

DATED 27 November 2023

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

BINKS EXECUTIVE HOMES LIMITED

and

FRESH THINKING CAPITAL LTD

and

FRESH THINKING PROPERTY TWO LTD

and

**ERNEST WARING GODFREY AS EXECUTOR OF THE LATE MICHAEL RODNEY
GODFREY AND THE LATE LISABETH GODFREY**

DEED

Under Section 106 of the Town & Country Planning Act 1990 relating to at Land to the rear of 23 to 43 Moor Lane, Gomersal, Cleckheaton, BD19 4LF

Kirklees Council
Civic Centre 1
High Street
Huddersfield
HD1 2NF

THIS AGREEMENT is made the 27 day of November 2023

B E T W E E N :-

BINKS EXECUTIVE HOMES LIMITED (Company Registration No: 02652361) whose registered office is situate at Cawthorne House, 19 Tivy Dale, Cawthorne, Barnsley, South Yorkshire, S75 4EJ (hereinafter called "the **Owner**") of the first part;

FRESH THINKING CAPITAL LTD (Company Registration No: 10975671) whose registered office is situate at Park House, Park Square West, Leeds, LS1 2PW (hereinafter called "the **Mortgagee**") of the second part;

FRESH THINKING PROPERTY TWO LTD (Company Registration No: 12601366) whose registered office is situate at Park House, Park Square West, Leeds, LS1 2PW (hereinafter called "the **Second Owner**") of the third part;

ERNEST WARING GODFREY of 187 Towngate, Ossett, Wakefield, WF5 0PT as executor of the late Michael Rodney Godfrey and the late Lisabeth Godfrey (the "**Third Owners**") of the fourth part; and

THE COUNCIL OF THE BOROUGH OF KIRKLEES of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire, HD1 2TA (hereinafter called "the **Council**") of the fifth part.

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 the freehold owner of the parts of the Site registered with HM Land Registry under title numbers WYK604092 and WYK489181 to which the planning obligations in this Agreement shall be enforceable.
3. The Mortgagee is the proprietor of a registered charge dated 1 November 2018 on the parts of the Site registered at HM Land Registry under title numbers WYK604092 and WYK489181.
4. The Second Owner is the freehold owner of that part of the Site registered at HM Land Registry under title number WYK325539.

5. The third Owners were the freehold owners of that part of the Site registered at HM Land Registry under title number WYK29804 and WYK344759, and this Agreement is being signed on their behalf by their executor.
6. The Council is, in its position as estate owner, the proprietor of that part of the Site registered with HM Land Registry under title number WYK815876.
7. The Owner has submitted the Application to the Council and the Application was validated by the Council on 11th July 2023.
8. 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.
9. The Council would not have been willing to grant the Planning Permission but for this Agreement because of the need to:
 - (i) (a) secure the establishment of a Management Company for the management and maintenance of the POS and any land not within the private curtilage of the Dwellings:-
 - (b) the management and maintenance of infrastructure including until such time as surface water drainage is formally adopted by a statutory undertaker.
 - (c) the management and maintenance of the internal estate roads prior to any adoption by the Council and the maintenance of the visibility splay for the lifetime of the site
 - (ii) secure payment of the Biodiversity Net Gain Contribution.

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 outline application known by reference number 2023/92079 and validated by the Council on 11 July 2023 for the erection of 10 dwellings, demolition of existing extension at 27 Moor Lane, widening of existing access and realignment of boundary walls on the Site

"Biodiversity Net Gain Contribution" means a contribution of £43,470 (Forty-Three Thousand Four Hundred and Seventy Pounds) to be paid by the Owner to the Council and applied by the Council towards biodiversity improvements within the locality of the Site, the need for which directly arises from the Development.

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

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

"Highways Management Plan" means the management scheme for the future maintenance and management of the internal estate roads and maintenance of the visibility splay land.

"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.

"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 Owner for the purposes carrying out future maintenance of the Open Space Area, estate roads, visibility splay and drainage management in accordance with paragraph 3 of this Agreement and:

1. which is incorporated in England and Wales or Scotland;
2. which has its registered office in England and Wales or Scotland; and
3. whose primary objects permit it to maintain and renew the Open Space Area together with any land not within private curtilage or adopted by other parties including for the avoidance of doubt drainage and internal estate roads.

"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.

"Open Space Area" means the area of Site to be laid out for the provision of on-site open space that is to be identified on a Reserved Matters Approval and any other approved plans.

"Open Space Management Scheme" means a scheme for the future maintenance and management of the Open Space Area to be submitted by the Owner in accordance with the provisions of paragraph 3.3 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).

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

“Plan 2” means the plan so marked and annexed and showing the visibility splay land.

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

“Relevant Matters Application” means an application discharge of reserved matters pursuant to the Planning Permission.

“Reserved Matters Approval” means any approval granted in respect of a Reserved Matters Application.

“Site” means the land to the rear of 23 to 43 Moor Lane, Gomersal, Cleckheaton, BD19 4LF, as shown edged red on Plan 1.

“SuDS Maintenance and Management Plan” means the maintenance and management plan that is to be submitted by the Owner pursuant to condition 8 on the Planning Permission that shall set out the particulars for the maintenance and management of the drainage works in respect of the SuDS up until the time of adoption by Yorkshire Water.

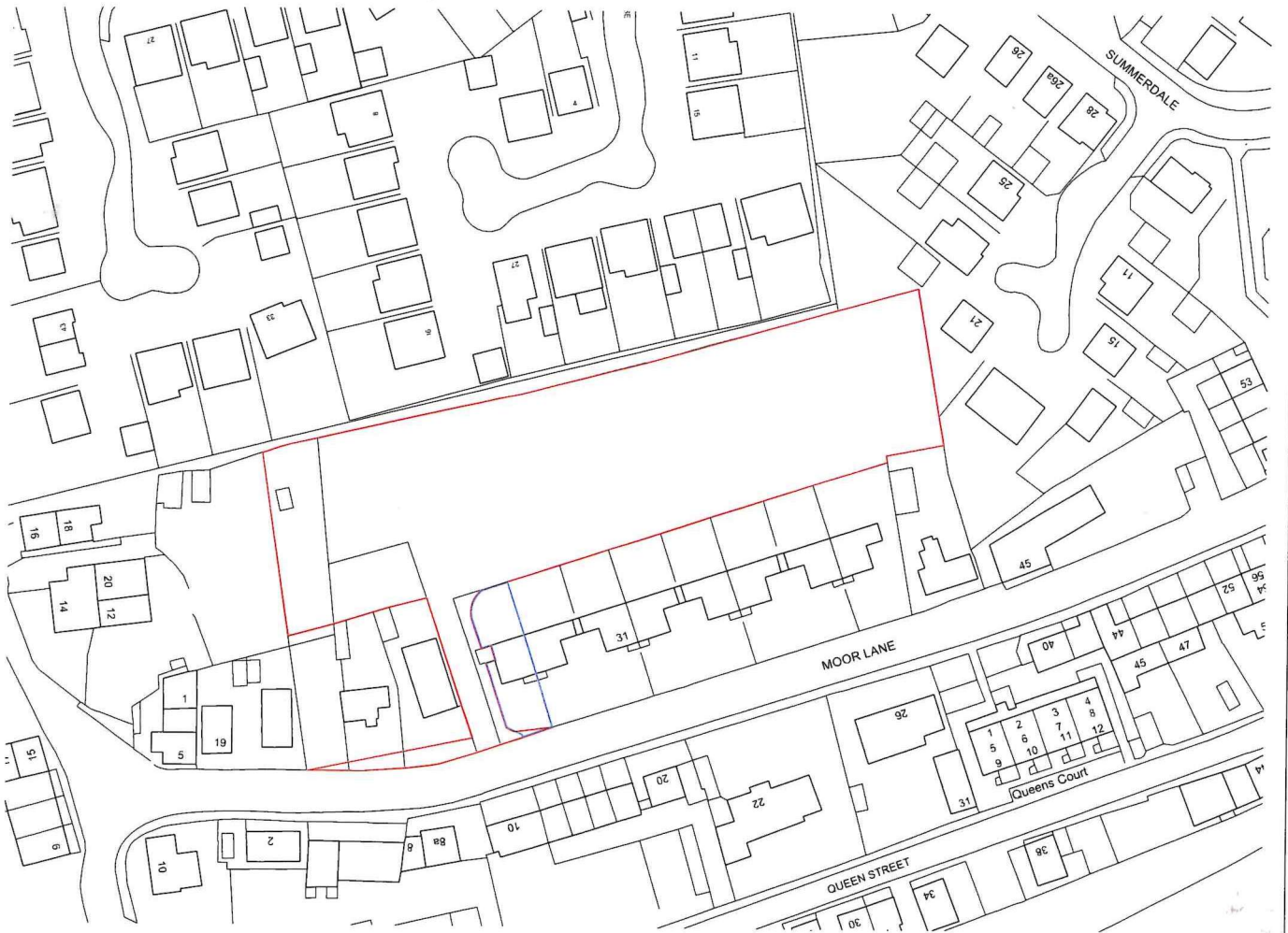
“Working Day” means any day except Saturdays Sundays or bank holidays and reference to **“Working Days”** shall be construed accordingly.

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 Owner, the Mortgagee, the Second Owner and the Third Owners covenant with the Council to observe the restriction and perform the

Plan 1



Drawings based on Ordnance Survey
(Streetwise License No 100047474)



0 10 20 30 40 50 60m
Scale 1:1250



Project	Proposed residential development at land off Moor Lane, Gomersal	
Client	Binks Executive Homes, Blakeridge Mills, Batley	
Dwg Title	(21942)3_Location Plan	A
Scale	1: 1250 @ A4	
Date	June 2022	

obligations contained in this Agreement relating to the visibility splay land.

- 2.3. The Mortgagee acknowledges that the obligations in this Agreement shall bind the Site and agrees that the security of its charge shall take effect subject to this Agreement provided that the Mortgagee shall not be liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site in which case it will be bound by the obligations as if it were a person deriving title from the Owner.
- 2.4. 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.
- 2.5. The expressions "the Council", "the Owner" the Second Owner", "Third Owners" and "the Mortgagee" shall include their successors in title and assigns.
- 2.6. 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.
- 2.7. No person shall be liable for breach of any covenant contained in this Agreement after he shall have parted with his or its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 2.8. This Agreement shall not be binding upon any of the owner/occupiers of the Dwellings.

- 2.9. This Agreement shall come into effect upon the date of Implementation save for clauses 2.11 and 2.13 which shall have immediate effect.
- 2.10. If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Agreement shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date.
- 2.11. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.
- 2.12. This Agreement is a local land charge and shall be registered as such.
- 2.13. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 2.14. The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Agreement which shall not exceed £1500
- 2.15. In the event that an application was made in respect of the development pursuant to Section 73 of the 1990 Act and planning permission is granted (whether or not on appeal) in respect of the Section 73 Application and the Council is satisfied that no revised planning obligations are required as a result of the Section 73 Permission then references to the planning permission in this Deed shall be construed to include the Section 73 permission of this Deed shall apply to and remain in full force in respect of that Section 73 permission without the need for a further agreement to be entered into pursuant to Section 106 or 106a of the 1990 Act.

3. Open Space Area

The Owner covenants with the Council:-

- 3.1. Prior to the Occupation of any Dwellings on the site to submit to the Council for approval a scheme for the laying out of the Open Space Area (such approval not to be unreasonably withheld or delayed).
- 3.2. To provide the Open Space Area in accordance with the Planning Permission, the Reserved Matters Approval and any other approved plans thereto.
- 3.3. Not to allow Occupation of the eighth (8th) Dwelling until the Open Space Area has been provided on the Site and a draft Open Space Management Scheme for the future maintenance and management of the Open Space Area has been submitted to the Council for written approval.
- 3.4. As soon as reasonably practicable after the completion of the Open Space Area specified in paragraph 3.2 above, the Owner shall notify the Council in writing that such works have been completed.
- 3.5. Not later than 1 (one) calendar month following receipt of the relevant notice referred to in paragraph 3.4 above, the Council shall inspect the Open Space Area and if it has been provided in accordance with the Planning Permission, Reserved Matters Approval and approved plans thereto to the Council's reasonable satisfaction it shall notify the Owner in writing thereto and such procedure may be repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof **PROVIDED THAT** it is agreed that in the event that the Council does not inspect the Open Space Area within 1 (one) calendar month following receipt of the relevant notice referred to in paragraph 3.4 of this Agreement it will be deemed the Council has approved the Open Space Area.

- 3.6. Following written confirmation or deemed approval by the Council of the satisfactory completion of the Open Space Area pursuant to paragraph 3.5 above the Owner shall thereafter maintain the Open Space Area in accordance with the approved Open Space Management Scheme until such time as it shall be transferred to a Management Company.
- 3.7. The Owner shall pay the inspection and certification charge of £250 to the Council prior to the Transfer of the POS Area referred to in paragraph 3.6 of this Agreement.
- 3.8. Within 3 (three) months of receipt of written confirmation or deemed approval by the Council of the satisfactory completion of the Open Space Area pursuant to paragraph 3.5 of this Agreement the Owner shall transfer the Open Space Area to the Management Company together with any other land that is not within the private curtilages of Dwellings or adopted by other parties and of infrastructure (until such time as surface water drainage may be formally adopted by a statutory undertaker) **PROVIDED THAT** it is agreed that the transfer shall contain a covenant so as to bind the Open Space Area into whomsoever hands the same may be transferred to maintain the Open Space Area in accordance with the approved Open Space Management Scheme and shall not be permitted to be used for anything other than Open Space (within the meaning of Open Spaces Act 1906) and to allow the public reasonable access thereto.
- 3.9. Responsibility for the maintenance of the Open Space Area shall not at any time be transferred to an alternative management company unless the Council has been given a minimum of 28 Working Days' written notice that such a transfer is to take place and has issued its approval in writing thereto.
- 3.10. When the Open Space Area is transferred to a Management Company in accordance with the provisions of paragraph 3.8 of this Agreement the Owner will procure in either case that access is allowed to the part of the Open Space Area but subject to the following provisions:

3.8.1 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.

3.8.2 Access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the Open Space Area and/or the Play Area or for and during the construction of any building or land abutting it subject to the Council's prior approval.

4. Biodiversity Net Gain Contribution

4.1. Prior to Occupation of the eighth (8th) Dwelling the Owner covenants to pay the Biodiversity Net Gain Contribution to the Council.

5. MAINTENANCE AND MANAGEMENT OF THE DRAINAGE WORKS

The Owner covenants with the Council:

5.1. To fully comply with the approved SuDS Maintenance and Management Plan with effect from the date of Implementation and at all times thereafter to maintain and manage the drainage works in accordance with the details set out in the approved SuDS Maintenance and Management Plan until the date when the drainage works have been adopted by Yorkshire Water or new appointments and variations (NAVs), limited companies appointed by OFWAT, which provide a water and/or sewerage service to customers in an area which was previously provide by the incumbent monopoly provider (Yorkshire Water);

5.2. Until such time as the drainage works are adopted by Yorkshire Water or any appointed NAV (if applicable) the Council may upon reasonable notice enter the Site in order to check and monitor

compliance with the approved SuDS Maintenance and Management Plan.

- 5.3. In the event that the Council (acting reasonably) considers that the requirements of the approved SuDS Maintenance and Management Plan are not being complied with (and unless and until the drainage works have been adopted by Yorkshire Water or appointed NAV) then the Council may serve a notice on the Owner requiring the Owner to undertake such remedial steps as are specified in such notice
- 5.4. The Owner shall comply with any terms of any notice served by the Council pursuant to paragraph 6.4 above within 20 Working Days of the date of service of the same by the Council on the Owner or within such longer period (as in all the circumstances shall be fair and reasonable) which may be agreed by the Council in writing.
- 5.5. The Owner shall ensure that the Council is provided with up-to-date contact details (including the contact name, address, email address and telephone number) of any third-party or person which is engaged or contracted to carry out any maintenance or management works in respect of the drainage works.
- 5.6. Upon receipt by the Council of satisfactory evidence that the drainage works have been adopted by Yorkshire Water or appointed NAV the planning obligations in paragraph 6 of this Deed shall cease to have effect.

6. Internal Estate Roads (not adopted)

- 6.1. The Owner will submit a draft management scheme for the future maintenance and management of the internal estate roads and visibility splay land to the Council for approval prior to commencement of development

7. The Owner's, the Mortgagee's, Second Owner's and Third Owners' Covenant

- 7.1. The Owner, the Mortgagee, Second Owner and Third Owners covenant with the Council that the visibility splay will be maintained for the lifetime of the Site

8. Council's Obligations

- 8.1. 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.
- 8.2. To apply the Biodiversity Net Gain Contribution and any interest accrued towards biodiversity improvements within the locality of the Site.
- 8.3. That in the event the Biodiversity Net Gain Contribution and / or any part or parts thereof are not expended within five (5) years of the date of the final payment then the sum or sums not expended plus interest accrued (if applicable) will be repaid to the person who paid the sum or sums or its nominee.

9. WAIVER

- 9.1. No waiver (whether expressed or implied) by the Council or Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. VAT

10.1. All consideration given in accordance with the terms of this Agreement shall be inclusive of any value added tax properly payable.

11. JURISDICTION

11.1. This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

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:-)



.....
Service Director - Legal, Governance
& Commissioning/Authorised Signatory

020929

EXECUTED AS A DEED by)
BINKS EXECUTIVE HOMES LIMITED)
acting by a Director the presence of:-)

Witness signature:

Witness name:

Witness Address:

Witness Occupation:

**EXECUTED AS A DEED by FRESH)
THINKING CAPITAL LTD acting by a)
Director the presence of:-)**

Witness signature:

Witness name:

Witness Address:

Witness Occupation:

**EXECUTED AS A DEED by FRESH)
THINKING PROPERTY TWO LTD acting by a)
Director the presence of:-)**

Witness signature:

Witness name:

Witness Address:

Witness Occupation:

**EXECUTED AS A DEED by ERNEST)
WARING GODFREY)
acting as personal representative of the late)
Michael Rodney Godfrey and the late)
Lisabeth Godfrey)
in the presence of:-)**

Witness signature:

Witness name:

Witness Address:

Witness Occupation: