11.	DISPUTES	10
12.	FUTURE PERMISSIONS	12
13.	DUTY TO ACT REASONABLY	12
14.	INDEXATION	12
15.	INTEREST ON LATE PAYMENTS	12
16.	THIRD PARTY RIGHTS	13
17.	NOTICES	13
18.	COSTS	13
19.	JURISDICTION	13
Schedule 1 – Plans		14
Schedule 2 – Ecological Enhancement Land		15
Schedule 3 – Financial Contributions		17
Schedule 4 – Travel Plan		18
Schedule 5 – Sustainable Drainage Systems		19
Schedule 6 – Employment and Skills		21
Schedule 7 – Council's Covenants (General)		23

THIS DEED is made 20th September 2024

BETWEEN

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

(2) **KENNETH SCOTT HALL** of Lower Halsted Farm, Halsted Lane, Thurstonland, Huddersfield HD4 6XT (**the Owner**); and

(3) **TOGETHER COMMERCIAL FINANCE LIMITED** (CRN: 2058813) of Lake View, Lakeside, Cheadle SK8 3GW (**the Chargee).**

BACKGROUND

(A) For the purposes 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 in this Deed are enforceable.

(B) The Owner is the registered freehold proprietor of the Site which is registered at HM Land Registry under Title Number WYK283229.

(C) The Chargee is the beneficiary of a registered charge over the Site dated 25 October 2023.

(D) The Owner has submitted the Application to the Council seeking planning permission for the Development.

(E) The Council's Strategic Planning Committee resolved on 20 June 2024 to grant the Planning Permission subject to the prior completion of this Deed.

(F) 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.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

1.1. In this Deed the following expressions have the following meanings:

1990 Act	the Town and Country Planning Act 1990
Application	the hybrid application for: (i) detailed planning permission for the erection of an industrial unit for B2/B8 use, with ancillary office space and associated access, parking, groundworks and landscaping; and (ii) outline planning permission for mixed use development Use Class E(b), B2 and B8 with ancillary office space and associated works;

	which was validated by the Council on 9 May 2022 under reference number 2022/91477.
Biodiversity Net Gain Contribution	a sum of £9,200.00 (nine thousand two hundred pounds) to be paid by the Owner to the Council as a contribution towards securing necessary off-site biodiversity improvements required as a result of the Development.
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.
Construction Phase	the period between the Commencement of Development of a Phase and the Practical Completion of the final Unit comprised in the Development of that Phase.
Construction Phase Employment, Skills and Social Value Plan	a scheme detailing the means by which the construction of the Development within a Phase will deliver the principles and objectives of the Framework Employment, Skills and Social Value Strategy (Construction) (or any amended plan submitted to and approved by the Council from time to time).
Contribution	any one of the financial contributions required (or which may be required) to be paid by the Owner to the Council pursuant to a Schedule to this Deed.
Default Interest Rate	4% per annum above the base rate from time to time of the Bank of England.
Development	the development of the Site as described in the Application.
Ecological Enhancement Land	on-site ecological enhancement for the purposes of improving biodiversity to be provided as part of each Phase of the Development in accordance

	with the conditions attached to the Planning Permission.
Ecological Enhancement Land Scheme	a scheme identifying the detailed arrangements for the design, management and maintenance of the Ecological Enhancement Land to be approved in accordance with paragraph 1 of Schedule 2.
Expert	a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
Framework Employment, Skills and Social Value Strategy (Construction)	a high level strategy relating to the construction of the Development which shall set out the principles and objectives to be included in each Construction Phase Employment, Skills and Social Value Plan in order to demonstrate the measures by which each Phase shall contribute towards the objectives of Local Plan Policy LP9 in relation to employment, skills and social value and which may include the following (or other measures at the Owner's discretion): (a) the provision of training, work placements and apprenticeships; (b) engagement protocols with the Council and Jobcentre Plus regarding recruitment and targeted recruitment towards specific groups; and (c) education initiatives which may include partnerships with local colleges; and which may be amended from time to time by agreement between the Owner and the Council;
Framework Employment, Skills and Social Value Strategy (Occupation)	a high level strategy relating to the occupation of the Units which shall set out the details of engagement with the Council by Occupiers of Units in order to demonstrate the measures by which those Occupiers shall contribute towards achieving the objectives of the Local Plan Policy LP9 in relation to employment, skills and social value which may include the following (or other measures at the Owner's discretion): (a) liaison with the Council regarding the Council's programmes for the provision of training, work placements and apprenticeships;

(b) engagement with the Council and Jobcentre Plus regarding recruitment and targeted recruitment towards specific groups; and

(c) liaison with the Council regarding the Council's programmes for education initiatives which may include partnerships with local colleges;

Index the Building Costs All-In Tender Price Index;

Index Linked increased in accordance with the following formula:

Amount payable = the figure specified in this Deed x (A/B) where:

A = the figure for the Index that applied immediately preceding the date the payment is due; and

B = the figure for the Index that applied when that index was last published prior to the date of this Deed (or prior to the date of calculation where this Deed provides for a figure to be calculated at a later point in time).

Management Company a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes carrying out future maintenance of the Ecological Enhancement Land and:

(a) which is incorporated in England and Wales;

(b) which has its registered office in England or Wales; and

whose primary objects permit it to maintain and renew the Ecological Enhancement Land.

Monitoring Report a written report setting out (as relevant) the measures taken by the Owner to comply with the Construction Phase Employment, Skills and Social Value Plan or by the Occupier to comply with the Framework Employment, Skills and Social Value Strategy (Occupation) (as applicable).

Occupy means to occupy for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development;

Plan 1	the plan ~~titled XXX~~ attached to this Deed at Schedule 1 with ~~drawing~~ reference ~~X~~ Ordnance Survey map SE10195E
Planning Obligations	the obligations, conditions and stipulations set out in Schedules 2 – 6 of this Deed.
Planning Permission	the planning permission granted by the Council pursuant to the Application.
Phase	a phase of the Development as indicated on the phasing plan to be approved pursuant to the Planning Permission.
Relevant Employment Unit	an employment unit which comprises 2,000 sqm or more gross floor area of business or industrial floorspace which is or is to be occupied by a single occupier with at least 25 employees based within the relevant unit.
Site	the land against which the obligations contained in this Deed may be enforced and which is shown edged red on Plan 1.
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.
SuDS	means the sustainable urban drainage systems to be provided by the Owner as part of the Development;
SuDS Maintenance and Management Plan	means a detailed management plan or plans setting out measures to be undertaken to ensure SuDS are properly maintained and managed, which shall include the information set out in paragraph 1 of Schedule 5, or such plan as may be agreed in writing with the Council from time to time;
SuDS Management Company	means a limited company or companies registered at Companies House (including a residents management company) which may already be in existence or which may be formed by the Owner for the purposes of the management of the SuDS provisions at the Site in accordance with the provisions in this Schedule and: a) which is incorporated in England and Wales or Scotland;

	b) which has/have its/their registered office in England or Wales; and c) whose primary objects permit it/them to maintain and renew the SuDS. And for the avoidance of doubt it is agreed that there may be more than one management company across the Site as a whole and/or a different management company responsible for the SuDS.
Sustainable Travel Contribution	a sum of £10,000.00 (ten thousand pounds) to be paid by the Owner to the Council as a contribution towards upgrading bus stop 22783.
Traffic Monitoring Contribution	a sum of £24,000.00 (twenty four thousand pounds) to be paid by the Owner to the Council as a contribution towards traffic monitoring at Ainley Top roundabout.
Travel Plan	the travel plan approved by the Council pursuant to the Planning Permission.
Travel Plan (Phase)	a travel plan prepared with respect to a Phase of the Development.
Travel Plan Coordinator	a travel plan co-ordinator to carry out the duties described in the Travel Plan and/or the Travel Plan (Phase) to be appointed by the Owner and approved in writing by the Council.
Travel Plan Monitoring Fee	The sum of £15,000.00 (fifteen thousand pounds) to be paid by the Owner to the Council for the purposes of monitoring the implementation of and compliance with the Travel Plan and making recommendations pursuant to paragraph 4 of Schedule 3.
Unit	a non-residential unit that may be built on the Site as part of the Development.
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 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. References to clauses paragraphs and schedules are references to clauses paragraphs and schedules in this Deed.

1.4. 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.

1.5. Any words denoting natural person shall include legal persons and vice versa.

1.6. The expression "the Owner" shall include its respective successors in title and assigns.

1.7. The expression "the Council" shall include any successor authority to its statutory functions under the 1990 Act.

1.8. Where a covenant, restriction or requirement is expressed to be given by more than one party, or where a party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.

1.9. Clause headings and the contents list shall not affect the construction of this Deed.

1.10. Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression and shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.11. Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

2. STATUTORY BASIS

2.1. This Deed is made pursuant to section 106 of the 1990 Act and binds the Site and as such 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 the 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

3.1. This Deed is conditional upon the grant of the Planning Permission.

3.2. Clause 4 below is further conditional upon the Commencement of Development.

4. COVENANTS & DECLARATIONS

4.1. The Owner covenant with the Council to comply with the Planning Obligations.

4.2. The Council covenants with the Owner to comply with the provisions of Schedule 7.

4.3. The Chargee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by this Deed and accordingly

its security over the Owner's interest in the Site shall take effect subject to this Deed **PROVIDED THAT** the Chargee shall otherwise have no liability under this Deed unless it takes possession of the Site or part thereof and 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 the Owner.

5. **EXCLUSIONS & RELEASE**

5.1. No party shall be bound by the terms of this Deed or be liable for a 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); or

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.

5.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owner), quashed or revoked 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 mortgagee from time to time who shall have the benefit of a charge or mortgage of or on 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 will 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.

6. **REGISTRATION**

6.1. This Deed is a local land charge and may 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 as soon as reasonably practicable upon the written request of the Owner effect the cancellation of all entries made in the Register of Local Site Charges in respect of this Deed.

7. **NON-FETTER & 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. **VAT**

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

9. **SEVERABILITY**

9.1. 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.

10. **CHANGE OF OWNERSHIP**

10.1. The Owner agrees 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 sale or disposal of an individual Unit or to the disposal of part of the Site to a Statutory Undertaker for the purposes of its undertaking.

11. **DISPUTES**

11.1. Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

11.2. Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.

11.3. The following provisions and terms of appointment shall apply to such disputes or disagreements:-

11.3.1. the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 11.2 above, shall be appointed or identified by the following persons:

11.3.1.1. in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

11.3.1.2. in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

11.3.1.3. in the case of any other dispute the President of the Bar Council.

11.3.2. the Expert shall act as an expert and not as an arbitrator

11.3.3. the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:

11.3.3.1. the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;

11.3.3.2. the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;

11.3.3.3. the Expert shall disregard any representations made out of this time; and

11.3.3.4. the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;

11.3.3.5. to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination

11.3.4. the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;

11.3.5. the Expert's decision shall be in writing and shall give reasons for the decision; and

11.3.6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.

11.4. The decision of the Expert shall be binding on the parties.

11.5. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

11.5.1. either party may apply to the relevant body as per Clause 11.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

11.5.2. Clause 11.3 shall apply to the new Expert as if they were the first Expert appointed

12. **FUTURE PERMISSIONS**

12.1. In the event that an application is made pursuant to Section 73 or Section 73B of the 1990 Act for an amendment to the Planning Permission and a planning permission is granted in respect of that application then:

12.1.1. references to "Planning Permission" in this Deed shall thereafter be deemed to include both the Planning Permission and the new planning permission granted pursuant to Section 73 or Section 73B of the Act; and

12.1.2. this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act unless required to do so by the Council

in each case **PROVIDED THAT**:

12.1.3. nothing in this Clause 12 shall fetter the discretion of the Council in determining any application(s) under Section 73 or Section 73B of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and

12.1.4. to the extent that any of the Planning Obligations have been discharged in respect of the original Planning Permission nothing shall require the Owner to comply with that obligation again in respect of a planning permission granted under Section 73 or Section 73B of the 1990 Act.

13. **DUTY TO ACT REASONABLY**

13.1. All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any agreement, consent, approval or expression of satisfaction is due by one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

13.2. The Council covenants that where any details, scheme, strategy or plan is submitted for its approval under this Deed it shall act reasonably and not unreasonably withhold or delay its approval.

14. **INDEXATION**

14.1. All Contributions payable to the Council shall be Index Linked.

14.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

15. **INTEREST ON LATE PAYMENTS**

15.1. Any amount due from the Owner to the Council under the terms of this Deed which is not paid on or prior to the date due shall accrue interest at the Default Interest Rate accruing form the date such payment was due to the date of actual payment.

16. **THIRD PARTY RIGHTS**

16.1. 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.

17. **NOTICES**

17.1. Any notice given to a party under or in connection with this Deed shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

17.2. Any notice shall be deemed to have been received:

17.2.1. if delivered by hand, at the time the notice is left at the proper address; or

17.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

17.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. **COSTS**

18.1. The Council acknowledges that the Owner has prior to the date of this Deed paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed.

19. **JURISDICTION**

19.1. 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.

THE PARTIES HEREBY WITNESS that this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 – Plans

Schedule 2 – Ecological Enhancement Land

1. **Provision of Ecological Enhancement Land**

1.1. Prior to the Commencement of Development of a Phase the Owner shall submit an Ecological Enhancement Land Scheme relevant to that Phase to the Council for approval.

1.2. The Ecological Enhancement Land Scheme shall include details of the following:

1.2.1. The detailed design of the Ecological Enhancement Land to be provided as part of that Phase of the Development;

1.2.2. Planting plans and specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants and proposed numbers / densities;

1.2.3. The proposals for the future management and ownership of the Ecological Enhancement Land on that Phase which for the avoidance of doubt may provide for the Owner to transfer the Ecological Enhancement Land on that Phase to a Management Company for the purposes of its future management and in the event that such a transfer to a Management Company is proposed the Ecological Enhancement Land Scheme shall include:

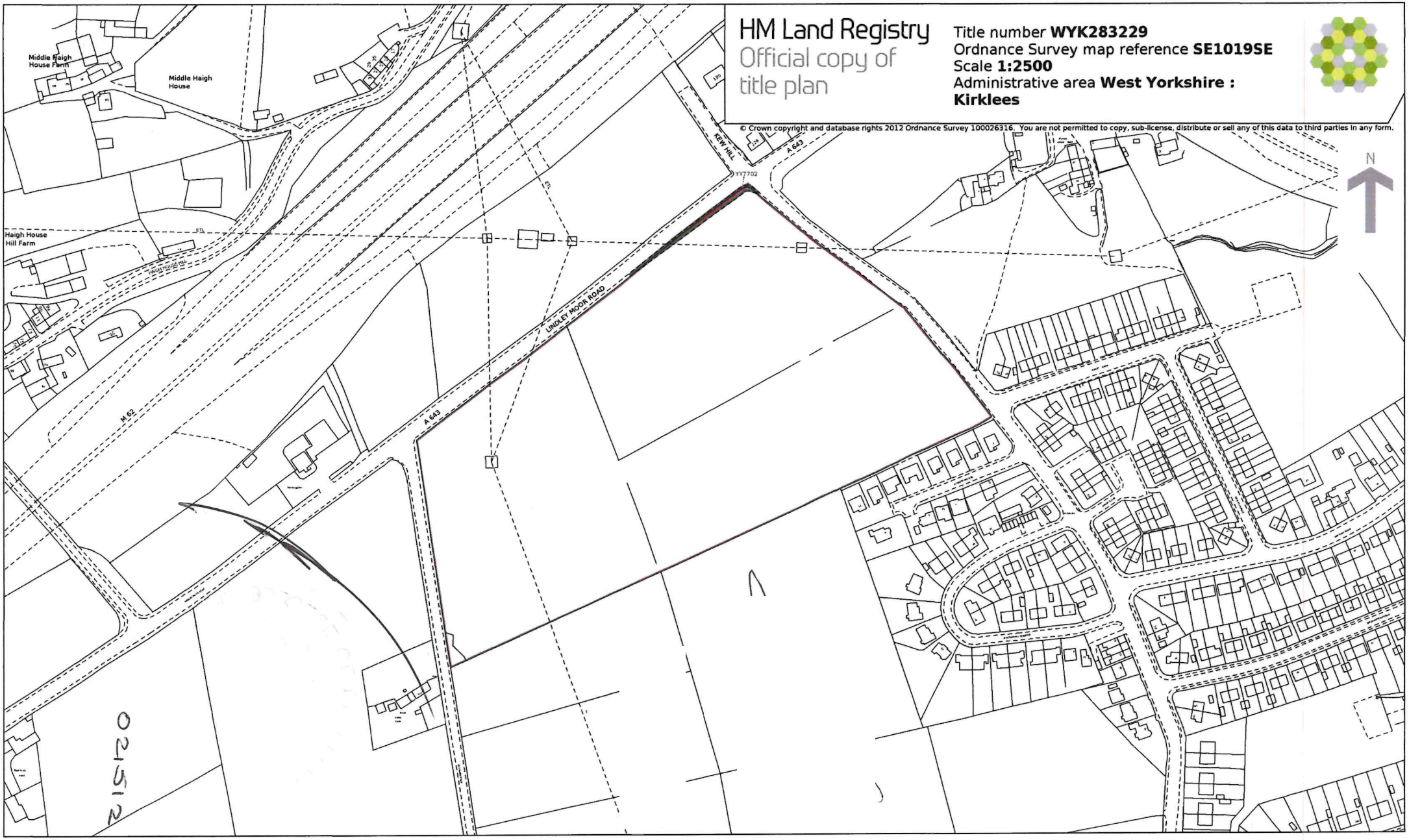
1.2.3.1. Details of the Management Company to whom the Ecological Enhancement Land on that Phase will be transferred upon its completion; and

1.2.3.2. Proposals for the future maintenance of the Ecological Enhancement Land on that Phase by the Management Company including any estimated costs to be levied by the Management Company upon the owners or occupiers of the Units in respect of the maintenance of the said Ecological Enhancement Land on that Phase.

1.3. The Owner shall invite the Council to (within 25 working days of the date of receipt of the Ecological Enhancement Land Scheme from the Owner) notify the Owner in writing of its approval to the Ecological Enhancement Land Scheme proposed by the Owner or provide in writing its proposed amendments to the Ecological Enhancement Land Scheme pursuant to which the Owner acting reasonably shall submit a revised Ecological Enhancement Land Scheme incorporating those amendments as are reasonable and accepted.

1.4. In the event that (after a period of not less than 25 working days following receipt from the Owner of a revised Ecological Enhancement Land Scheme (submitted pursuant to Paragraph 1.3 of Schedule 2) the Council serves further written notice upon the Owner stating that the Council does not approve the revised Ecological Enhancement Land Scheme:

1.4.1. The Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owners of a further revised Ecological Enhancement Land Scheme; and/or



This official copy is incomplete without the preceding notes page.

1.4.2. Either the Owner or the Council may invoke the provisions of Clause 11 of this Deed in respect of the acceptability or otherwise of the relevant revised Ecological Enhancement Land Scheme.

1.5. Upon receipt of the Council's approval to an Ecological Enhancement Land Scheme pursuant to Paragraph 1.4 of Schedule 2 (or upon receipt of expert determination in relation to the Ecological Enhancement Land Scheme if applicable) the Owner shall as part of the carrying out of the Development of a Phase provide the Ecological Enhancement Land in accordance with the approved Ecological Enhancement Land Scheme relevant to that Phase (as may be varied from time to time).

1.6. The Owner covenants that it shall not permit the Occupation of any Phase until it has received the Council's approval of the Ecological Enhancement Land Scheme relevant to that Phase pursuant to Paragraph 1.3 or Paragraph 1.4 of Schedule 2 (or until the receipt of an Expert's determination in relation to the acceptability of the same).

2. **Management and Maintenance of the Ecological Enhancement Land**

2.1. Upon the Ecological Enhancement Land for any Phase being completed to the Council's reasonable satisfaction in accordance with the approved Ecological Enhancement Land Scheme relevant to that Phase the Owner shall either:

2.1.1. Transfer title for the Ecological Enhancement Land on that Phase to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the Council and all further maintenance shall be thereafter carried out by the Management Company **PROVIDED THAT** it shall be a term of the transfer that the Management Company shall:

2.1.1.1. Maintain and manage the Ecological Enhancement Land on that Phase for a period of 30 (thirty) years in accordance with the Ecological Enhancement Land Scheme or any variations that may be agreed in writing from time to time; and

2.1.1.2. Only allow the use of the Ecological Enhancement Land on that Phase for the purpose of biodiversity enhancement and for no other purpose; or

2.1.2. Maintain and manage in perpetuity the Ecological Enhancement Land in accordance with the approved Ecological Enhancement Land Scheme relevant to that Phase (or any variations that may be agreed in writing between the Owner and the Council from time to time) **IN DEFAULT OF WHICH** the Council shall be entitled (upon giving reasonable prior written to the Owner) to carry out any maintenance works reasonably required to the Ecological Enhancement Land and recover the proper and reasonable costs and expenses involved from the Owner.

Schedule 3 – Financial Contributions

1. **Biodiversity Net Gain Contribution**

1.1. The Owner shall not Occupy the Development nor permit the Development to be Occupied until it has paid the Biodiversity Net Gain Contribution to the Council.

2. **Traffic Monitoring Contribution**

2.1. The Owner shall not Occupy nor permit to be Occupied more than 50% of the Units constructed as part of the Development until it has paid 50% of the Traffic Monitoring Contribution to the Council.

2.2. The Owner shall not Occupy nor permit to be Occupied the final Unit constructed as part of the Development until it has paid the remaining 50% of the Traffic Monitoring Contribution to the Council.

3. **Sustainable Travel Contribution**

3.1. The Owner shall not Occupy the Development nor permit the Development to be Occupied until it has paid the Sustainable Travel Contribution to the Council.

4. **Travel Plan Monitoring Fee**

4.1. The Owner shall not Occupy the Development nor permit the Development to be Occupied until it has paid the Travel Plan Monitoring Fee to the Council.

Schedule 4 – Travel Plan

1. **Travel Plan**

1.1. The Owner shall not Commence Development of a Phase until a Travel Plan (Phase) relevant to that Phase has been submitted to the Council and approved by the Council in writing.

1.2. The Owner shall implement and comply with the Travel Plan and relevant Travel Plan (Phase) in accordance with the timescales and time periods contained therein and (without prejudice to any other requirements of the Travel Plan or the relevant Travel Plan (Phase)) shall:

1.2.1. Appoint a nominated Travel Plan Co-ordinator and notify the details of the Travel Plan Co-ordinator to the Council;

1.2.2. Use reasonable endeavours to procure that the Travel Plan Co-ordinator complies with its obligations and duties set out in the Travel Plan and any relevant Travel Plan (Phase) for the duration of its appointment;

1.2.3. Procure that the Travel Plan Co-ordinator remains appointed for the duration of the construction of the Development plus a period of 5 (five) years following Occupation of the final Unit and that it complies with its obligations and duties set out in the Travel Plan and any relevant Travel Plan (Phase) for this period;

1.2.4. To review any relevant Travel Plan (Phase) annually in accordance with the provisions of the approved Travel Plan (Phase) for the duration set out therein and submit the results of each review to the Council; and

1.2.5. Have regard to any reasonable recommendations made by the Council from each annual review and incorporate and implement such recommendations.

Schedule 5 – Sustainable Drainage Systems

1. **Provision of Sustainable Drainage Systems**

1.1. Prior to Commencement of Development of any Phase the Owner shall submit to the Council for approval the SuDS Maintenance and Management Plan in respect of that Phase such SuDS Maintenance and Management Plan to contain:

1.1.1. Details and a programme for the long term management and maintenance works to cover all aspects of the SuDS in that Phase to include:-

1.1.1.1. A detailed maintenance schedule and methodology for all individual SuDS components to maintain the functionality of the SuDS, water storage and treatment;

1.1.1.2. 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;

1.1.1.3. A detailed schedule and methodology for the inspection, maintenance and replacement as required of any other SuDS features;

1.1.1.4. A detailed schedule and methodology for litter and debris removal, landscape and grass cutting, weeding and sediment removal;

1.1.2. Details of the procedure in place for dealing with extreme rainfall events (both prior and post event);

1.1.3. Plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Yorkshire Water sewers and details of whether the SuDS feature is a designated asset under the Floor & Water Management Act 2010.

1.1.4. Details of the maintenance of the shared surface water drainage network, connected to the SuDS, and the shared foul drainage network within the Site as part of the Development prior to their adoption by Yorkshire Water.

1.1.5. Detailed maintenance schedules will be provided which shall 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.

1.1.6. Details of the maintenance regime that will be adopted during the construction phase up until the point that the SuDS is signed off as complete in accordance with the approved design.

1.1.7. Details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of SuDS.

1.2. In the event that the Council considers that it is unable to approve the submitted version of the SuDS Maintenance and Management Plan the Owner shall submit a

revised version to the Council, taking into account any comments that the Council has provided for their approval (such procedure to be repeated as often as is necessary until the Council approves the SuDS Maintenance and Management Plan).

1.3. The Owner covenants to fully comply with the relevant approved SuDS Maintenance and Management Plan from the Commencement of Development of that Phase and at all times thereafter to manage and maintain the SuDS in accordance with the details set out in the relevant SuDS Maintenance and Management Plan unless and until the SuDS have been adopted by a statutory undertaker or transferred to a SuDS Management Company.

2. **Management of Sustainable Drainage Systems**

2.1. The Owner shall not Occupy any Phase of the Development until the SuDS have been adopted by a statutory undertaker or transferred to the SuDS Management Company and thereafter the SuDS Management Company shall maintain and manage those SuDS in accordance with the relevant SuDS Maintenance and Management Plan in perpetuity SAVE THAT this obligation shall not apply where the SuDS in question has been adopted by a statutory undertaker.

2.2. No part of the SuDS shall be transferred or leased to any SuDS Management Company unless the identity of the SuDS Management Company has been approved by the Council (acting reasonably). In seeking approval of any SuDS Management Company the Owners shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, the structure of the SuDS Management Company, voting rights and such other information as the Council (acting reasonably) shall require.

2.3. The Owner shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and email address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of any of the SuDS.

2.4. Unless and until such time as any part of the SuDS are adopted by a statutory undertaker the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the relevant SuDS Maintenance and Management Plan.

2.5. In the event that the Council considers that the requirements of the relevant SuDS Maintenance and Management Plan are not being complied with then the Council may serve a notice on the Owner or the SuDS Management Company as applicable requiring the Owner or the SuDS Management Company (as applicable) to undertake such remedial steps as are specified in the notice.

2.6. The Owner or the SuDS Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 2.5 above within 14 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.

2.7. The approved SuDS Maintenance and Management Plan in respect of a Phase shall only be varied or amended with the prior written approval of the Council.

Schedule 6 – Employment and Skills

1. **Framework Employment, Skills and Social Value Strategies**

1.1. Not less than 3 (three) months prior to the intended date of Commencement of Development of a Phase the Owner shall submit the Framework Employment, Skills and Social Value Strategy (Construction) to the Council.

1.2. The Owner shall not Commence Development on any Phase unless and until the Council has approved in writing the Framework Employment, Skills and Social Value Strategy (Construction).

1.3. Not later than 6 (six) months following the Commencement of Development of a Phase the Owner shall submit the Framework Employment, Skills and Social Value Strategy (Occupation) to the Council.

1.4. The Owner shall take account of any comments received from the Council within 3 months of submission of the Framework Employment, Skills and Social Value Strategy (Occupation) and thereafter shall submit the final version of the Framework Employment, Skills and Social Value Strategy (Occupation) to the Council for approval.

1.5. The Owner may at any time submit a revised Framework Employment, Skills and Social Value Strategy (Occupation) to the Council and paragraph 1.4 shall apply to such submission.

2. **Construction Phase Employment, Skills and Social Value Plans**

2.1. The Owner shall not Commence Development of any Phase unless and until the Council has approved in writing a Construction Phase Employment, Skills and Social Value Plan in relation to that Phase.

2.2. At all times during the Construction Phase of each Phase the Owner shall implement and promote (and where necessary take reasonable steps to procure the implementation and promotion of) the approved Construction Phase Employment, Skills and Social Value Plan (or any revised plan submitted to the Council by the Owner and approved by the Council).

3. **Framework Employment, Skills and Social Value Strategy (Occupation)**

3.1. In the event that any employment floorspace which is first occupied pursuant to the Planning Permission comprises a Relevant Employment Unit, any Occupier of that Relevant Employment Unit for a period of three years from its first Occupation shall use reasonable endeavours to comply with the Framework Employment, Skills and Social Value Strategy (Occupation) so far as relevant to its Occupation of that Unit.

4. **Monitoring**

4.1. During the Construction Phase for each Phase, the Owner (as relevant to each Phase) shall submit a Monitoring Report relating to that Phase during the Construction Phase to the Council every six months.

4.2. Any Occupier of a Relevant Employment Unit shall submit a Monitoring Report on or as soon as reasonably practicable after each anniversary of Occupation of that Unit up until the third anniversary of Occupation of that Unit.

4.3. In the event that a Monitoring Report submitted pursuant to paragraph 4.1 or 4.2 above demonstrates that the principles and objectives of the approved Construction Phase Employment, Skills and Social Value Plan or the approved Framework Employment, Skills and Social Value Strategy (Occupation) (as applicable) are not being achieved the Owner or Occupier (as applicable) shall take into account any reasonable comments, recommendations and/or suggestions which are provided by the Council and the subsequent Monitoring Report shall demonstrate how such comments have been taken into account.

Schedule 7 – Council's Covenants (General)

1. **Receipt of Financial Contributions**

1.1. The Council will issue separate receipts on request for any sum paid to the Council under this Deed.

1.2. The Council will place all sums received under this Deed in an interest bearing account or in separate accounts as the Council shall at its discretion decide.

1.3. The Council will not apply the Contributions or any sums received pursuant to this Deed for any purpose other than as described in this Deed.

2. **Repayment of Financial Contributions**

2.1. Any Contributions received by the Council under this Deed (or part or parts thereof) which are not expended within 10 years of the date of payment shall, upon the written request of the paying party, be returned to that party or its nominee together with any interest accrued.

3. **Performance**

3.1. Upon the reasonable written request of the Owner after any of the Planning Obligations have been performed the Council will issue written confirmation thereof and will thereafter cancel all relevant entries in the register of local land charges.

Executed as a Deed (but not delivered

Until the date of it) by the affixing of

CORPORATE

THE COMMON SEAL of

THE COUNCIL OF THE BOROUGH OF KIRKLEES



02512

Authorised Sealing Officer

(A permanent Officer of the Council)

Signed as a deed

(but not delivered until the date hereof) by

KENNETH SCOTT HALL

.....

In the presence of:

Witness Signature: .....

Name of Witness: LEANNE DYSON

Address: C/O 1 Hungerford Road, Huddersfield HD3 3AL

Executed as a deed

(but not delivered until the date hereof) by

TOGETHER COMMERCIAL FINANCE LIMITED

acting by:

.....

~~Director~~ ATTORNEY BARRY MATTHEWS

.....

~~Director/Secretary~~

WITNESS. CHRIS DAWSON