

**INVICTA DEVELOPMENTS LIMITED (1)**

**and**

**WESTSHIELD LIMITED (2)**

**and**

**KIRKLEES COUNCIL (3)**

**AGREEMENT PURSUANT TO  
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
relating to  
Land at Land at Dowker Street, Milnsbridge**

**THIS DEED** is made on

**2025**

**BETWEEN:**

- (1) **INVICTA DEVELOPMENTS LIMITED** (Co. Regn. No 06888058) whose registered office is at Elmslae House, Tinwell Road, Stamford, Lincolnshire, England, PE9 2SD (the “**Landowner**”)
- (2) **WESTSHIELD LIMITED** (Co. Regn. No. 01317158) whose registered office is at 52 Chorley New Road, Bolton, United Kingdom, BL1 4AP (the “**Developer**”) and
- (3) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA (“**the Council**”)

**BACKGROUND**

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.
- (B) The Landowner has an interest in the Site as set out in paragraph 2 of Part 1 of Schedule 1
- (C) The Developer has an interest in the Site as set out in paragraph 3 of Part 1 of Schedule 1
- (D) The Application for the Development was submitted to the Council on behalf of the Landowner and the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed, having regard to the provisions of the development plan and the planning considerations affecting the Site.
- (E) The Council resolved to approve the Application and grant Planning Permission subject to the prior completion of this Deed
- (F) The Parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No.948) (to the extent relevant to the obligations in this Agreement) and the advice set out at paragraph 56 of the NPPF and agree that the planning obligations
  - necessary to make the Development acceptable in planning terms
  - directly related to the Development and

- in all other respects are fairly and reasonably related in scale and kind to the Development

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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

<b>Expression</b>	<b>Meaning</b>
<b>“1990 Act”</b>	the Town and Country Planning Act 1990;
<b>“Application”</b>	the application submitted to and validated by the Council on 8 <sup>th</sup> September 2023 for the Development on the Site which was given reference 2023/92490 and where the context requires includes all plans and other documents submitted therewith
<b>“BEMP”</b>	the Bio-diversity Enhancement Management Plan approved by the Council pursuant to a condition attached to the Planning Permission in pursuance of the obligations in Section 90A and Schedule 7A of the 1990 Act
<b>“Commencement Date”</b>	<p>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 (whether or not the carrying out of that material operation constitutes a lawful beginning of the Development) but excluding any operations undertaken in connection with or associated with</p> <ul style="list-style-type: none"> <li>• demolition,</li> <li>• site clearance,</li> <li>• archaeological investigations,</li> <li>• ecology survey or works,</li> <li>• investigations for the purpose of assessing ground conditions and any resultant remediation works,</li> <li>• environmental investigation,</li> <li>• site and soil surveys,</li> <li>• erection of a contractor's work compound,</li> <li>• erection of a site office,</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>• erection of fencing to the site boundary; and/or</li> <li>• the temporary display of site notices or advertisements</li> </ul> <p>and <b>Commence Development</b> and <b>Commencement of Development</b> shall be construed accordingly.;</p>
<b>“Development”</b>	the erection of of 35 dwellings with associated access and landscaping (within a Conservation Area) as described in the Application;
<b>Due Date</b>	the latest date that any sum to be paid in accordance with this Agreement is to be paid
<b>Dwelling</b>	any dwelling to be constructed as part of the Development and where the context requires includes the curtilage and all land occupied with the Dwelling and ‘Dwellings’ shall be construed accordingly
<b>Highway Improvement Contribution</b>	the sum of £10,000-00 (TEN THOUSAND POUNDS ONLY)
<b>“Index”</b>	the BCIS All-In Tender Price Index provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used;
<b>“Index Linked”</b>	<p>increased in accordance with the following formula:</p> <p><b>Amount payable</b> = the figure specified in this Deed x (A/B)</p> <p>where:</p> <p><b>A</b> = the figure for the Index that applied immediately preceding the Due Date or the date paid if earlier; and</p> <p><b>B</b> = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission (or prior to the date of calculation where this Deed provides for a figure to be calculated at a different point in time).</p>

<b>Expression</b>	<b>Meaning</b>
<b>“Interest”</b>	interest at the rate of 4% (four per cent) per annum above the base lending rate of Barclays Bank plc;
<b>“Managed Areas”</b>	those parts of the Site identified in the Managed Areas Scheme, including (without limitation) private parking areas green space intended as amenity areas for residents of the Development and the public any infrastructure forming part of the Development (for the avoidance of doubt excluding land used for SuDS) until such time as its ownership is transferred to the Council or a statutory undertaker or its management and maintenance is otherwise assumed by the Council or any other public body;
<b>Managed Areas Inspection Fee</b>	the sum of £250-00 (TWO HUNDRED AND FIFTY POUNDS ONLY) to be paid by the Landowner to the Council as a contribution towards the costs involved in inspecting the Managed Areas.
<b>Managed Areas Scheme</b>	the scheme for the future maintenance and management of the Managed Areas approved by the Council (together with any variation of such scheme agreed in writing from time to time by the Council) in accordance with paragraph 1.2 or 1.3 of Part 1 of Schedule 2 of this Deed
<b>Management Company</b>	except where a Registered Proprietor becomes the owner of the entire site a limited company or companies at Companies House (including a residents management company) which may already be in existence or which may be formed by the Landowner for the purposes of the management of the Development and/or the Managed Areas and/or SuDS serving the Development in accordance with the provisions of the Part 1 and Part 2 of Schedule 2 of this Deed and: <ul style="list-style-type: none"> <li>(a) which is/are incorporated in England and Wales or Scotland; and</li> <li>(b) which has/have its/their registered office in England, Wales, or Scotland; and</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	whose primary objects permit it/them to maintain and renew the Managed Areas and/or SuDS;
<b>Occupation</b>	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 and 'Occupied' and like expressions shall be construed accordingly
<b>"Parties"</b>	the Council the Landowner and the Developer and <b>"Party"</b> shall mean any one of them;
<b>"Planning Permission"</b>	the full planning permission which is proposed to be granted conditionally pursuant to the Application for the Development;
<b>"Registered Provider"</b>	a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England under Chapter 3 of that Act.
<b>"Site"</b>	the land described and detailed in Part 1 of Schedule 1;
<b>"Expert"</b>	the person appointed pursuant to Clause 10.2.1;
<b>"Working Day"</b>	any day other than a Saturday or Sunday or a public holiday in England and Wales.

1.2 In this Deed:

- 1.2.1 the clause and paragraph and Schedule headings do not affect their interpretation;
- 1.2.2 words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.3 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.4 references to any statute or statutory provision include references to:

- 1.2.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
- 1.2.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.5 references to the Site include any part of it and references to the Development include any part of it;
- 1.2.6 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;
- 1.2.7 any covenant on any Party not to do any act or thing includes a covenant not to permit or allow or cause or suffer or procure the doing of that act or thing;
- 1.2.8 The word ‘person’ or ‘persons’ shall be construed to include any natural person and any other legally constituted company corporation or other entity .

## **2. EFFECT OF THIS DEED**

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of section 106 of the 1990 Act, the covenants restrictions and obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council against the Landowner and the Developer and all those obtaining title to the Site or any part thereof through or under either or both of them.
- 2.2 The covenants restrictions and obligations in this Deed are also entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.3 The Parties agree that the planning obligations in this Deed are compliant with regulation 122 of the Community Infrastructure Levy Regulations 2010 in its form in force as at the date of this Deed and section 106 of the 1990 Act.
- 2.4 The Parties agree that if any application arising from the Planning Permission is made

2.4.1 pursuant to Section 73 or Section 73B of the 1990 Act (the “**Section 73 Application**”) and a planning permission is granted pursuant to the Section 73 Application (the “**Section 73 Permission**”), or

2.4.2 pursuant Section 96A of the Act to change the Planning Permission which is granted pursuant thereto

then this Deed shall apply mutatis mutandis to the development permitted by the Section 73 Permission (the “**Section 73 Development**”) or as changed pursuant an approval under Section 96a and shall continue to serve to control the Development of the Site as set out in this Deed and all references to the ‘*Application*’, ‘*Planning Permission*’ and the ‘*Development*’ in this Deed shall be construed to include the Section 73 Application, the Section 73 Permission and the Section 73 Development as well as any change approved pursuant to Section 96A or the Act.

2.5 For the purposes of clause 2.4 any Section 73 Application relating to either the Planning Permission or any subsequent Section 73 Permission is construed to be “arising from the Planning Permission”.

2.6 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 in relation to the Site or otherwise.

2.7 Where two or more people form a party to this Deed, then all of that party’s obligations in this Deed can be enforced against both or all of the persons jointly and against both or all of the persons individually and where more than one party undertakes or is required to comply with an obligation in this Deed then such obligation can be enforced against both or all parties jointly and against both or all parties individually.

2.8 If any provision in this Deed is in whole or in part held to any extent to be illegal, invalid or unenforceable it shall be severed from this Deed to the extent required but the legality, validity and enforceability of the remainder of the Deed is unaffected and in the event of any such severance the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so severed.

2.9 Nothing in this Deed shall prevent development under any other permission other than the Planning Permission or a subsequent Section 73 Permission.

- 2.10 Nothing in this Deed constitutes a grant of planning permission or an obligation to grant planning permission and nothing in this Deed grants any other approval, consent or permission required from the Council in the exercise of any other statutory function.
- 2.11 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date.
- 2.12 No provisions of this Deed will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the Parties to this Deed and their successors in title.
- 2.13 The terms of this Deed shall not be enforced against a Statutory Undertaker who has acquired an interest in any part of the Site for the sole purposes of exercising its statutory functions.
- 2.14 Save for 4 of Schedule 2 the terms of this Deed shall not be enforced against any individual owner lessee tenant or occupier of any Dwelling.

### **3. LEGAL EFFECT**

- 3.1 This Deed has immediate effect.

### **4. OBLIGATIONS OF THE PARTIES**

- 4.1 The Landowner agrees with the Council to comply with the obligations set out in Schedule 2.
- 4.2 The Landowner warrants that no other person other than the Developer has any legal or equitable interest in the the Site and that the Site is free from encumbrances (other than those listed in Part 1 of Schedule 1).
- 4.3 Subject to clause 12 (No Waiver) where any notice, consent, approval, authorisation, agreement or other similar affirmation is required from the Council under the terms of the Deed, the Council having regard to its duties as local planning authority will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
- 4.4 This Deed will be registered as a local land charge by the Council.

## **5. TERMINATION OF THIS DEED**

5.1 This Deed will forthwith determine and cease to have effect if:

5.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable; or

5.1.2 the Planning Permission expires before the Commencement Date without having been implemented.

## **6. INDEXATION OF CONTRIBUTIONS**

All financial contributions payable to the Council pursuant to this Deed shall be Index Linked.

## **7. INTEREST**

Any amount due from the Landowner to the Council under the terms of this Deed which is not paid on or prior to the Due Date shall accrue interest at the Default Interest Rate accruing from the Due Date to the date of actual payment.

## **8. NOTICES**

8.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication to be served on the Landowner and or the Developer is to be sent to the address of the relevant Party set out at the beginning of this Deed or to such other address as one Party may notify in writing to the others at any time as its address for service.

8.3 Any notice, demand or any other communication to be served on the Council is to be sent to the Head of Planning and Development at PO Box 1720, Huddersfield, HD1 9EL or such other address as the Council may notify to the other Parties quoting the Planning Permission reference and where appropriate the clause, schedule or paragraph to which it pertains.

8.4 Subject to clause 8.5 unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery;

8.4.2 if sent by pre-paid or first class post, on the second Working Day after posting;  
or

8.4.3 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

8.6 Notwithstanding clauses 8.1 to 8.5, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## 9. **COSTS OF THIS DEED**

Prior to or upon completion of this Deed the Developer is to pay to the Council its reasonable and proper legal costs together with all disbursements which are incurred in connection with the preparation, negotiation completion and registration of this Deed.

## 10. **DETERMINATION OF DISPUTES**

10.1 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.

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

10.2.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 10.1 above, shall be appointed or identified on application by any party by the following persons:

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

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

10.2.1.3 in the case of any other dispute the President of the Law Society.

- 10.2.2 the Expert shall act as an expert and not as an arbitrator
- 10.2.3 the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:
  - 10.2.3.1 if any party to the dispute wishes to make written submissions to the Expert such submissions shall be sent to the Expert and all other parties to the dispute within 20 Working Days of receipt of the Expert's Notice;
  - 10.2.3.2 the parties shall have 20 Working Days from the receipt of original written submissions (or such extended period as the Expert shall allow) to respond;
  - 10.2.3.3 the Expert shall disregard any representations made out of this time;
  - 10.2.3.4 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; and
  - 10.2.3.5 to the extent not provided for by this clause the Expert may in his 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
- 10.2.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written submissions;
- 10.2.5 the Expert's decision shall be in writing and shall give reasons for the decision; and
- 10.2.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 10.3 The decision of the Expert shall be binding on the parties save in the case of manifest error and/or fraud.
- 10.4 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:
  - 10.4.1 any party may apply to the relevant body as per Clause 10.2.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

10.4.2 Clause 10.2 shall apply to the new Expert as if they were the first Expert appointed.

10.5 Notwithstanding the above any dispute between the parties as to the meaning or interpretation of any provision of this Deed or as regards the enforceability of any provision shall only be determined by a Court

## 11. **DEVELOPER'S CONSENT**

11.1 The Developer consents to the Landowner entering into this Deed.

11.2 The Developer confirms and acknowledges that its interest in the Site shall be bound by the obligations contained in this Deed and shall take effect subject to this Deed as if the Deed had been executed and registered as a land charge prior to the creation of the Developer's interests in the Site

11.3 With the exception of clause 9 which is binding on and enforceable against the Developer immediately upon completion of this Deed no obligations in this Deed should be enforced against the Developer, unless and until the Developer has taken possession of the Site or part thereof to which such obligation relates

11.4 No obligations in this Deed should be enforced against any Chargee, unless and until it has taken possession of the Site or part thereof to which such obligation relates.

## 12. **NO WAIVER**

12.1 No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy and in any event no waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the obligations in this Deed shall constitute a continuing waiver.

12.2 No such failure, delay or waiver shall prevent the Council from enforcing any of the obligations that are not complied with and no single or partial exercise of any right or remedy provided under this Deed or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 13. **JURISDICTION**

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

14. **EXECUTION**

The parties have executed this Deed as a deed and it is delivered on the date set out above.



## **SCHEDULE 1**

### **Part 1 the Site and Title**

#### **1. DESCRIPTION OF SITE**

- 1.1. ALL THAT land situate and known as the former Dowker Works Dowker Street, Milnsbridge, Huddersfield, HD3 4JX as shown edged in red on the Plan

#### **2. LANDOWNERS TITLE**

The Landowner is

- 2.1. the freehold owner of the Site free from encumbrances that would prevent the Landowner entering into this Deed registered at HM Land Registry with Freehold Title Absolute under Title Number WYK650476; and.
- 2.2. the leasehold owner of parts of the Site free from encumbrances that would prevent the Landowner entering into this Deed registered at HM Land Registry with Leasehold Title Absolute under Title Numbers WYK650478 and YK22414.

#### **3. DEVELOPER'S INTEREST**

- 3.1. The Developer has an interest in the site by virtue of an agreement to develop the Site dated 11 April 2025 and made between (1) the Landowner and (2) the Developer.



## Part 2: the Plan

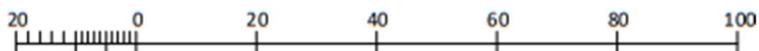


# Location Plan

1 : 1250



— Site Edged Red



Rev	Date	Int	Description
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**btp**  
ARCHITECTS

RIBA  
Chartered Practice

CLIENT: JOB NO: SCALE@ A4:

Westshield / FCHO 4016 1 : 1250

PROJECT:  
Dowker Street, Milnsbridge

DESCRIPTION: DRAWN BY: CHECKED BY: DATE: STATUS CODE: DRAWING NO: Rev:

Location Plan ED VJS 11.08.23 S0 100

PURPOSE OF ISSUE: FILE IDENTIFIER:

Planning DS-BTP-00-LP-DR-A-4016\_100

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**SCHEDULE 2**  
**LANDOWNER'S OBLIGATIONS**

**Part 1 Managed areas**

The Landowner and Developer jointly and severally covenant with the Council as follows:

**1. MANAGED AREAS SCHEME**

- 1.1. The Development shall not be Commence until the Landowner has submitted a draft Managed Areas Scheme to the Council for approval that includes:
  - 1.1.1. a timescale for the carrying out and completion of the works to create the Managed Areas
  - 1.1.2. proposal for the ongoing maintenance operations in respect of the Managed Areas, specifically identifying the management objective, task and the timing and frequency of the operation for all the features including any play features and/or street furniture within the Managed Areas;
  - 1.1.3. the identity of the Management Company (which, for the avoidance of doubt can be the Registered Provider who is the owner or is contracted to become the owner of the entire Site) which is to be responsible for the ongoing management and maintenance of the Managed Areas;
  - 1.1.4. the arrangements and timing for the transfer of the responsibility for the management and maintenance of the Managed Areas from the Landowner to the Management Company; and
  - 1.1.5. the funding arrangements for the management and maintenance of the Managed Areas.
- 1.2. The Landowner shall invite the Council to (within 25 Working Days of the date of receipt of the draft Managed Areas Scheme from the Landowner) review the draft Managed Areas Scheme and thereafter notify the Landowner in writing of its approval to the draft Managed Areas Scheme or provide in writing its proposed amendments to the draft Managed Areas Scheme pursuant to which the Landowner shall submit a revised draft Managed Areas Scheme incorporating those amendments as are accepted **PROVIDED THAT** if the Council does not notify the Landowner of its approval or proposed

amendments to the draft Managed Areas Scheme within the 25 working days referred to above it shall be deemed that the Council has approved the draft Managed Areas Scheme submitted by the Landowner.

1.3. In the event that after a period of not less than 25 working days following receipt from the Landowner of a revised draft Managed Areas Scheme (submitted pursuant to Paragraph 1.2 above the Council serves further written notice upon the Landowner stating that the Council does not approve the revised Managed Areas Scheme:

1.3.1. The Landowner may collaboratively seek to agree a timetable with the Council for the resubmission by the Landowners of a further revised draft Managed Areas scheme; and/or

1.3.2. Either the Landowner or the Council may invoke the provisions of clause 10 of this Deed in respect of the acceptability or otherwise of the relevant revised draft Managed Areas scheme.

1.4. The Landowner covenants that it shall not permit the Occupation of more than 9 of the Dwellings until it has received the Council's approval or deemed approval of the Managed Areas Scheme pursuant to Paragraph 1.2 or Paragraph 1.3 of this Schedule (or until the receipt of an Expert's determination in relation to the acceptability of the same).

## **2. MANAGEMENT AND MAINTENANCE OF THE MANAGED AREAS**

2.1. Once the Landowner considers the Managed Areas to have been completed in accordance with the Managed Areas Scheme it shall invite the Council to inspect the Managed Areas and pay to the Council the Managed Areas Inspection Fee.

2.2. The Landowner covenants that it shall not permit the Occupation of more than 19 Dwellings until

2.2.1. the Managed Areas have been constructed in accordance with the Planning Permission

2.2.2. the works of habitat creation and/or enhancement set out in the BEMP are completed; and

2.2.3. the Council has been notified of the completion thereof and has either certified that it is satisfied that those works are complete or has failed to respond to the

invitation referred to in paragraph 2.1 above within 10 (ten) Working Days of having paid the Managed Areas Inspection Fee

PROVIDED THAT if the Council shall notify the Landowner that it is not satisfied with those works and supplies its reasons for that opinion the Landowner shall carry out such further works as may be necessary having regard to the reasons given by the Council and thereafter again notify the Council in accordance with sub-paragraph 2.2.3 above.

- 2.3. Unless ownership of the entire Site has been transferred to a Registered Provider upon the Council notifying the Landowner that it is satisfied that the Managed Areas have been constructed in accordance with the Planning Permission the Landowner shall as soon as practicable but in any event in accordance with the timescales detailed in the approved Managed Areas Scheme transfer title for the Managed Areas to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) and thereafter all further maintenance shall be carried out by the Management Company and the Landowner shall have no further liability to do so
- 2.4. After the transfer to the Management Company, the Management Company shall be obliged to:
  - 2.4.1. maintain and manage in perpetuity the Managed Areas in accordance with the Managed Areas Scheme or any variations that may be agreed in writing from time to time unless or until the Managed Areas or any part thereof are adopted as highway maintainable at public expense or a public body takes on their management and maintenance;
  - 2.4.2. create maintain and manage the works of habitat creation and/or enhancement set out in the BEMP that are located within the Managed Areas for a period of no less than 30 years from the date that the Council certifies that the works of habitat creation and/or enhancement set out in the BEMP are completed pursuant to paragraph 2.2.3 above
  - 2.4.3. permit public access to the Managed Areas on the same terms as those set out in paragraph 2.5 below;
- 2.5. For the avoidance of doubt the Landowner shall manage and maintain the Managed Areas in accordance with the approved Managed Areas Scheme until such time as it may be transferred to a Management Company or any part thereof is adopted as

highway maintainable at public expense or a public body takes on their management and maintenance.

- 2.6. No part of the Managed Areas shall be transferred or leased to any Management Company other than in accordance with an approved Managed Areas Scheme.
- 2.7. Responsibility for the maintenance of the Managed Areas 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, or the Expert has approved it after a referral pursuant to Clause 10
- 2.8. The Landowner shall allow public access to the Managed Areas **SUBJECT ALWAYS** to the following provisions:
  - 2.8.1. Access to the Managed Areas shall be subject to such requirements and regulations as may from time to time be imposed by the Landowner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior approval; and
  - 2.8.2. The Landowner may erect notices on the Managed Areas and access to the Managed Areas may be denied by the Landowner for one day each year in order to prevent public rights of way or common rights coming into being;
  - 2.8.3. The Landowner may close the Managed Areas or any part thereof for reasonable periods by reason of:
    - 2.8.3.1. emergency;
    - 2.8.3.2. cleansing, maintenance and repair;
    - 2.8.3.3. at the direction of the emergency services or other lawful authority; and
    - 2.8.3.4. construction activities whilst the Development is being carried out.

### **3. DEFAULT BY MANAGEMENT COMPANY**

- 3.1. Unless and until such time as any part of the Managed Areas are adopted by the Council or another Statutory Undertaker the Council may upon reasonable notice to any party

then with an interest in the Managed Areas enter the Site in order to check and monitor compliance with the Managed Areas Scheme.

- 3.2. In the event that the Council considers that the requirements of the relevant Managed Areas Scheme are not being complied with then the Council may serve a notice on the Landowner or the Management Company (as applicable) requiring the Landowner or the Management Company (as applicable) to undertake such remedial steps as are specified in the notice.
- 3.3. The Landowner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 3.2 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.
- 3.4. If the Landowner or the Management Company (as appropriate) shall fail to comply with the notice referred to in paragraph 3.2 above the Council may enter the Managed Areas and carry out such works as it considers necessary to ensure compliance with the Managed Areas Scheme and may recover from the Landowner or Management Company (as applicable) the costs incurred in doing so

#### **4. ECOLOGICAL FEATURE MANAGEMENT**

- 4.1. The provisions of this paragraph relate to the Occupation of any Dwelling in which a feature or requirement of the BEMP is required to be created or retained within the curtilage of that Dwelling and is not located or to be created within the Managed Areas.
- 4.2. Once a Dwelling to which this paragraph relates is ready to be Occupied the Landowner shall give notice to the Council and that Dwelling shall not be Occupied until the Council has either certified that it is satisfied that any features in the BEMP have been satisfactorily created or ten (10) Working Days have passed since service of the notice without the Council having responded
- 4.3. If the Council shall refuse to certify that it is satisfied that any such features have been satisfactorily created then the provisions of paragraph 2.2 of this Schedule shall apply in respect of paragraph 4.2 above as they apply in relation to approval of the completion of the Managed Areas
- 4.4. Unless otherwise permitted by the Council the occupier of a Dwelling shall retain and maintain the works of habitat creation and/or enhancement set out in the BEMP for at least 30 years after the relevant Dwelling is first Occupied



## **Part 2 Drainage Management**

The Landowner and the Developer jointly and severally covenant with the Council as follows:

### **1. INTERPRETATION**

1.1. In this Deed unless the context otherwise requires in addition to the definitions in Clause 1.1 in this Part of this Schedule the following words and expressions shall have the meanings respectively assigned to them:-

<b>Expression</b>	<b>Meaning</b>
<b>“Default Notice”</b>	a notice requiring the Default Works specified in the notice to be taken within the time specified therein
<b>“Default Works”</b>	such works as the Council shall reasonably determine to be necessary to remedy any failure to comply with any obligations under this Part of this Second Schedule
<b>“Inspection and Certification Charge”</b>	[the sum of £250-00 (Two hundred and Fifty Pounds Only) towards the administrative cost to the Council in inspecting the SUDS and certifying that they are in accordance with the SuDS Maintenance and Management Plan
<b>Sewers</b>	any pipe drain or other conduit which is maintained by a water or sewerage undertaker for the purpose of managing and disposing of surface water and foul sewage
<b>SUDS</b>	sustainable urban drainage system to be provided as part of the Development comprising all treatment and drainage systems including pipework, swales, reed beds ponds, filter trenches, attenuation tanks and detention basins

<b>Expression</b>	<b>Meaning</b>
<b>SuDS Maintenance and Management Plan</b>	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 2.1 of this Part of this Schedule or such plan as may be agreed in writing with the Council from time to time;
<b>SuDS Management Company</b>	the Management Company set up to maintain the SuDS in accordance with this Part of this Schedule

## **2. PROVISION OF SUSTAINABLE DRAINAGE SYSTEMS**

2.1. The Development shall not Commence until there has been submitted to the Council for approval a draft SuDS Maintenance and Management Plan such SuDS Maintenance and Management Plan to contain the following:

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

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

2.1.1.2. 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;

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

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

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

2.1.3. Plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Sewers and details of whether

the SuDS feature is a designated asset under the Flood & Water Management Act 2010.

- 2.1.4. Details of the maintenance of the shared surface water drainage network, connected to the SuDS, and any shared foul drainage network within the Site as part of the Development prior to their adoption by a water or sewerage undertaker.
  - 2.1.5. Detailed maintenance schedules 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.
  - 2.1.6. Details of the maintenance regime that will be adopted during the construction of the Development up until the point that the Council certifies that the SuDS is complete in accordance with the SuDS Maintenance and Management Plan.
  - 2.1.7. Details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of the SuDS.
- 2.2. Within 25 Working Days of the date of receipt of the draft SuDS Maintenance and Management Plan the Council shall either
- 2.2.1. approve the draft SuDS Maintenance and Management Plan; or
  - 2.2.2. refuse to approve the draft SuDS Maintenance and Management Plan in writing with reasons for doing so
- failing which the draft SuDS Maintenance and Management Plan shall be deemed approved
- 2.3. If the Council refuses to approve the draft SuDS Maintenance and Management Plan a revised draft SuDS Maintenance and Management Plan shall be submitted for approval and if that revised draft SuDS Maintenance and Management Plan is again refused either a further revised draft SuDS Maintenance and Management Plan may be submitted (in which case paragraph 2.2 above shall again apply) or the refusal may be referred to the Expert pursuant to Clause 10.
- 2.4. The Landowner covenants that it shall not permit the Occupation of any of the Dwellings until it has received the Council's approval of the SuDS Maintenance and Management

Plan pursuant to Paragraph 2.2 or 2.3 of this Part of this Schedule (or until the receipt of an Expert's determination in relation to the acceptability of the same).

### **3. MANAGEMENT OF SUSTAINABLE DRAINAGE SYSTEMS**

3.1. Once the Landowner considers the SuDS to have been completed in accordance with the SuDS Maintenance and Management Plan it shall invite the Council to inspect the SuDS and pay to the Council the Inspection and Certification Charge.

3.2. The Landowner shall not permit the Occupation of more than 19 Dwellings until

3.2.1. the SuDS has been constructed in accordance with the Planning Permission and SuDS Maintenance and Management Plan and

3.2.2. the Council has been notified of the completion thereof and has either certified that it is satisfied that the SuDS is complete or has failed to respond to the invitation referred to in paragraph 3.1 above within 10 (ten) Working Days of having paid the Inspection and Certification Charge

PROVIDED THAT if the Council shall notify the Landowner that it is not satisfied with those works and supplies its reasons for that opinion the Landowner shall carry out such further works as may be necessary having regard to the reasons given by the Council and thereafter shall again notify the Council in accordance with paragraph 3.1 above.

3.3. To comply with the approved SuDS Maintenance and Management Plan 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.

3.4. Unless ownership of the entire site has been transferred to a Registered Provider no Dwelling shall be Occupied until the SuDS have been adopted by a water or sewerage undertaker or transferred to the SuDS Management Company and thereafter the SuDS Management Company shall maintain and manage the SuDS in accordance with the SuDS Maintenance and Management Plan in perpetuity or until the SuDS has been adopted by a water or sewerage undertaker.

3.5. No part of the SuDS shall be transferred or leased to any SuDS Management Company until details of

- 3.5.1. the assets of the proposed SuDS Management Company,
- 3.5.2. how the ongoing maintenance and management works will be funded,
- 3.5.3. the structure of the SuDS Management Company, voting rights and such other information as the Council shall require

have been provided to the Council and the Council has approved the appointment of the SuDS Management Company-

- 3.6. The SuDS Maintenance and Management Plan shall only be varied or amended with the prior written approval of the Council
- 3.7. To provide the Council 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.

#### **4. DEFAULT BY SUDS MANAGEMENT COMPANY**

- 4.1. Unless and until such time as any part of the SuDS are adopted by a water or sewerage undertaker the Council may upon reasonable notice to any party then with an interest in the Site enter the Site in order to check and monitor compliance with the relevant SuDS Maintenance and Management Plan.
- 4.2. In the event that the Council considers that the requirements of the relevant SuDS Maintenance and Management Plan are not being complied with the Council may serve a Default Notice on any party then with an interest in the Site requiring the Default Works specified in the notice to be taken within the time specified therein
- 4.3. If the Default Notice is not complied with the Council shall be at liberty to enter the Site to itself carry out the Default Works and the party served with the Default Notice shall on demand pay to the Council the costs incurred by it in securing compliance

### **Part 3 Highway Improvements**

#### **1. THE LANDOWNER COVENANTS**

- 1.1. to pay the Highway Improvements Contribution to the Council; and
- 1.2. not to Commence the Development or suffer or permit the Development to be Commenced until the Highway Improvements Contribution has been paid in full

**2. THE DEVELOPER COVENANTS**

not to Commence the Development until the Highway Improvements Contribution has been paid in full

**SCHEDULE 3**  
**COUNCIL'S COVENANTS**

**1. RECEIPT OF CONTRIBUTIONS**

- 1.1. The Council shall issue separate receipts on request for any payment made to it pursuant to this Deed.
- 1.2. The Council will place all sums received pursuant to this Deed in an interest bearing account (or in separate interest bearing accounts as the Council shall at its discretion decide).
- 1.3. The Council will use
  - 1.3.1. the Highways Improvement Contribution to pay for a Traffic Regulation Order regulating or prohibiting parking in the vicinity of the access into the Site and amending the Traffic Regulation Order providing for a restricted parking bay to the south of that access
  - 1.3.2. any sums received pursuant to paragraph **Error! Reference source not found.** of Part 1 of Schedule 2 or paragraph 4.3 of Part 2 of Schedule 2 to secure compliance with the Managed Areas Scheme or SuDS Maintenance and Management Plan as appropriate
- 1.4. The Council will not apply any sums received pursuant to this Deed for any purpose other than as described in this Deed.
- 1.5. The Council shall on reasonable request by the Landowner provide details of the sums collected and retained, the interest accrued, the sums expended and the purposes for which the sums have been expended **PROVIDED THAT** the Council shall not be obliged to comply with more than one such request within any 12 month period.
- 1.6. The Council shall upon written request repay any Contributions or parts thereof paid to it under this Deed (plus any actual interest accrued) to the person who made the payment if not committed by contract or expended within 10 years from the date of payment.

**2. PERFORMANCE**

- 2.1. The Council shall on reasonable request by the Landowner issue written confirmation that each Planning Obligation has been performed.

2.2. In the event that the Council is satisfied that all of the Planning Obligations have been performed, the Council will thereafter cancel all relevant entries in the register of local land charges.

**IN WITNESS** of the above the parties have executed this Deed as a deed and the same has been delivered by them or on their behalf on the above date.

Executed as a deed by **INVICTA DEVELOPMENTS LIMITED** acting by a director in the presence of

Witness: (Signature) .....  
(Name) .....  
(Address) .....  
.....  
.....  
(Occupation) .....

Executed as a deed by **WESTSHIELD LIMITED** acting by a director in the presence of

Witness: (Signature) .....  
(Name) .....  
(Address) .....  
.....  
(Occupation) .....

**EXECUTED AS A DEED** (but not delivered until the date of it) by the affixing of **THE COMMON SEAL of THE COUNCIL OF THE BOROUGH OF KIRKLEES** in the presence of

**Authorised Sealing Officer**