DATED 26th May **2023**

SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO LAND AT GILLROYD LANE LINTHWAITE HUDDERSFIELD

between

The Council of the Borough of Kirklees

and

S B Homes Ltd

and

The Trustees of the S B Homes Ltd Directors Pension Scheme

CONTENTS

CLAUSE

1. Interpretation 2
2. Statutory provision 3
3. Variations to the Original Agreement 4
4. Covenants to the Council 5
5. Lender's consent 5
6. Local land charge 5
7. Council's costs 5
8. Value added tax 5
9. Third party rights 6
10. Limitation of liability 6
11. Governing law 6

This deed is dated 26th May 2023

Parties

(1) THE COUNCIL OF THE BOROUGH OF KIRKLEES of The Town Hall Huddersfield (**Council**)

(2) S B HOMES LTD incorporated and registered in England and Wales with company number 03377654 whose registered office is at Empire House Lewisham Road Slaithwaite Huddersfield HD7 5AL (**Owner**)

(3) MCDONALD TRUSTEES LIMITED incorporated and registered in England and Wales with company number 04011908 whose registered office is at 1 Lindrick Way Barlborough Chesterfield S43 4XE and STEPHEN GLEN BYRAM and RACHAEL JAYNE BYRAM of Orchard Hey Farm Waters Road Marsden Huddersfield HD7 6NJ (**Lender**) as trustees of the S B Homes Ltd Directors Pension Scheme (**Scheme**)

BACKGROUND

(A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.

(B) The Owner is the freehold owner of the Property subject to a mortgage in favour of the Lender but otherwise free from encumbrances.

(C) The Lender is the registered proprietor of the charge dated 14 September 2020 referred to in entry numbers 2 and 3 of the charges register of title number YY95647 and has agreed to enter into this deed to give its consent to the terms of this deed.

(D) On 21 January 2022, the Council and the Owner entered into the Original Agreement.

(E) Without prejudice to the terms of the other covenants contained in the Original Agreement, the parties have agreed to vary the terms of Original Agreement as set out in this deed.

(F) This agreement is made under section 106A of the TCPA 1990 and is supplemental to the Original Agreement.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 21 January 2022 between the Council and the Owner.

Plan: the plan annexed to the Original Agreement.

1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.

1.3 Clause headings shall not affect the interpretation of this deed.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.

1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any words following the terms "including, include, in particular, for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.11 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. Statutory provision

This deed is made pursuant to the provisions of sections 106 and 106A of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. Variations to the Original Agreement

3.1 With effect from the date of this deed, the plan attached to this deed shall be substituted for the Plan.

3.2 A definition of "Commuted Sum" shall be added to clause 1.1 of the Original Agreement as follows:

"**Commuted Sum:** the sum to be paid by the Owner to the Council pursuant to paragraphs 5.5 to 5.9 inclusive of Schedule 1 in lieu of the provision of all or any of the Affordable Housing Units being an amount equal to 20% of the Market Value of the Affordable Housing Units (or part thereof) as shall be specified in the Commuted Sum Notice.".

3.3 Paragraph 5.1 of Schedule 1 to the Original Agreement shall be amended by substituting on the third line the words "paragraph 4.2" with the words "paragraph 5.2".

3.4 The following paragraphs shall be inserted after paragraph 5.4 of Schedule 1 to the Original Agreement:

5.5 if, having used reasonable endeavours to enter into a contract to sell all or any part of the Affordable Housing Units, the Owner shall serve written notice on the Council together with evidence as reasonably required by the Council of its attempts to contract for the sale of all or such part of the Affordable Housing Units identified in the notice and the Council shall then serve within 10 Working Days a counter notice on the Owner requiring payment of a Commuted Sum (the quantum of which shall be set out in the notice) instead of the Affordable Housing Units (or part thereof) as shall be specified in the notice (**Commuted Sum Notice**).

5.6 Following the payment of the Commuted Sum specified in the Commuted Sum Notice:

(a) the Owner shall be entitled to develop Market Units in place of those Affordable Housing Units as are specified in the Commuted Sum Notice;

(b) the Owner's obligations shall cease in relation to those Affordable Housing Units as are specified in the Commuted Sum Notice; and

(c) the number of Affordable Housing Units required to be built pursuant to paragraph 5.2 of this Schedule shall be adjusted accordingly.

5.7 Following the payment of the Commuted Sum specified in the Commuted Sum Notice and the completion of any Affordable Housing Units that remain to be constructed pursuant to the terms of this deed, the restriction on Occupation contained in paragraph 5.1 above shall no longer apply.

5.8 The Council will apply any Commuted Sum received from the Owner solely for the purpose of the provision of Affordable Housing in the Kirklees District.

5.9 If any Commuted Sum paid to the Council in accordance with this paragraph 5 remains unspent on the expiry of two years from the date of receipt by the Council of the said payment then the Council shall repay such sum together with interest (payable at the Default Interest Rate) to the Owner such repayment to be made within 20 Working Days of the end of the period of two years."

3.5 In all other respects, the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. Covenants to the Council

The Owner and the Lender covenant to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. Lender's consent

The Lender consents to the completion of this deed and acknowledges that from the date of this deed the Property shall be bound by the terms of this deed, as if it had been executed and registered as a land charge before the creation of the Lender's interest in the Property.

6. Local land charge

This deed is a local land charge and shall be registered as such by the Council.

7. Council's costs

The Owner shall pay to the Council on or before the date of completion of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

8. Value added tax

8.1 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax (VAT) properly paid.

8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed, then to the extent that VAT has not been previously charged in respect of that supply, the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

9. Third party rights

A person who is not a party to this deed does not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

10. Limitation of liability

The liability of the McDonald Trustees Limited, Stephen Glen Byram and Rachael Jayne Byram and each of them in respect of each and every liability responsibility or obligation undertaken by the Lender hereunder shall be limited in amount to the realisable value of the assets from time to time of the Scheme and nothing contained in this deed shall entitle the Council to pursue exercise or enforce any right or remedy in respect of any such matter as aforesaid against the personal estate, effects or assets of McDonald Trustees Limited, Stephen Glen Byram and Rachael Jayne Byram or any trustee for the time being of the Scheme or against any assets for the time being vested in the Lender or such trustees as aforesaid which are not assets of the Scheme.

11. Governing law

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) will be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



The Corporate Common Seal of THE COUNCIL OF THE BOROUGH OF KIRKLEES was affixed to this document in the presence of:

Authorised signatory

Executed as a deed by S B HOMES LTD acting by a director in the presence of:

Director

Signature of witness:

Name of witness [BLC CAPITALS];

Address of witness:

Executed as a deed by MCDONALD TRUSTEES LIMITED acting by

a director, and

a director

Signed as a deed by STEPHEN GLEN BYRAM in the presence of:

Signature of witness:

Name of witness [BL(

Signed as a deed by
RACHAEL JAYNE BYRAM in
the presence of:

Signature of witnes

Name of witness [BLOCK
CAPITALS];

Address of witness:

ANNEX - Plan