

Dated 9 May 2024

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

NIGEL JOHN LEE & JANET MAY LEE

and

NORTH PARK (BIRCHENCLIFFE) LIMITED

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

Land on the south side of Yew Tree Road,  
Birchcliffe, Huddersfield

Application Ref: 2021/94363

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THIS DEED is made

9 May

2024

**BETWEEN**

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire (**the Council**); and
- (2) **NIGEL JOHN LEE** and **JANET MAY LEE** of Flat 1, Inglewood, Birkby Road, Huddersfield HD2 2DA (**the Mortgagee**); and
- (3) **NORTH PARK (BIRCHENCLIFFE) LIMITED** (CRN: 13596384) of West House, King Cross Road, Halifax, West Yorkshire, United Kingdom, HX1 1EB (**the Developer**).

**BACKGROUND**

- (A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations in this Deed are enforceable.
- (B) The Developer is the registered freehold proprietor of the Site which is registered at HM Land Registry under Title Number WYK480951.
- (C) The Mortgagee is the proprietor of a registered charge over that part of the Site registered under title number WYK480951 dated 11 October 2023.
- (D) The Site benefits from the Outline Planning Permission
- (E) On 21 November 2018 the Council entered into the Original Agreement with the previous owner of the Site and the Developer is now the entity against whom the obligations in the Original Agreement are enforceable.
- (F) The parties by entering into this Deed do so to:
  - (i) Revoke the Original Agreement in its entirety; and
  - (ii) create replacement planning obligations in respect of the Site pursuant to section 106 of the 1990 Act.
- (G) The parties agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

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

**1990 Act**

the Town and Country Planning Act 1990

**Additional First Homes Contribution**

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of this Schedule, the lower of the following two amounts:

(a) 30% of the proceeds of sale; and

(b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

<b>Administration Charge</b>	1% (one percent) of the Affordable Housing Contribution)
<b>Affordable Housing Contribution</b>	A financial contribution which is (if applicable) to be calculated in accordance with the SPD and paid by the Developer to the Council in accordance with and in the circumstances specified in paragraph 2.5 of Schedule 3 to this Deed as a contribution towards the cost of providing new Affordable Housing within the Council's administrative area.
<b>Affordable Housing</b>	affordable housing as defined in Annex 2 of the National Planning Policy Framework September 2023 (or as redefined by any amendment, replacement or re-enactment thereof) and which shall be made available to people whose income is insufficient to enable them to afford housing locally on the open market.
<b>Affordable Housing Scheme</b>	the plan referred to as Plan 2, which indicates the location of the Affordable Housing Units to be provided as part of the Development.
<b>Affordable Housing Units</b>	the 3 Dwellings to be built on the Site as part of the Development to be provided as Affordable Housing (of which two shall be Rented Dwellings and one shall be a First Home) in accordance with the provisions of Schedule 3 of this Deed.
<b>Affordable Housing Price</b>	the price to be paid by the Registered Provider to the Developer for the Affordable Housing Units to be agreed at a price that is no more than the price

set out in accordance with the SPD (or such other policy concerning affordable housing which shall supersede or modify this document) or such other sum as may be reasonably agreed between the Developer and the Council.

**Affordable Rented Dwellings**

Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing where the rent level is capped at 80% of the local market rent (including any service charges, where applicable).

**Armed Service Member**

a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the 5 (five) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

**Biodiversity Contribution**

the sum of £12,190.00 (twelve thousand one hundred and ninety pounds) to be paid by the Developer to the Council as a contribution towards off-site mitigation and compensation for ecological impacts in order to achieve a biodiversity net gain

**Chargee**

a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

**Close Family**

a spouse, civil partner, partner, parent, son, daughter, sibling, grandparent;

**Commencement of Development**

the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act **SAVE THAT** for the purposes of this Deed the term 'material operation' shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys,

diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly.

<b>Compliance Certificate</b>	the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home Unit to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 3.2 of Schedule 4 applies the Eligibility Criteria (Local).
<b>Contribution</b>	any one of the financial contributions required (or which may be required) to be paid by the Developer to the Council pursuant to a Schedule to this Deed.
<b>Default Interest Rate</b>	4% per annum above the base rate from time to time of the Bank of England.
<b>Development</b>	the development of the Site.
<b>Dwelling</b>	a residential unit that may be built on the Site as part of the Development.
<b>Education Contribution</b>	the sum of £42,007.00 (forty two thousand and seven pounds) to be paid by the Developer to the Council towards the provision of educational facilities or school places, the need for which directly arises from the Development.
<b>Eligible Person</b>	an individual who:  (a) Has an annual income of no greater than £80,000.00; and  (b) Is unable to afford to purchase a home that meets their needs on the open market.
<b>Eligibility Criteria (National)</b>	criteria which are met in respect of a purchase of the First Home Unit if:  (c) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and  (d) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).
<b>Eligibility Criteria (Local)</b>	criteria published by the Council in the document entitled "First Homes Provision Statement Kirklees Council December 2021" (or any subsequent

updating/replacing documentation) at the date of the relevant disposal of a First Home which are met in respect of a Disposal of a First Home if:

(a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the First Homes Income Cap (Local) (if any); and

(b) either or both of criteria (i) and (ii) below are met:

(i) the purchaser meets the First Homes Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the First Homes Local Connection Criteria); and/or

(ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member;

**Expert**

a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.

**First Homes Discount Market Price**

a sum which is the First Homes Market Value discounted by at least 30%;

**First Homes Disposal**

a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

(a) a letting or sub-letting in accordance with paragraph 4 of Schedule 4;

(b) a transfer of the freehold interest in a First Home Unit or land on which a First Home Unit is to be provided before that First Home Unit is made available for occupation except where the transfer is to a First Home Owner; or

(c) an Exempt Disposal

and **Disposed** and **Disposing** shall be construed accordingly.

**First Homes Exempt Disposal**

the Disposal of the First Homes Unit in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Home Owner;
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Home Owner;
- (c) Disposal to a former spouse or former civil partner of a First Home Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order;
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt Clause 5 of Schedule 4 shall apply to such sale);

PROVIDED THAT in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 3 of Schedule 4.

**First Home**

a Dwelling to be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap.

**First Home Owner**

the person or persons having the freehold or leasehold interest (as applicable) in the First Homes Unit other than:

- (a) the Developer; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home Unit or in the land on which a First Home Unit is to be provided has been transferred before that First Home Unit is made available and is disposed of for occupation as a First Home; or
- (c) a tenant or sub-tenant of a permitted letting under paragraph 4 of Schedule 4;

**First Home Price Cap**

the amount for which the First Home Unit is sold after the application of the First Homes Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be

	published from time to time by the Secretary of State;
<b>First Homes Administration Charge</b>	<p>the reasonable and proper costs incurred by the Council in consideration of the following:</p> <ul style="list-style-type: none"> <li>(a) the consideration of the evidence supplied by any purchase meeting the First Home Eligibility Criteria (National) and (Local);</li> <li>(b) the consideration of the evidence supplied by the owner of the First Home in relation to the First Homes Discount Market Price; and</li> <li>(c) the provision of any Compliance Certificate.</li> </ul>
<b>First Homes Market Value</b>	<p>the open market value as assessed by an independent Valuer of the First Home Unit as confirmed to the Council by the First Home Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation but shall be based on an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion on the basis that:</p> <ul style="list-style-type: none"> <li>(a) it has vacant possession;</li> <li>(b) it is assumed with be free from all encumbrances specified in the registers relating to the First Home Unit maintained by Land Registry; and</li> <li>(c) it is free from all restrictions contained in this deed;</li> </ul>
<b>First Homes Unit</b>	1 x 2bed Dwelling (identified on the Affordable Housing Scheme) which shall be provided as a First Home in accordance with Schedule 4.
<b>First Time Buyer</b>	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
<b>Homes England</b>	the Homes and Communities Agency (trading as Homes England) or any body or bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008

(or as redefined by any amendment, replacement or re-enactment of such Act).

**Income Cap (Local)** £80,000.00 (eighty thousand pounds) or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged at the date of this agreement that the Council has not set an Income Cap (Local);

**Income Cap (National)** £80,000.00 (eighty thousand pounds) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;

**Index** the BCIS All-In Tender Price Index.

**Index Linked** increased in accordance with the following formula:

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

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

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

**Local Connection Criteria** criteria which are met by a person who satisfies one or more of (a) to (g) below:

- (a) currently lives in Kirklees as their primary residence and has done so for the past 3 years;
- (b) previously lived in Kirklees as their primary residence for at least 5 years cumulatively within the past 10 years;
- (c) has Close Family ordinarily resident in Kirklees and that Close Family has been ordinarily resident in the Locality for the past 3 years;
- (d) needs to move to Kirklees to receive or provide care or support;
- (e) is employed full time on a permanent basis for more than 16 hours per week in Kirklees

or is about to take up an offer of permanent full-time employment in Kirklees;

- (f) needs to move to Kirklees to be close to local facilities because of a specific identified need;
- (g) has some other connection to Kirklees as approved by the Council in writing;

OR

such other local connection criteria as may be published by the Council from time to time as its "First Homes Local Connection Criteria" (or equivalently so titled) and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that Disposal;

**Locality**

the district of Kirklees.

**Managed Areas**

the areas of the Development that are not residential plots, to be made up of landscaped areas and highway land (but excluding land used for SuDS);

**Managed Areas Inspection Fee**

a sum of £250.00 (two hundred and fifty pounds) to be paid by the Owner to the Council as a contribution towards the costs involved in inspecting the Managed Areas.

**Managed Areas Scheme**

a scheme identifying the detailed arrangements for the design, management and maintenance of the Managed Areas to be approved in accordance with paragraph 1.1 of Schedule 6;

**Management Company**

a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Developer for the purposes carrying out future maintenance of the Managed Areas and:

- (a) which is incorporated in England and Wales;
- (b) which has its registered office in England or Wales; and

whose primary objects permit it to maintain and renew the Managed Areas.

<b>Market Dwelling</b>	a Dwelling which is not an Affordable Housing Unit;
<b>Marketing Strategy</b>	The strategy to be approved by the Council pursuant to paragraph 3.13 of schedule 4 of this Deed and to detail the marketing measure to be undertaken to dispose of the First Home to a Qualifying Person upon a first disposal.
<b>Metrocard Contribution</b>	a sum of £8,415.00 (eight thousand four hundred and fifteen pounds) to be paid by the Owner to the Council as a contribution towards provision of metrocards in order to promote the use of public transport.
<b>Mortgagee</b>	any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home.
<b>Nominations Agreement</b>	an agreement to be entered into by the Registered Provider and the Council establishing nomination rights with respect to the Affordable Housing Units.
<b>NPPF</b>	the National Planning Policy Framework published by the Department for Levelling Up, Housing and Communities dated September 2023 and any document that supplements or replaces it.
<b>Occupy</b>	means to occupy for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development;
<b>Off-Site Highways Contribution</b>	a sum of £14,220.00 (fourteen thousand two hundred and twenty two pounds) to be paid to the Council by the Developer and applied by the Council towards improvements at the Halifax Road/East Street (Cavalry Arms) junction, the need for which directly arises as a result of the Development.
<b>Open Market Value</b>	the open market value of the relevant Affordable Housing Unit(s) (having regard to the market area, local incomes and local house prices) free from the restrictions in Schedule 3 <b>SUCH OPEN MARKET VALUE TO BE DETERMINED:</b>  (a) (in relation to Paragraph 2.6 and Paragraph 5.2 of Schedule 3) in the first instance by agreement between the Developer and the

Council or (in default of such agreement in 20 Working Days) by the average of two (2) valuations provided by two (2) valuers who are members of the Royal Institute of Chartered Surveyors and one of which shall be selected by the Developer and the other by the Council and the parties shall each bear their own costs in respect of such valuations; AND

- (b) (in relation to Paragraph 5.5) by an independent valuer who is a member of the Royal Institute of Chartered Surveyors.

<b>Original Agreement</b>	an agreement entered into under Section 106 of the 1990 Act dated 21 November 2018 between (1) Nigel John Lee and (2) The Council of the Borough of Kirklees.
<b>Outline Planning Permission</b>	the outline planning permission granted by the Council on 11 December 2018 with reference number 2018/60/90151/W.
<b>Planning Permission</b>	the outline planning permission granted by the Council on 11 December 2018 with reference number 2018/60/90151/W.
<b>Plan 1</b>	the plan titled "Location Plan" attached to this Deed at Schedule 1 with drawing reference 2313-0102-P01.
<b>Plan 2</b>	the plan titled "Site Layout" with reference number 2313-0301-P05 attached to this Deed at Schedule 1.
<b>Planning Obligations</b>	the obligations, conditions and stipulations set out in Schedules 3 – 7 of this Deed.
<b>Practical Completion</b>	the issue of a certificate of practical completion by the Developer's architect certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed and Practically Complete and Practically Completed shall be construed accordingly;
<b>Protected Tenant</b>	any tenant who:  (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being enforced (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) has acquired an Affordable Housing Unit from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof;
- (d) has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the Tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the Tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

and

any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs (a) to (d) above;

a sum of £38,084.00 (thirty eight thousand and eighty four pounds) to be paid by the Developer to the Council towards improvements at Birchencliffe Recreation Ground or other existing open space facilities within the vicinity of the development.

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.

2 Dwellings (1no. 2bed and 1no. 3bed) to be provided on the Site, each to be provided either as a Social Rented Dwelling or an Affordable Rented Dwelling.

Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect.

the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function.

the land at Yew Tree Road and Burn Road, Birchencliffe, Huddersfield shown edged red on Plan 1.

**Public Open Space Contribution**

**Registered Provider**

**Rented Dwelling**

**SDLT**

**Secretary of State**

**Site**

<b>Social Rent</b>	means a rent set in line with the Government's rent policy for social rented affordable housing to be owned and let by a Registered Provider;
<b>Social Rented Dwellings</b>	means the Affordable Housing Unit(s) which may be made available for letting at a Social Rent and to be constructed on the Site in accordance with the Planning Permission;
<b>SPD</b>	The Council's Affordable Housing and Housing Mix SPD dated March 2023 (or any successor or replacement document as may be agreed in writing between the Developer and the Council).
<b>Statutory Undertaker</b>	any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking.
<b>SuDS</b>	means the sustainable urban drainage systems to be provided by the Developer as part of the Development;
<b>SuDS Maintenance and Management Plan</b>	means a detailed management plan or plans setting out measures to be undertaken to ensure SuDS are properly maintained and managed, which shall include the information set out in paragraph 1.1 of Schedule 7 to this Deed, or such plan as may be agreed in writing with the Council from time to time;
<b>SuDS Management Company</b>	<p>means a limited company or companies registered at Companies House (including a residents management company) which may already be in existence or which may be formed by the Developer for the purposes of the management of the SuDS provisions at the Site in accordance with the provisions in this Schedule and:</p> <ul style="list-style-type: none"> <li>(a) which is incorporated in England and Wales or Scotland;</li> <li>(b) which has/have its/their registered office in England or Wales; and</li> <li>(c) whose primary objects permit it/them to maintain and renew the SuDS</li> </ul>

and for the avoidance of doubt it is agreed that there may be more than one management company across the Site as a whole and/or a

different management company responsible for the SuDS.

**Valuer**

a member or fellow of the Royal Institute of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity.

**Working Day**

any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday

- 1.2. Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3. References to clauses paragraphs and schedules are references to clauses paragraphs and schedules in this Deed.
- 1.4. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.5. Any words denoting natural person shall include legal persons and vice versa.
- 1.6. The expression "Developer" shall include its respective successors in title and assigns.
- 1.7. The expression "the Council" shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8. Where a covenant, restriction or requirement is expressed to be given by more than one party, or where a party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.
- 1.9. Clause headings and the contents list shall not affect the construction of this Deed.
- 1.10. Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression and shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11. Any covenant by the Developer or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

**2. STATUTORY BASIS**

- 2.1. This Deed is made pursuant to section 106 and section 106A of the 1990 Act and binds the Site and as such is enforceable pursuant to section 106(3) of the 1990 Act against the Developer and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Developer as if that person had been an original covenanting party to this Deed.

- 2.2. This Deed is enforceable by the Council as the local planning authority for the purposes of the 1990 Act.
- 2.3. To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

### **3. COVENANTS & DECLARATIONS**

- 3.1. The Developer covenants with the Council to comply with the Planning Obligations.
- 3.2. The Council covenants with the Developer to comply with the provisions of Schedule 8.
- 3.3. The Mortgagee acknowledges and declares that this Deed has been entered into by the Developer with its consent and that the Site shall be bound by this Deed and accordingly its security over the Developer's interest in the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed or the Original Agreement, unless it takes possession of the Site and in which case it shall also be bound by the covenants, restrictions and obligation in this Deed as if it were the personal deriving title from the Developer.

### **4. THE ORIGINAL AGREEMENT**

- 4.1. The Parties hereby agree that on the date of this Deed hereof the Original Agreement shall determine and cease to have effect and the obligations provisions and covenants contained therein shall be replaced in its entirety by the obligations provisions and covenants contained in this Deed.

### **5. EXCLUSIONS & RELEASE**

- 5.1. No party shall be bound by the terms of this Deed or be liable for a breach of any Planning Obligation:
  - 5.1.1. after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest);
  - 5.1.2. if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
  - 5.1.3. if that party is an owner or occupier of an individual Dwelling.
- 5.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Developer), quashed or revoked this Deed shall determine and cease to have effect.
- 5.3. No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it

will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

## 6. **REGISTRATION**

6.1. This Deed is a local land charge and may be registered as such by the Council.

6.2. Following either:

6.2.1. the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2. the determination of this Deed in accordance with Clause 5.2;

the Council shall as soon as reasonably practicable upon the written request of the Developer effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

## 7. **NON-FETTER & WAIVER**

7.1. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.

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

7.3. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

## 8. **VAT**

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

## 9. **SEVERABILITY**

9.1. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

## 10. **CHANGE OF OWNERSHIP**

10.1. The Developer agrees with the Council to give written notice to the Council within 20 Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan **PROVIDED THAT** this obligation shall not apply to a sale or disposal of an individual

Dwelling or to the disposal of part of the Site to a Statutory Undertaker for the purposes of its undertaking.

## 11. DISPUTES

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

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

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

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

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

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

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

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

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

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

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

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

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

- 11.3.3.5. to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination
- 11.3.4. the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
- 11.3.5. the Expert's decision shall be in writing and shall give reasons for the decision; and
- 11.3.6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 11.4. The decision of the Expert shall be binding on the parties.
- 11.5. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
  - 11.5.1. either party may apply to the relevant body as per Clause 11.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
  - 11.5.2. Clause 11.3 shall apply to the new Expert as if they were the first Expert appointed

**12. FUTURE PERMISSIONS**

- 12.1. In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and a planning permission is granted in respect of that application then:
  - 12.1.1. references to "Planning Permission" in this Deed shall thereafter be deemed to include both the Planning Permission and the new planning permission granted pursuant to Section 73 of the Act; and
  - 12.1.2. this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act unless required to do so by the Council

in each case **PROVIDED THAT:**

- 12.1.3. nothing in this Clause 12 shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and
- 12.1.4. to the extent that any of the Planning Obligations have been discharged in respect of the original Planning Permission nothing shall require the Owner

to comply with that obligation again in respect of a planning permission granted under Section 73 of the 1990 Act.

**13. DUTY TO ACT REASONABLY**

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

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

**14. INDEXATION**

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

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

**15. INTEREST ON LATE PAYMENTS**

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

**16. THIRD PARTY RIGHTS**

16.1. No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.

**17. NOTICES**

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

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

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

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

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

18. **COSTS**

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

19. **JURISDICTION**

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

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

**Schedule 1 – Plans**

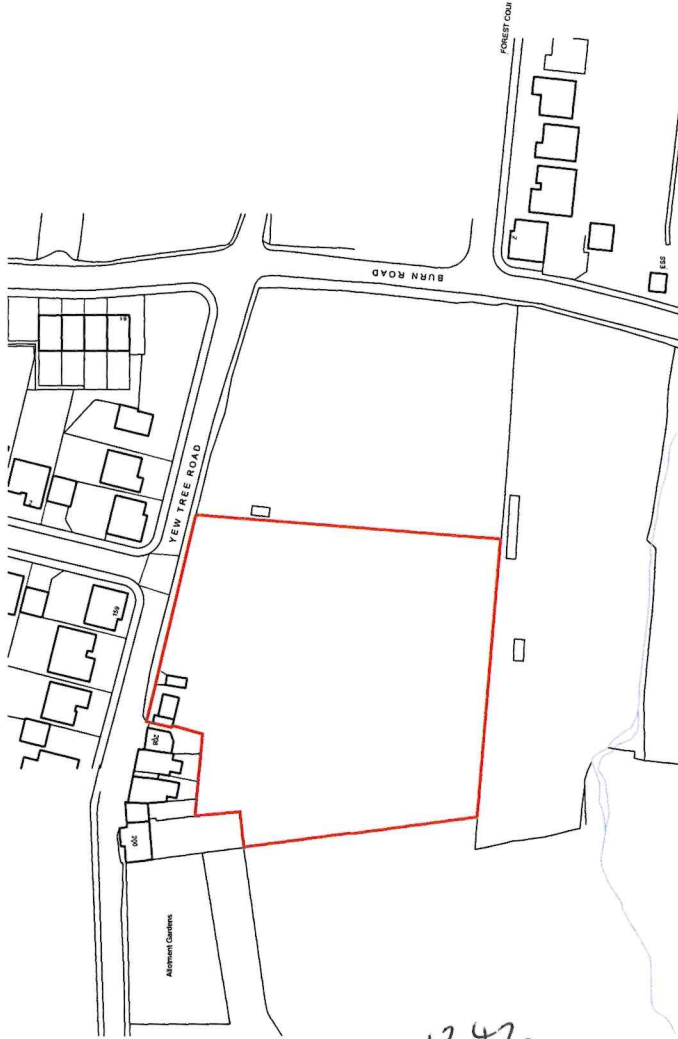
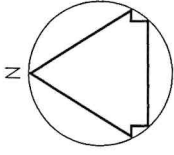
**NOTES**

This drawing has been prepared specifically for the purpose of obtaining Planning and/or Building Regulations Approval. Its suitability for other purposes without additional supplementary details and specifications cannot be guaranteed.

All dimensions are to be checked on site, any discrepancies are to be reported to the designer before work commences. Use only figured dimensions.

All structural components shown are indicative only. Details / dimensions of structural members are to be provided by the Structural Engineer.

This drawing is not to be copied or divulged to a third party without written permission.



021242

P01	Preliminary Issue	01.02.23
REV.	REVISION DESCRIPTION	DATE

DRG. STATUS: **PLANNING**

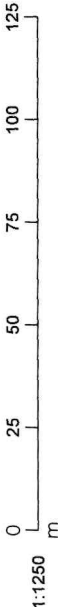


JOB  
Land at Yew Tree Road  
Birchcliffe  
Huddersfield

TITLE  
Location Plan

SCALE at A3  
1:1250  
DATE  
February 23

DRG. No. **2313-0102-P01**



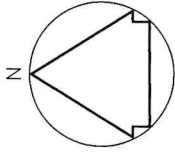
**NOTES**

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All structural components shown are indicative only. Details / calculations of structural members are to be provided by the Structural Engineer.

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- = Bin collection points
- \* = Affordable units
- = To be agreed

021242

REV.	REVISION DESCRIPTION	DATE
P05	Planning amendment	16.05.23
P04	Planning amendment	04.04.23
P03	Planning amendment	16.03.23
P02	Client amendment	01.12.22
P01	Preliminary plans	01.12.22

DRG. STATUS: FEASIBILITY



JOB  
Land at Yew Tree Road  
Birchcliffe  
Huddersfield

TITLE  
Site Layout

SCALE IN A3  
1:500

DATE  
February 23

DRG. No. 2313\_0301\_P05



Scale 1:500

0m 10m 20m 30m 40m

**Schedule 2 – NOT USED**

**NOT USED**

### **Schedule 3 – Affordable Housing**

#### **1. Provision of On-Site Affordable Housing Units**

- 1.1. As part of the carrying out of the Development the Developer shall ensure that the Affordable Housing Units shall:
  - 1.1.1. be provided in accordance with the approved Affordable Housing Scheme; and
  - 1.1.2. be provided in accordance with the Planning Permission, this Deed, and all applicable legislation policy and regulatory requirements.
- 1.2. The Developer shall notify the Council of the Practical Completion of each Affordable Housing Unit within 14 days thereof.
- 1.3. The Developer shall not cause or permit the Occupation of more than 9 of the Market Dwellings until the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.4. Subject only to paragraphs 2.3 and 4.6 of this Schedule, the Developer shall not permit the Affordable Housing Units to be Occupied other than as Affordable Housing in accordance with this Deed.

#### **2. Transfer of the Affordable Housing Units**

- 2.1. The Developer shall inform the Council when it has offered the Rented Dwellings to a Registered Provider(s) at the Affordable Housing Price together with providing details of the Registered Provider(s) to whom the Rented Dwellings have been offered (the "Initial Offer").
- 2.2. Following the date of the Initial Offer the Developer shall use reasonable endeavours to dispose of the Rented Dwellings to a Registered Provider(s) at the Affordable Housing Price.
- 2.3. In the event that:
  - 2.3.1. despite using its reasonable endeavours the Developer has not entered into a binding contract with a Registered Provider(s) for the transfer of the Rented Dwellings within a period of 24 (twenty four) calendar months from the date of the Initial Offer (or such shorter period of time that may be agreed in writing by the Council); and
  - 2.3.2. the Developer has produced evidence in writing to the reasonable satisfaction of the Council that it has used reasonable endeavours to enter into such binding contractthen (subject only to the prior receipt of both the Affordable Housing Contribution and the Administration Charge in respect of the Rented Dwelling(s)) the Developer may dispose of such Rented Dwelling(s) on the open market and the restriction at paragraph 1.5 shall be disregarded in respect of that Rented Dwelling.
- 2.4. In the event that the Developer is free to offer some or all of the Rented Dwellings for sale on the open market pursuant to the provisions of paragraph 2.3 above of this

Schedule the Developer shall serve a written notice on the Council confirming that they intend to sell such Rented Dwelling(s) on the open market (**Developer's Notice**).

- 2.5. The Developer shall within 28 (twenty eight) days of the date of the Developer's Notice pay to the Council the Affordable Housing Contribution and the Administration Charge in respect of the applicable Rented Dwelling(s).

### 3. **Exclusions to this Schedule**

- 3.1. The obligations in this Deed shall not be binding on:

- 3.1.1. Any Protected Tenant (or any mortgagee or chargee, receiver or administrative receiver of the Protected Tenant) or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees;

- 3.1.2. Any Chargee (subject only to paragraph 3.2.1 below); or

- 3.1.3. Any purchaser of an individual Affordable Unit from a mortgagee or chargee pursuant to any default by an individual mortgagor of an Affordable Unit or any person deriving title from that individual mortgagor.

- 3.2. This Schedule 3 of this Deed shall not be binding on a Chargee PROVIDED THAT:

- 3.2.1. Such Chargee has first given written notice to the Council of its intention to dispose of the relevant Affordable Unit(s) and thereafter has used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the relevant Affordable Unit(s) to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 3.2.2. If such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Unit(s) free from the obligations in this Schedule 3 of this Deed which thereafter will determine absolutely in respect of such Affordable Unit(s).

### 4. **Social Rent Dwellings**

- 4.1. In the event that the Registered Provider should elect to Occupy one or more of the Rented Dwellings as Social Rented Dwellings, the provisions of this Paragraph 4 shall apply to those Rented Dwellings.

- 4.2. No Social Rented Dwellings shall be Occupied otherwise than as a Social Rented Dwelling.

- 4.3. The initial letting of any Social Rent Dwellings provided shall be allocated in accordance with the Council's choice based lettings system "Choose 'n' Move" or such successor policy PROVIDED ALWAYS THAT where a Registered Provider is not a signatory to either the Council's Choice Based Lettings System (or a relevant successor policy) then prior to Occupation of any Social Rented Units provided, the Registered Provider shall offer to enter into a nominations agreement with the Council detailing how the Social Rented Units provided will be allocated to Eligible Persons.

4.4. Every alternate subsequent re-letting of any Social Rented Dwelling provided shall thereafter be allocated in accordance with the Council's Choice Based Lettings System "Choose 'n' Move" (or a relevant successor policy) or any applicable nominations agreement entered into pursuant to paragraph 4.3 above

5. **Affordable Rented Dwellings**

5.1. In the event that the Registered Provider should elect to Occupy one or more of the Rented Dwellings as Affordable Rented Dwellings, the provisions of this Paragraph 5 shall apply to those Rented Dwellings.

5.2. No Affordable Rented Dwellings shall be Occupied otherwise than as an Affordable Rented Dwelling.

5.3. Allocation of the Rented Dwelling shall be in accordance with the Council's choice-based lettings system Choose n Move or such successor policy PROVIDED ALWAYS THAT where a Registered Provider is not a signatory to either the Council's choice-based lettings system or such successor policy then prior to Occupation of the Rented Dwelling the Registered Provider shall offer to enter into a nominations agreement with the Council detailing how the Rented Unit will be allocated to Eligible Persons.

5.4. The Registered Provider shall enter into a Nominations Agreement to be agreed with the Council.

## Schedule 4 – First Homes

- 1.1. The First Homes Unit provided on the Development shall not be visually distinguishable from the Market Dwellings based upon its external appearance.
- 1.2. The internal specification of the First Homes Unit shall not by reason of it being a First Home be inferior to the internal specification of the equivalent Market Dwellings **PROVIDED THAT** (subject to that requirement) variations to the internal specifications of the First Homes Unit shall be permitted.
2. **Type and Distribution**
  - 2.1. The First Homes Unit provided shall be in accordance with the Affordable Housing Scheme.
3. **Delivery Mechanism**
  - 3.1. The First Homes Unit shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as a First Home to a person or person(s) meeting:
    - 3.1.1. the Eligibility Criteria (National); and
    - 3.1.2. the Eligibility Criteria (Local).
  - 3.2. If after the First Homes Unit has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 3.1.2 shall cease to apply.
  - 3.3. Subject to paragraphs 3.6 to 3.10, the First Homes Unit shall not be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.
  - 3.4. The First Homes Unit shall not be Disposed of (whether on a first or any subsequent sale) unless and until:
    - 3.4.1. The Council has been provided with evidence that:
      - 3.4.1.1. the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.2 applies meets the Eligibility Criteria (Local) (if any);
      - 3.4.1.2. the First Homes Unit is being Disposed of as a First Home at the First Homes Discount Market Price; and
      - 3.4.1.3. the transfer of the First Homes Unit includes:
        - 3.4.1.3.1. a definition of the "Council" which shall be "the Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire"
        - 3.4.1.3.2. a definition of "*First Homes Provisions*" in the following terms:

*"means the provisions set out in paragraphs X - X of the Section 106 Agreement a copy of which is attached hereto as the Annexure."*

3.4.1.3.3. A definition of "Section 106 Agreement" in the following terms:

*"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ DATE OF THIS DEED ] made between (1) the Council of the Borough of Kirklees and (2) North Park (Birchencliffe) Limited;"*

3.4.1.3.4. a provision that the First Homes Unit is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Homes Unit or any part of it other than in accordance with the First Homes Provisions; and

3.4.1.3.5. a copy of the First Homes Provisions in an Annexure; and

3.4.1.3.6. The First Homes Administration Charge has been paid to the Council by the Developer in respect of the initial disposal and the owner of the individual Dwelling on all subsequent disposals;

3.4.2. the Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.3 and 3.4.1 have been met.

3.5. On the first Disposal of the First Homes Unit to a First Home Owner the Developer shall apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Homes Unit of the following restriction:

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by The Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"*

3.6. The owner of the First Homes Unit (which for the purposes of this clause shall include the Developer and any First Home Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

3.6.1. the First Homes Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 3.1 and 3.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and reasonable endeavours have been made to Dispose of the Dwelling as a First Home

but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 3.3 and 3.4.1; or

- 3.6.2. requiring the First Home Owner to undertake active marketing for the period specified in paragraph 3.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship.
- 3.7. Upon receipt of an application served in accordance with paragraph 3.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Homes Discount Market Price.
- 3.8. If the Council is satisfied that either of the grounds in paragraph 3.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 that the relevant Dwelling may be Disposed of:
  - 3.8.1. to the Council at the First Home Discount Market Price; or
  - 3.8.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home.

and on the issue of that written confirmation the obligations in this Schedule which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.11 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

- 3.9. If the Council does not wish to acquire the First Homes Unit itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 serve notice on the owner of the First Homes Unit setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months) **PROVIDED THAT** if at the end of that period the owner of the First Homes Unit has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 3.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 3.10. Where the First Homes Unit is Disposed of other than as a First Home or to the Council at the First Homes Discount Market Price in accordance with paragraphs 3.8 or 3.9 above the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution (Provided That for the avoidance of doubt this shall not be payable where the First Homes Unit is Disposed of to the Council at the First Homes Discount Market Price).
- 3.11. Upon receipt of the Additional First Homes Contribution the Council shall within 10 working days of such receipt:
  - 3.11.1. provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title; and

- 3.11.2. apply all monies received towards the provision of Affordable Housing within the Council's administrative area.
- 3.12. Any person who purchases the First Homes Unit free of the restrictions in this Schedule 4 pursuant to the provisions in paragraphs 3.8 and 3.9 shall not be liable to pay the Additional First Homes Contribution to the Council.
- 3.13. Prior to Commencement of Development the Developer shall submit to the Council the Marketing Strategy for the Council's approval and the Developer shall not commence development unless and until such marketing strategy has been approved by the Council such approval not to be unreasonably withheld or delayed and thereafter the First Homes shall be disposed of according to the terms of the Marketing Strategy.

4. **Use of the First Home Units**

- 4.1. The First Homes Unit shall be used only as the main residence of the First Home Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with paragraphs 4.1.1 – 4.1.4 below.
- 4.1.1. A First Home Owner may let or sub-let their First Homes Unit for a fixed term of no more than two (2) years, provided that the First Home Owner notifies the Council in writing before the First Homes Unit is Occupied by the prospective tenant or sub-tenant (and a First Home Owner may let or sub-let their First Homes Unit pursuant to this paragraph more than once during that First Home Owner's period of ownership **PROVIDED THAT** the aggregate of such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed two (2) years).
- 4.1.2. A First Home Owner may let or sub-let their First Homes Unit for any period provided that the First Home Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting and in such case the Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- 4.1.2.1. the First Home Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- 4.1.2.2. the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
- 4.1.2.3. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- 4.1.2.4. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;

- 4.1.2.5. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- 4.1.2.6. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 4.1.3. A letting or sub-letting permitted pursuant to paragraph 4.1.1 or 4.1.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 4.1.4. Nothing in this paragraph 4 prevents a First Home Owner from renting a room within their First Home or from renting their First Homes Unit as temporary sleeping accommodation provided that the First Homes Unit remains at all times the First Home Owner's main residence.

5. **Exclusions and release**

- 5.1. The obligations in this Schedule 4 in relation to First Homes Units shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver **PROVIDED THAT:**
  - 5.1.1. such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the First Homes Unit; and
  - 5.1.2. once notice of intention to Dispose of the First Homes Unit has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Homes Unit at its full Open Market Value and subject only to paragraph 5.3; and
  - 5.1.3. following the Disposal of the First Homes Unit the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
  - 5.1.4. following receipt of notification of the Disposal of the relevant First Homes Unit the Council shall:
    - 5.1.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.5; and
    - 5.1.4.2. apply all such monies received towards the provision of Affordable Housing.
- 5.2. Paragraphs 1 and 2 of this Schedule shall not apply to a First Home Owner.

- 5.3. Paragraphs 3, 4 and 5 apply as set out therein but and for the avoidance of doubt where a First Homes Unit is owned by a First Home Owner they shall apply to that First Home Owner only in respect of the First Home owned by that First Home Owner.

## **Schedule 5 – Financial Contributions**

### **The Owner covenants:**

1. **Managed Areas Inspection Fee**

- 1.1. Not to Commence Development until the Managed Areas Inspection Fee has been paid to the Council.

2. **Public Open Space Contribution**

- 2.1. Not to cause or permit Occupation of more than 9 Dwellings until the Public Open Space Contribution has been paid to the Council.

3. **Education Contribution**

- 3.1. Not to cause or permit Occupation of more than 9 Dwellings until the Education Contribution has been paid to the Council.

4. **Off-Site Highways Contribution**

- 4.1. Not to cause or permit Occupation of more than 9 Dwellings until the Off-Site Highways Contribution has been paid to the Council.

5. **Biodiversity Contribution**

- 5.1. Not to cause or permit Occupation of more than 9 Dwellings until the Biodiversity Contribution has been paid to the Council.

6. **Metrocard Contribution**

- 6.1. Not to cause of permit Occupation of any of the Dwellings until the Metrocard Contribution has been paid to the Council.

## Schedule 6 – Managed Areas

### 1. Provision of Managed Areas

- 1.1. Prior to the Commencement of Development the Owner shall submit a Managed Areas Scheme to the Council for approval.
- 1.2. The Managed Areas Scheme shall include details of the following:
  - 1.2.1. The detailed design of the Managed Areas to be provided as part of the Development;
  - 1.2.2. Planting plans and specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants and proposed numbers / densities;
  - 1.2.3. The proposals for the future management and ownership of the Managed Areas which for the avoidance of doubt may provide for the Owner to transfer of the Managed Areas to a Management Company for the purposes of its future management and in the event that such a transfer to a Management Company is proposed the Managed Areas Scheme shall include:
    - 1.2.3.1. Details of the Management Company to whom the Managed Areas will be transferred upon its completion; and
    - 1.2.3.2. Proposals for the future maintenance of the Managed Areas by the Management Company including the estimated costs to be levied by the Management Company upon the owners or occupiers of the Dwellings in respect of the maintenance of the said Managed Areas.
- 1.3. The Owner shall invite the Council to (within 25 working days of the date of receipt of the Managed Areas Scheme from the Owner) inspect the Managed Areas Scheme and thereafter notify the Owner in writing of its approval to the Managed Areas Scheme proposed by the Owner or provide in writing its proposed amendments to the Managed Areas Scheme pursuant to which the Owner acting reasonably shall submit a revised Managed Areas Scheme incorporating those amendments as are reasonable and accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the Managed Areas Scheme within the 25 working days referred to above it shall be deemed that the Council has approved the Managed Areas Scheme submitted by the Owner.
- 1.4. In the event that (after a period of not less than 25 working days following receipt from the Owner of a revised Managed Areas Scheme (submitted pursuant to Paragraph 1.3 of Schedule 6) the Council serves further written notice upon the Owner stating that the Council does not approve the revised Managed Areas Scheme:
  - 1.4.1. The Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owners of a further revised Managed Areas scheme; and/or

- 1.4.2. Either the Owner or the Council may invoke the provisions of clause [ ] of this Deed in respect of the acceptability or otherwise of the relevant revised Managed Areas scheme.
- 1.5. Upon receipt of the Council's approval or deemed approval or to a Managed Areas Scheme pursuant to Paragraph 1.4 of Schedule 6 (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 from time to time).
- 1.6. The Owner covenants that it shall not permit the Occupation of more than 75% (19 houses) of the Dwellings until it has received the Council's approval or deemed approval of the Managed Areas Scheme pursuant to Paragraph 1.3 or Paragraph 1.4 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. Upon the Managed Areas being completed to the Council's reasonable satisfaction in accordance with the approved Managed Areas Scheme the Owner shall either:
- 2.1.1. 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) on the terms agreed between the Owner and the Management Company in consultation with the Council and all further maintenance shall be thereafter carried out by the Management Company **PROVIDED THAT** it shall be a term of the transfer that the Management Company shall:
- 2.1.1.1. Maintain and manage 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
- 2.1.1.2. Only allow the use of the Managed Areas for public access and recreation and for no other purpose; or
- 2.1.2. 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) **IN DEFAULT OF WHICH** the Council shall be entitled (upon giving reasonable prior written to the Owner) to carry out any maintenance works reasonably required to the Managed Areas and recover the proper and reasonable costs and expenses involved from the Owner.
- 2.2. 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.
- 2.3. 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) requiring the Owner or the

Management Company (as applicable) to undertake such remedial steps as are specified in the notice.

- 2.4. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 2.4 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.

## **Schedule 7 – Sustainable Urban Drainage Systems**

### **1. Provision of Sustainable Drainage Systems**

- 1.1. Prior to Commencement of Development the Developer shall submit to the Council for approval the SuDS Maintenance and Management Plan such SuDS Maintenance and Management Plan to contain:
  - 1.1.1. Details and a programme for the long term management and maintenance works to cover all aspects of the SuDS to include:-
    - 1.1.1.1. A detailed maintenance schedule and methodology for all individual SuDS components to maintain the functionality of the SuDS, water storage and treatment;
    - 1.1.1.2. A detailed schedule and methodology for the inspection, maintenance and replacement as required of engineering features including inlet and outlet structures, flow controls tanks and channels;
    - 1.1.1.3. A detailed schedule and methodology for the inspection, maintenance and replacement as required of any other SuDS features;
    - 1.1.1.4. A detailed schedule and methodology for litter and debris removal, landscape and grass cutting, weeding and sediment removal;
  - 1.1.2. Details of the procedure in place for dealing with extreme rainfall events (both prior and post event);
  - 1.1.3. Plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Yorkshire Water sewers and details of whether the SuDS feature is a designated asset under the Floor & Water Management Act 2010.
  - 1.1.4. Details of the maintenance of the shared surface water drainage network, connected to the SuDS, and the shared foul drainage network within the Site as part of the Development prior to their adoption by Yorkshire Water.
  - 1.1.5. Detailed maintenance schedules will be provided which shall include details of the frequency of all actions and routine maintenance activities, the timing of all inspections (including annual inspections) and the timing of management works arising from inspections.
  - 1.1.6. Details of the maintenance regime that will be adopted during the construction phase up until the point that the SuDS is signed off as complete in accordance with the approved design.
  - 1.1.7. Details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of SuDS.
- 1.2. In the event that the Council considers that it is unable to approve the submitted version of the SuDS Maintenance and Management Plan the Developer shall submit

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

2. **Management of Sustainable Drainage Systems**

- 2.1. The Developer covenants to fully comply with the relevant 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.
- 2.2. The Owner shall not Occupy any residential property/unit until the SuDS have been adopted by a statutory undertaker or transferred to the SuDS Management Company and thereafter the SuDS Management Company shall maintain and manage those SuDS in accordance with the relevant SuDS Maintenance and Management Plan in perpetuity SAVE THAT this obligation shall not apply where the SuDS in question has been adopted by a statutory undertaker.
- 2.3. No part of the SuDS shall be transferred or leased to any SuDS Management Company unless the identity of the SuDS Management Company has been approved by the Council. In seeking approval of any SuDS Management Company the Owners shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, the structure of the SuDS Management Company, voting rights and such other information as the Council shall require.
- 2.4. The Developer shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and email address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of any of the SuDS.
- 2.5. Unless and until such time as any part of the SuDS are adopted by a statutory undertaker the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the relevant SuDS Maintenance and Management Plan.
- 2.6. In the event that the Council considers that the requirements of the relevant SuDS Maintenance and Management Plan are not being complied with then the Council may serve a notice on the Developer or the SuDS Management Company as applicable requiring the Developer or the SuDS Management Company (as applicable) to undertake such remedial steps as are specified in the notice.
- 2.7. The Developer or the SuDS Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 2.5 above within 14 days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.
- 2.8. The approved SuDS Maintenance and Management Plan shall only be varied or amended with the prior written approval of the Council.

## **Schedule 8 – Council's Covenants (General)**

### **1. Receipt of Financial Contributions**

- 1.1. The Council will issue separate receipts on request for any sum paid to the Council under this Deed.
- 1.2. The Council will place all sums received under this Deed in an interest bearing account or in separate accounts as the Council shall at its discretion decide.
- 1.3. The Council will not apply the Contributions or any sums received pursuant to this Deed for any purpose other than as described in this Deed.

### **2. Repayment of Financial Contributions**

- 2.1. In the event that the Contributions or any part or parts thereof are not expended within 10 years of the date of payment then the sum or sums not expended plus any interest accrued will be repaid to the paying party or its nominee upon written request of the paying party.

### **3. Performance**

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



**Executed as a Deed** (but not delivered  
Until the date of it) by the affixing of  
**THE COMMON SEAL of  
THE COUNCIL OF THE BOROUGH OF  
KIRKLEES**

**Authorised Sealing Officer**  
(A permanent Officer of the Council)

**Signed as a deed**  
(but not delivered until the date hereof) by

**NIGEL JOHN LEE**

In the presence of:

Witness Signature:

Name of Witness: [

Address:

**Signed as a deed**  
(but not delivered until the date hereof) by

**JANET MAY LEE**

In the presence of:

Witness Signature:

Name of Witness:

Address:

**Executed as a deed**

(but not delivered until the date hereof) by

**NORTH PARK (BIRCHENCLIFFE) LIMITED**

acting by one Director:

In the presence of:

Witness signature:

Name of Witness:

Address: