

**DATED**

**2026**

**LEDGARD MANAGEMENT COMPANY LIMITED**

**- and -**

**FRESH THINKING CAPITAL LIMITED**

**- and -**

**REWARD CAPITAL LIMITED**

**- and -**

**HAMPSHIRE TRUST BANK PLC**

**- and -**

**THE COUNCIL OF THE BOROUGH OF KIRKLEES**

**PLANNING OBLIGATION BY WAY OF AGREEMENT**

**under Section 106 of the Town and Country  
Planning Act 1990 (as amended) and all other enabling powers  
relating to land adjacent to Ledgard Bridge Mill, Back Station Road, Mirfield,  
WF14 8NZ**

**Planning Application Reference 2023/60/93539/E**

**IKEN Number: 109751**



- (4) The Second Mortgagee is the mortgagee of the Site subject to a legal charge dated 8 August 2022.
- (5) The Third Mortgagee is the mortgagee of the Site subject to a legal charge dated 27 October 2023.
- (4) On 30 November 2023 the Application has been submitted to the Council for the Development.
- (5) The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.
- (6) The parties have agreed to enter into this Deed so as to create planning obligations in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

For the purposes of this Deed the following words and expressions shall where the context so requires or admits have the following meanings:

**“1990 Act”** means the Town and Country Planning Act 1990 (as amended);

**"Affordable Housing"** means housing to be provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it);

**“Affordable Housing Plan”** means a plan which identifies the location and

size of each Affordable Private Rent Unit which is to be provided as part of the Development in accordance with paragraph 1 of the First Schedule of this Deed;

**“Affordable Private Rent”**

means Affordable Housing where all of the following criteria are met:

- (i) the rent is set in accordance with the government’s rent policy for affordable rent at least 20% below local market rents (including service charges where applicable);
- (ii) includes provision to remain as Affordable Private Rent, for future eligible households.

**“Affordable Private Rent Units”**

means 20% (twenty percent) of the Dwellings (up to a maximum of 15 Dwellings in total) to be made available for Affordable Private Rent in accordance with and **“Affordable Private Rent Unit”** shall be construed accordingly;

**“Annual Statement”**

means a statement to be submitted to the Council annually detailing the approach to letting the Affordable Private Rent Units, their ongoing letting status and compliance with this Deed PROVIDED THAT such statement shall not require the disclosure of information which would otherwise be prohibited from disclosure by law;

**“Application”**

means the outline planning application validated by the Council on 1 December 2023 and registered by the Council under reference 2023/60/93539/E for the *“Outline application, including the considerations of access*

*appearance, layout, and scale, for the erection of a six-storey building to host 76 residential apartments (C3 use) and ancillary works comprising demolition of vacant building, formation of new access, parking areas, open space and landscaping; erection of cycle and bin refuse storage structures”;*

**“Baseline Biodiversity Value”** means the pre-Development biodiversity value of the Site (in Biodiversity Units) calculated in accordance with the Biodiversity Impact Assessment;

**“Build to Rent Household Income Cap”** means £80,000 (eighty thousand pounds) or such other income cap as may be published from time to time by the Council and is in force at the time of the relevant letting of an Affordable Private Rent Unit;

**“Biodiversity Contribution”** means such sum which may be payable to ensure the Development delivers the Biodiversity Net Gain Objective in circumstances where this cannot be achieved on Site and/or on Biodiversity Improvement Land **PROVIDED ALWAYS THAT** such sum shall not in any event exceed the maximum figure of £60,525 (sixty thousand five hundred and twenty five pounds) **AND FURTHER PROVIDED THAT** such sum shall be used by the Council solely towards biodiversity improvements within its district (the specification and location of which to be agreed between the parties;

**“Biodiversity Gain Site Register”** means the statutory biodiversity gain site register created pursuant to regulation 3 of the

Biodiversity Gain Site Register Regulations 2024 or any other equivalent regulations;

**“Biodiversity Assessment”** **Impact** means the updated Biodiversity Impact Assessment which will reflect the approval of Reserved Matters and is to be submitted to and approved by the Council pursuant to the conditions of the Planning Permission;

**“Biodiversity Land”** **Improvement** means land outside of the Site which is either within the control of the Owner or a Net Gain Site Operator which is intended to ensure that the Development delivers the Biodiversity Net Gain Objective, which is registered on the Biodiversity Gain Site Register;

**“Biodiversity Objective”** **Net Gain** means that the Post Development Biodiversity Value of the Development exceeds the Baseline Biodiversity Value of the Site (measured in Biodiversity Units) by at least 5% (five per cent);

**“Biodiversity Scheme”** **Offsetting** means a scheme to ensure that the Development achieves the Biodiversity Net Gain Objective in circumstances where the approved Biodiversity Impact Assessment confirms that this will not be achieved on Site alone such scheme to propose one or more of the following in order to make up the shortfall:

- (i) the identification of Biodiversity Improvement Land and its allocation to the Development; and/or
- (ii) the payment of a Biodiversity Contribution;

**“Biodiversity Units”** means biodiversity unit(s) calculated in

accordance with the Biodiversity Impact Assessment;

**“Bus Stop Contribution”**

means the sum of £21,000 (twenty one thousand pounds sterling) Index Linked such sum to be paid to the Council solely for the purpose of providing real-time information displays at the following bus stops on Huddersfield Road within the vicinity of the Site:

- (a) northwest bound stop number 15147;  
and
- (b) southeast bound stop number 15148 or bus stop number 15150;

**“Clawback Sum”**

means, in relation to an Affordable Private Rent Unit which is are sold into the open market in accordance with this Deed, a sum calculated as follows:

$$\textit{Clawback sum} = D \times E$$

where:

‘D’ is the Open Market Value of the relevant Affordable Private Rent Unit.

‘E’ is the percentage discount that had been applied to the rent in respect of the Affordable Private Rent home(s) being sold.

*For example, if the home had an Open Market Value of £500,000, and the discount level is 20%, this would generate a clawback of £100,000*

such sum to applied by the Council towards the

upkeep or provision of Affordable Housing in the Council's administrative area;

**“Commencement of Development”**

means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;

**“Contribution”**

means any one of the Biodiversity Contribution, the Bus Stop Contribution, the Metrocard Contribution or the Travel Plan Monitoring Contribution (as the context requires);

**“Development”**

means the development of the Site in pursuance of the Planning Permission;

**“Dwellings”**

means all dwellings to be constructed on the Site as part of the Development pursuant to the Planning Permission and “Dwelling” shall be construed accordingly;

**“Habitat Management and Monitoring Plan”**

means the document titled 'Habitat Management and Monitoring Plan' to be

submitted and approved pursuant to the conditions of the Planning Permission;

**“Index”**

means the Building Costs Information All-In Tender Price Index published by the Royal Institution of Chartered Surveyors or any index which replaces or supplements the same from time to time;

**“Index Linked”**

means (where applicable) such increase in a Contribution (or where the Contribution is payable in instalments, increase in the relevant instalment of that Contribution) on an annual basis or pro rata per day from the date of this Deed to the date of payment based upon the Index last published before the date of the grant of Planning Permission or any publication substituted for it;

**“Management and Service Agreement”**

means a management and service agreement to be submitted to the Council detailing how the Affordable Private Rent Units will be managed and maintained, and details of any related service charges;

**“Marketing Agreement”**

means an agreement setting out how availability of the Affordable Private Rent Units will be publicised, to be submitted to the Council;

**“Market Units”**

means those Dwellings which are not Affordable Private Rent Units and “Market Unit” shall be construed accordingly;

**“Metrocard Contribution”**

means £511.50 (five hundred and eleven pounds and fifty pence sterling) Index Linked

per Dwelling such sum to be paid to the Council solely for the purpose of providing bus only Residential Mcards (operated by the West Yorkshire Ticketing Company or any replacement provider) to the Occupiers of the Dwellings

**“Mineral Rights”**

rights to exploit mine or produce minerals and other extractive resources lying below the surface of the Site;

**“Net Gain Site Operator”**

means an organisation responsible for enhancing, creating, managing, monitoring and reporting on new habitats and which is either:

(a) the freehold owner of the Biodiversity Improvement Land; or

(b) the leaseholder of the Biodiversity Improvement Land with a sufficiently long lease to cover the entire duration of the Habitat Management and Monitoring Plan

**“Occupation”**

means occupation for the purposes of 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”**, **“Occupied”** and **“Occupier”** shall be construed accordingly;

**“Off-Site**

**Greenspace Contribution”**

means the financial contribution which may be payable to the Council towards the provision of public open space and in the event that it is determined that such a financial contribution is generated by the Development as a result of:

- (a) the Reserved Matters Approval(s); and
- (b) the open space standards set out in the Council's Open Space Supplementary Planning Document (June 2021)

any financial contribution payable will be calculated by reference to the Reserved Matters Approval(s) in accordance with the Council's document entitled "2025/26 Open Space Supplementary Planning Document – Updated Financial Contribution Rates";

**“Open Market Value”**

the open market value as assessed by a Valuer in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and agreed between the Council and the Owner as being the open market value of an Affordable Rented Unit at which the sale of an interest in the Affordable Rented Unit would have been completed unconditionally for cash consideration on the date of the valuation assuming:

- (a) a willing seller;
- (b) that any restrictions imposed on the Dwelling in this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Dwelling or to whom a transfer or lease may be granted or assigned; and
- (d) that both parties to the transaction had acted knowledgably and prudently and without compulsion.

<b>“Plan”</b>	means the plan annexed to this Deed at Annex [1];
<b>“Planning Obligations”</b>	the obligations restrictions conditions and stipulations on the part of the Owner set out in this Deed;
<b>“Planning Permission”</b>	means an outline planning permission to be granted by the Council pursuant to the Application;
<b>“Practical Completion”</b>	the issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by the other party's architect and “Practically Completed” shall be construed accordingly;
<b>“Qualifying Person”</b>	means a person whose household meets the Build to Rent Household Income Cap;
<b>“Rent Levels”</b>	<b>details of the Affordable Private Rent (and market rent for an equivalent Dwelling) calculated</b> in accordance with the International Valuations Standards as adopted by the Royal Institute of Chartered Surveyors (or any future guidance or initiative that replaces or supplements it);
<b>“Reserved Matters”</b>	has the meaning given to it by the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended);
<b>“Reserved Matters Approval(s)”</b>	means the approval pursuant to the Planning

Permission of all Reserved Matters for the Development;

**“Site”** means the land shown for the purpose of identification only outlined red on the Plan hereto and known as Ledgard Bridge Mill, Back Station Road, Mirfield, WF14 8NZ;

**“Statutory Undertaker”** means any company corporation board or authority at the date of this Deed that is authorised by statute to carry on an undertaking for the supply of telephone or television or other electronic communications electricity gas water or drainage or other public services and any other body authorised to carry out such undertaking;

**“Travel Plan”** means the Bryan G Hall document entitled “Travel Plan” dated 20 June 2024 (Revision 03) which has been submitted as part of the Application, or any revised or replacement version thereof which is agreed pursuant to the conditions of the Planning Permission;

**“Travel Plan Monitoring Contribution”** means the sum of £10,000 (ten thousand pounds) such sum to be paid to the Council for the purposes of monitoring compliance with the Travel Plan, as required by the conditions of Planning Permission;

**“Working Days”** means any day except a Saturday, Sunday or any public holiday in England and Wales;

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council any successor to its statutory functions.

### **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the 1990 Act which bind the Site and are enforceable by the Council as local planning authority against the Owner and their successors in title.

#### **4. CONDITIONALITY**

4.1 Save for any obligation that requires the Owner to do or act or thing prior to the Commencement of Development which shall come into effect immediately upon completion of this Deed this Deed shall take effect upon the date hereof but the covenant from the Owner in clause 5 of this Deed is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development

#### **5. THE OWNER'S COVENANT**

The Owner covenants with the Council as set out in the First Schedule and the Second Schedule.

#### **6. THE COUNCIL'S COVENANT**

The Council covenants with the Owner as set out in the Third Schedule.

#### **7. MISCELLANEOUS**

7.1 The Owner shall pay to the Council on or before completion of this Deed the Council's reasonable legal costs and disbursements incurred in the negotiation, preparation, execution and completion of this Deed in the sum of up to £4,500 (four thousand five hundred pounds sterling) (excluding Value Added Tax)

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

7.3 This Deed is given on the condition that following the performance and satisfaction of all the obligations contained in this Deed and upon the written request of the Owner the Council shall forthwith effect the cancellation of all entries made in the register of Local Land Charges in respect of this Deed.

- 7.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.5 This Deed shall cease to have effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure other than a non-material amendment under section 96A of the 1990 Act or expires prior to Commencement of Development.
- 7.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:
- (a) to the extent that such breach relates to any part of the Site in which that person has no interest; and/or
  - (b) which occurs after it shall have parted with its interest in the Site or if it be part only the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which it shall continue to be liable
- 7.7 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 (whether or not on appeal) after the date of this Deed.
- 7.8 Wherever this Deed requires the approval, agreement, determination or consent of the Council or the Owner such approval, agreement, determination or consent must be in writing and shall not be unreasonably withheld or delayed.
- 7.9 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act (and the Council is satisfied that no revised planning obligations are required as a result of such amendment) this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

- 7.10 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its reasonable discretion that no revised planning obligations are required as a result of such amendment) references to the Planning Permission in this Deed shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.
- 7.11 No party shall be bound by the terms of this Deed or be liable for a breach of any Planning Obligation:
- 7.11.1 if its interest in the Site or relevant part thereof is solely as the owner of the subsoil of adopted highway and/or of Mineral Rights;
  - 7.11.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking;
  - 7.11.3 if that party is an owner or Occupier of an individual Market Unit; or
  - 7.11.4 if that party is an owner or Occupier of an Affordable Private Rent Unit save in respect of the provisions of paragraph 1 of the First Schedule which shall apply.
- 7.12 No Planning 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.

## **8. REGISTRATION**

This Deed shall be registered as a local land charge in the register of Local Land Charges maintained by the Council.

## **9. NOTICES**

Any notice or other written communication to be served by one party upon any other pursuant to the terms of this Deed shall be deemed to have been validly served if delivered by hand or sent by pre-paid special or recorded delivery post to the party to be delivered at its address herein specified or such other address as may from time to time be notified for the purpose by notice served under this Deed specifically referring to this clause and the intention of the notice to notify an address thereunder.

## **10. DISPUTE RESOLUTION**

10.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed which cannot be resolved by prior agreement between the parties such dispute or difference shall be referred to an independent and suitable person (the “**Expert**”) holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with experience of resolving such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

10.2 In the absence of an agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

10.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 (twenty-eight) Working Days

after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received any file or written representation.

- 10.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further 10 (ten) Working Days.

## **11. WAIVER**

- 11.1 No waiver (whether expressed or implied) by the Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **12. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the courts of England.

## **13. DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## **14. FIRST MORTGAGEE'S CONSENT**

The First Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of their mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the First Mortgagee shall otherwise have no liability under this Deed unless it takes

possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**15. SECOND MORTGAGEE'S CONSENT**

The Second Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of their mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Second Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**16. THIRD MORTGAGEE'S CONSENT**

The Third Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of their mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Third Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

## **FIRST SCHEDULE**

### **Owner's Covenants**

The Owner covenants with the Council in the following terms:

#### **1. AFFORDABLE HOUSING**

##### **1.1 The Owner covenants with the Council:**

- 1.1.1 not to Occupy any part of the Development until the Affordable Housing Plan has been submitted to and approved by the Council in writing.
- 1.1.2 not to Occupy more than fifty per cent (50%) (on a 'round half up' basis) of the Market Units until the Affordable Private Rent Units have been Practically Completed in accordance with sub-paragraph 1.1.3 below.
- 1.1.3 to procure that all the Affordable Private Rent Units shall be Practically Completed in accordance with the Planning Permission and the Affordable Housing Plan;
- 1.1.4 No later than 4 (four) weeks prior to the marketing of any of the Affordable Private Rent Units to submit the Council for approval by email at [housing.regeneration@kirklees.gov.uk](mailto:housing.regeneration@kirklees.gov.uk) the following:
  - (a) a proposed Lettings Agreement;
  - (b) Management and Service Agreement;
  - (c) the proposed Rent Levels; and
  - (d) the Marketing Agreement.
- 1.1.5 To market the availability of the Affordable Private Rent Units in accordance with the approved Marketing Agreement (subject to such variations as may be agreed in writing by the parties from time to time).
- 1.1.6 Subject to sub-paragraphs 1.1.7 and 1.1.8 below not to permit the Occupation of any Affordable Private Rent Units other than by Qualifying Persons and in accordance with the approved

Management and Service Agreement (subject to such variations as may be agreed in writing by the parties from time to time);

1.1.7 If no Qualifying Person contracts to Occupy an Affordable Private Rent Unit within 6 weeks of the commencement of its marketing pursuant to sub-paragraph 1.1.5 above then the Owner may let the relevant Affordable Private Rent Unit to a non-eligible person PROVIDED THAT it is let as an Affordable Private Rent Unit at an Affordable Private Rent AND FURTHER PROVIDED THAT upon any further re-letting of the Affordable Private Rent Unit the provisions of sub-paragraph 1.1.6 above shall apply once more.

1.1.8 If the Owner intends to sell an Affordable Private Rent Unit on the open market at any time then:

(a) prior to any sale of an Affordable Private Rent Unit the Owner shall notify the Council in writing of its intention and shall at the same time submit to the Council for approval the Open Market Value of the Affordable Private Rent Unit;

(b) in the event that the Owner and the Council are unable to agree the Open Market Value of the Affordable Private Rent Unit within 20 Working Days of the Owner submitting details of the same pursuant to sub-paragraph 1.1.8(a) above then the Open Market Value shall be the average of the valuations of 2 (two) independent valuers (who shall be members of the Royal Institute of Chartered Surveyors) one of which should be selected by the Owner and the other by the Council and the parties shall each bear their own costs in respect of such valuation;

(c) the Owner shall not sell or otherwise dispose of the Affordable Dwelling until the Open Market Value has been approved by the Council (such approval not to be unreasonably withheld or delayed) or otherwise determined in accordance with sub-paragraph 1.1.8(b) above;

- (d) the Affordable Private Rent Unit to which this sub-paragraph 1.1.8 applies shall not be Occupied otherwise than in accordance with sub-paragraph 1.1.6 above until the Clawback Sum has been paid to the Council in full; and
- (e) upon the payment of the Clawback Sum pursuant to sub-paragraph 1.1.8(d) above the Affordable Private Rent Unit shall be released from all Affordable Housing restrictions and obligations set out in this paragraph 1 of this First Schedule.

## 2. **OFF-SITE GREENSPACE CONTRIBUTION**

- 2.1 To pay the Off-Site Greenspace Contribution to the Council prior to Occupation.
- 2.2 Not to Occupy any Dwellings until the Off-Site Greenspace Contribution has been paid to the Council.

## 3. **BIODIVERSITY NET GAIN**

- 3.1 Where a Biodiversity Impact Assessment confirms that the Biodiversity Net Gain Objective will not be achieved on Site then a Biodiversity Offsetting Scheme shall also be submitted to and approved in writing by the Council prior to the Commencement of Development (and paragraphs 5, 6 and 7 of the Third Schedule shall apply to the Council's consideration and approval of the Biodiversity Offsetting Scheme).
- 3.2 Where an approved Biodiversity Offsetting Scheme proposes the securing of Biodiversity Improvement Land to achieve the Biodiversity Net Gain Objective (in whole or part) then the Owner shall not Occupy any Dwellings until the Owner has provided the Council with written evidence that the Biodiversity Improvement Land has been secured with the Net Gain Site Operator.
- 3.3 Where an approved Biodiversity Offsetting Scheme requires the payment of a Biodiversity Contribution the Owner shall:
  - 3.3.1 pay the Biodiversity Contribution to the Council before Occupation of any Dwelling;

3.3.2 not to permit, or cause to permit or allow the Occupation of any Dwelling until the Biodiversity Contribution has been paid to the Council;

**4. BUS STOP CONTRIBUTION**

4.1 To pay the Bus Stop Contribution to the Council upon or before the Commencement of Development; and

4.2 Not to cause or permit the Commencement of Development of any Dwellings until the Bus Stop Contribution has been paid to the Council.

**5. METROCARD CONTRIBUTION**

5.1 To pay the Metrocard Contribution to the Council before the first Occupation of any Dwellings.

5.2 Not to Occupy any Dwellings until the Metrocard Contribution has been paid to the Council.

**6. TRAVEL PLAN MONITORING CONTRIBUTION**

6.1 To pay the Travel Plan Monitoring Contribution to the Council in accordance with sub-paragraphs 6.1.1 to 6.1.3 below:

6.1.1 To pay a first instalment of £2,000 (Index Linked) of the Travel Plan Monitoring Contribution to the Council before the first Occupation of any Dwellings.

6.1.2 Not to Occupy any Dwellings until a first instalment of a first instalment of £2,000 (Index Linked) of the Travel Plan Monitoring Contribution has been paid to the Council.

6.1.3 Following the payment of the first £2,000 (Index Linked) instalment of the Travel Plan Monitoring Contribution pursuant to sub-paragraphs 6.1.1 and 6.1.2 above, the remaining £8,000 of the Travel Plan Monitoring Contribution shall be paid to the Council in four equal instalments of £2,000 (Index Linked) and each such £2,000 (Index Linked) instalment shall be payable upon the anniversary of the due date for the payment of the first instalment of

the Travel Plan Monitoring Contribution in accordance with subparagraphs 6.1.1 and 6.1.2 above.

**SECOND SCHEDULE**  
**Owner's Covenants**  
**Managed Areas and On-Site Drainage Infrastructure**

**1. Additional Definitions**

1.1. In this Second Schedule (and this Deed as a whole) the following words and expressions shall unless the context requires otherwise have the meaning set out below:

**“Managed Areas Inspection Certification Charge”** means the sum of ££613 (six hundred and thirteen pounds) towards the administrative costs of the Council in inspecting the laying out and completion of the Managed Areas and certifying that such works have been completed in accordance with paragraph 2 of this Second Schedule;

**“Managed Areas”** means the land within the Site which is proposed for open space and amenity purposes in connection with the Development as well as any other incidental areas of landscaping (including incidental areas not within the private curtilage of Dwellings and internal roads until adoption by the local highway authority) and as determined by the Reserved Matters Approval(s);

**“Managed Areas Scheme”** means a scheme detailing the specification and proposals for the completion of the Managed Areas, the Open Space Works and the management and maintenance of any Managed Areas to be provided on Site in accordance with conditions attached to the Planning Permission and Reserved Matters Approval(s) which scheme shall be submitted to and approved by the Council pursuant to paragraph 2 of this Second Schedule. The scheme shall include details of;

- (a) the ongoing maintenance operations in respect of the Managed Areas, and Managed Areas Works, 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;

- (b) the identity of the Management Company proposed to be responsible for the ongoing management and maintenance of the Managed Areas, Managed Area Works and the Open Space Works together with all documents reasonably requested by the Council pertaining to the Management Company;
- (c) the arrangements and timing for the transfer of the responsibility for the management and maintenance of the Managed Areas, and the Managed Areas Works from the Owner to the POS Management Company; and
- (d) the funding arrangements for the management and maintenance of the Managed Areas, and the Managed Areas Works;

**"Managed Areas Works"** means the works required to provide the Managed Areas in accordance with the Managed Areas Scheme;

**"Management Company"** means (for the purposes of this Second Schedule) a body or bodies established or nominated by the Owner for the long term maintenance and management of the Managed Areas and/or On-Site Drainage Infrastructure (as the case may be) and/or in accordance with the details which are to be submitted and approved pursuant to paragraph 3.1 of this Second Schedule;

**"On-Site Drainage Infrastructure"** means any drainage infrastructure which is to be provided on the Site as part of the Development which may (only if applicable) include sustainable urban drainage systems which may comprise any of the following: balancing ponds, swales, ditches, flood alleviation and surface water and ground water drainage features) and/or pumping station (if any);

**"On-Site Drainage"** means a detailed management plan setting out measures to

**Management and Maintenance Plan”** be undertaken to ensure the On-Site Drainage Works are properly maintained and managed;

**“On-Site Drainage Works”** means the works to be carried out to provide the On-Site Drainage Infrastructure in accordance with the Planning Permission;

## **2. Provision of On-Site Managed Areas**

- 2.1. **Prior to the Commencement of Development the** Owner shall submit a Managed Areas Scheme to the Council for approval (and paragraphs 5, 6 and 7 of the Third Schedule shall apply to the Council’s consideration and approval of such a scheme).
- 2.2. The Owner shall not permit the Occupation of more than **50% (fifty per cent)** of the Dwellings until the Managed Areas Scheme has been approved or deemed approved by the Council.
- 2.3. Upon receipt of the Council's approval or deemed approval or to a Managed Areas Scheme pursuant to Paragraph 2.2 of this Second Schedule (or upon receipt of expert determination in relation to the Managed Areas Scheme if applicable) the Owner shall as part of the carrying out of the Development provide the Managed Areas in accordance with the approved Managed Areas Scheme (as may be varied in writing by the parties from time to time).
- 2.4. The Owner shall pay to the Council the Managed Areas Inspection and Certification Charge and shall invite the Council to (within 15 Working Days of the date of completion of the Managed Areas Works) inspect the Managed Areas .
- 2.5. Upon receipt of the Managed Areas Inspection and Certification Charge and not later than one month following receipt of the notice referred to in paragraph 2.4 above the Council shall inspect the Managed Areas and if the same have been completed in accordance with this paragraph 2 of this Second Schedule then the Council shall notify the Owner to that effect in writing.

- 2.6. If upon inspection of the Managed Areas pursuant to paragraph 2.5 above the Council reasonably considers that the Managed Area Works have not been completed in accordance with this paragraph 2 of this Second Schedule then the Council shall notify the Owner to this effect and shall specify the measures which the Council considers to be reasonably necessary to comply with this paragraph 2.
- 2.7. Upon receipt of a notice from the Council pursuant to paragraph 2.6 above the Owner shall within such reasonable period as is specified by the Council carry out the specified works and shall notify the Council of their completion pursuant to paragraph 2.4 and thereafter the procedure set out in paragraphs 2.4 to 2.7 of this Second Schedule shall be repeated as many times as is necessary until such time as the Council issues its notice pursuant to paragraph 2.5 PROVIDED THAT such procedure shall always be subject to clause 8 of this Deed AND FURTHER PROVIDED that no further Managed Areas Inspection and Certification Charge shall be payable in respect of any such repetition of the procedure.

### **3. Management and Maintenance of the Managed Areas**

- 3.1. If the Owner intends to transfer the Managed Areas to a Management Company then the Owner shall provide details of the Management Company (including a certified copy of the Memorandum and Articles of Association and any other documents reasonably requested by the Council) as part of the Managed Areas Scheme and shall not effect any transfer until the Council has approved of the Management Company in writing.
- 3.2. Upon the Managed Areas being completed to the Council's reasonable satisfaction in accordance with the approved Managed Areas Scheme the Owner shall:
- 3.2.1. Transfer title for the Managed Areas to a 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:

- 3.2.1.1. 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; and
    - 3.2.1.2. Only allow the use of the Managed Areas for public access and recreation and for no other purpose; or
  - 3.2.2. Maintain and manage in perpetuity the Managed Areas in accordance with the approved Managed Areas Scheme (or any variations that may be agreed in writing between the Owner and the Council from time to time).
- 3.3. The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Managed Areas has not been dedicated to the public nor is any use by the public of any part of the Managed Areas to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 3.4. 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 Owner or the Management Company (as applicable at the time of the alleged breach) requiring the Owner or the Management Company (as applicable at the time of the alleged breach) to undertake such remedial steps as are specified in the notice.
- 3.5. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 3.4 above within 30 Working 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.
- 3.6. The Owner shall allow public access to the Managed Areas **SUBJECT ALWAYS** to the following provisions:
  - 3.6.1. access to the Managed Areas shall be subject to such 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; and

3.6.2. the Owner may erect notices on the Managed Areas and access to the Managed Areas may be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;

3.6.3. the Owner may close the Managed Areas or any part thereof for reasonable periods by reason of:

3.6.3.1. emergency;

3.6.3.2. cleansing maintenance and repair;

3.6.3.3. at the direction of the emergency services or other lawful authority; and

3.6.3.4. construction activities whilst the Development is being carried out

#### **4. Management and Maintenance of On-Site Drainage Infrastructure**

4.1. To provide the On-Site Drainage Works in accordance with the Planning Permission and condition(s) thereto.

4.2. Not to Commence Development until the On-Site Drainage Management and Maintenance Plan has been submitted to the Council for approval.

4.3. The On-Site Drainage Management and Maintenance Plan will include detailed measures setting out how the On-Site Drainage Works will be maintained and managed to include:

4.3.1. details and a programme for the long term management and maintenance to cover all aspects of the On-Site Drainage Works;

4.3.2. detailed maintenance schedules which must include details of the frequency of all actions and routine maintenance activities, the timings of all inspections (including annual inspections) and the timing of management works arising from inspections;

- 4.3.3. details of the maintenance regime that will be adopted during the construction phase up until the point that the On-Site Drainage Works are signed off as complete in accordance with the approved design;
  - 4.3.4. details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of the On-Site Drainage Works; and
  - 4.3.5. a submission of risk assessments and method statements concerning access to and into confined spaces and carrying out of defined maintenance and management operations associated with surface water sewerage, as sanctioned by the Principal Designer under CDM Regulations 2015.
- 4.4. In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of the On-Site Drainage Management and Maintenance Plan then the Owner shall submit a revised version to the Council taking into account comments that the Council has provided, for their approval, and this procedure shall be repeated as often as is necessary until the Council approves the On- Site Drainage Management and Maintenance Plan and for the avoidance of doubt the Council shall not be responsible for any costs that are borne out of this paragraph 4.
- 4.5. Unless otherwise first agreed in writing by the Council, not to carry out any above ground works comprised in the Development unless and until the On-Site Drainage Management and Maintenance Plan has been approved by the Council.
- 4.6. The approved On-Site Drainage Management and Maintenance Plan shall only be varied or amended with the written approval of the Council
- 4.7. To fully comply with the approved On-Site Drainage Management and Maintenance Plan from the date that it is approved by the Council in accordance with paragraph of this Schedule and at all times thereafter to manage and maintain the On-Site Drainage Works in accordance with the details set out in the approved On-Site Drainage Management and Maintenance Plan until the earlier of the date that the On- Site Drainage

Works are transferred to a Management Company and the date that the On-Site Drainage Works have been adopted by a Water Company.

- 4.8. Until such time as the On-Site Drainage Works are adopted by a Water Company the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the approved On-Site Drainage Management and Maintenance Plan.
- 4.9. In the event that the Council considers (acting reasonably) that the requirements of the approved On-Site Drainage Management and Maintenance Plan are not being complied with and unless the On-Site Drainage Works have been adopted by a Water Company then the Council may serve a notice on the Owner or the Management Company (as the case may be) requiring the Owner or the Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.
- 4.10. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 4.9 of this Schedule within 20 (twenty) Working 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.
- 4.11. No part of the Site upon which the On-Site Drainage Works are located shall be transferred or leased to any Management Company (as apart from a Water Company in which case any transfer or lease may proceed without the approval of the Council) unless the identity of that Management Company has been approved by the Council (acting reasonably) in writing.
- 4.12. In seeking approval from the Council to any Management Company to whom the Owner intend to transfer or lease the On-Site Drainage Works they shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, structure, voting rights and such other information as the Council (acting reasonably) shall require.
- 4.13. The Owner shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and

e-mail address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the On-Site Drainage Works.

- 4.14. Upon receipt by the Council of satisfactory evidence that the On-Site Drainage Works have been transferred to a Water Company the obligations in paragraphs 4.7 to 4.13 (inclusive) of this Schedule shall thereafter cease and not be applicable.

### **THIRD SCHEDULE**

#### **Council's Covenants**

The Council covenants with the Owner in the following terms:

1. That it will following receipt of the written request of the Owner at any time or times after any of the obligations in this Deed have been discharged issue written confirmation thereof as soon as reasonably practicable or if the Planning Permission has expired or been quashed or revoked will cancel all relevant entries in the register of Local Land Charges as soon as reasonably practicable.
2. To use all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid and not to expend the sums for any other purposes and the Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.
3. To pay to the Owner (or the payer if not the Owner) such part of any payment made to the Council under this Deed which has not been expended or allocated in accordance with the provisions of this Deed within 10 (ten) years of the date of receipt by the Council of such payment or part payment (as the case may be) PROVIDED that a payment or part thereof shall be deemed to be "expended" for the purposes of this paragraph where the Council has entered into an arrangement with any person which commits the Council to expending the said sum within 24 months of the date of payment.
4. Where the Council's approval is required in respect of any of the matters stated in sub-paragraph 1.1.4 of the First Schedule or a Biodiversity Offsetting Scheme and/or a Managed Areas Scheme and/or an On-Site Drainage Management and Maintenance Plan then such approval or refusal shall be given by no later than 30 Working Days from the date of submission of the relevant scheme by the Owner pursuant to the First Schedule or the Second Schedule (as the case may be) and deemed

approval shall be given in the event of failure by the Council to respond within that timescale.

5. If the Council refuses to approval a Biodiversity Offsetting Scheme and/or Managed Areas Scheme it shall notify the Owner in writing setting out the reasons for its decision and the steps it requires to be taken or information provided by the Owner in order to satisfy the Council's requirements.
6. The procedure set out in paragraphs 4 and 5 of this Second Schedule shall be repeated as many times as is necessary until the Council has approved the relevant scheme or the matter has been referred for dispute resolution pursuant to clause 10 of this Deed.

**IN WITNESS WHEREOF** the parties hereto have caused this Deed to be executed as a Deed on the day and year first before written

THE CORPORATE COMMON SEAL of

**THE COUNCIL OF**

**THE BOROUGH OF KIRKLEES**

was hereunto affixed in the presence of:-

Director- Legal Governance and Commissioning /Authorised Signatory

**EXECUTED AS A DEED**

by **LEDGARD MANAGEMENT COMPANY LIMITED**

acting by a Director

in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

**EXECUTION BLOCKS OF MORTGAGEES TBC**

**EXECUTED** as a **DEED** by

[ ]

acting by:

Director

Director / Secretary