

Dated 2<sup>nd</sup> DECEMBER

2015

**SELBY DISTRICT COUNCIL**

**and**

**DAVID PULLEYN**

**DEED PURSUANT TO**

**Section 106 of the Town and Country Planning  
Act 1990 relating to land to the north west of Castle Close,  
Cawood, near Selby North Yorkshire, YO8 3SY  
Planning application reference 2015/0518/OUT**

THIS DEED is made the 2ND day of DECEMBER 2015

**BETWEEN:-**

- (1) **SELBY DISTRICT COUNCIL** of Civic Centre, Doncaster Road, Selby, North Yorkshire, YO8 9FT (the "District Council")
- (2) **DAVID PULLEYN OF** number one Bothany Bay Cottages, Commonside Road, Selby, North Yorkshire, YO8 8JS

**WHEREAS**

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The Owner is the freehold owner of the Site with absolute title at Land Registry under title number NYK164354.
3. The Owner has submitted the Application to the District Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained herein.

**1. DEFINITIONS AND INTERPRETATION**

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

- "Act"** means the Town and Country Planning Act 1990
- "Affordable Housing"** means affordable housing as described in Annex 2 of the National Planning Policy Framework dated 27 March 2012 (and any future guidance or initiative that replaces or supplements it)
- "Affordable Housing Contribution"** means <sup>A</sup>the sum of ~~it~~ WHICH SHALL BE CALCULATED IN ACCORDANCE WITH THE AFFORDABLE HOUSING SPD. QUM
- "Affordable Housing Land"** means the part of the Site where the Affordable Housing Units will be constructed as set out in the Affordable Housing Plan to be approved by the District Council as part of the Reserved Matters Approval
- "Affordable Housing Plan"** means the detailed scheme to be provided for the District Council's approval identifying the number, types, size, location and tenures of the Affordable Housing Units and the timetable for the construction and Practical

Completion thereof to satisfy the requirements of the First Schedule hereof subject to any modifications as may be approved in writing by the District Council

**“Affordable Housing Sale Contract”**

means a legally binding contract for the transfer of the Affordable Housing Land to a Registered Provider which shall be on substantially the same terms as the transfer of Market Units and shall include the following terms and conditions:

(a) at a cost that allows the Registered Provider to let the Social Rented Dwellings at a Social Rent and to let the Affordable Dwellings at an Affordable Rent;

(b) at a cost that allows the Registered Provider to sell the Intermediate Housing at a price that is affordable having regard to local incomes and local house prices

**“Affordable Housing SPD”**

means the Affordable Housing Supplementary Planning Document adopted by the District Council on 25 February 2014 or such other document as shall replace it.

**“Affordable Housing Standards”**

the design criteria in addition to relevant Building Regulations with which the Affordable Housing Units shall comply, namely:

- to be constructed to HCA Design and Quality Standards (“DQS”); and
- designed to the same external design as the Market Units so as to be indistinguishable from the Market Units

**“Affordable Housing Units”**

means the units of Affordable Housing which shall comprise 40% of the total number of Dwellings on the Site (rounded up to the nearest whole Dwelling), unless an alternative figure is justified in accordance with the Affordable Housing SPD and agreed by the District Council, and of which:

30-50% shall be Intermediate Housing (the number to be rounded up to the nearest whole dwelling); and

50-70% shall be Rented Housing (the number to be rounded up to the nearest whole dwelling)

and “Affordable Housing Unit” shall be construed accordingly

**"Affordable Rent"**

means an Affordable Housing Unit which is let at a rent of no more than 80% of the local market rent and using the Royal Institution of Chartered Housing Surveyors approved valuation methods such rent shall not exceed Local Housing Allowance levels or equivalent replacement assessment

**"Affordable Rented Unit"**

means an Affordable Housing Unit let by the Registered Provider at an Affordable Rent and which meets the criteria of "affordable rented housing" in the definition of "affordable housing" in Annex 2 to the National Planning Policy Framework and "Affordable Rented Units" shall be construed accordingly

**"Application"**

means the application for outline planning permission registered by the District Council on ~~5 February~~ <sup>19 MAY</sup> 2015 and allocated planning application reference number 2015/0518/OUT *ach*

**"Commencement of Development"**

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

**"Development"**

means the development of the Site with all matters reserved for the erection of residential development as set out in the Application

**"Dwelling"**

means a unit of residential accommodation (including a house, flat or maisonette) that may be built on the Site as part of the Development pursuant to the Planning Permission and "Dwellings" shall be construed accordingly

**"Fully Serviced"**

means the relevant Dwelling has proper connections within its boundary so as to connect it to surface water drainage facilities and to mains foul drainage water gas electricity and telecommunications (or such of the aforesaid services, if any, the provision of which is

anticipated to be required) and enjoys direct access to the public highway or a roadway constructed to adoptable standards which is connected to the public highway and which is adequate for the purpose of its prospective use

**“HCA”**

means the Homes and Communities Agency constituted pursuant to the Housing and Regeneration Act 2008 and any successor or successors for the time being and any future organisation carrying on substantially the same grant making functions

**“Index”**

means in relation to construction the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

**“Index Linked”**

means that wherever reference in this Deed is made to a sum being Index Linked it shall mean that at the date when the said sum becomes due it shall be adjusted in accordance with upwards changes in the Index from the date of the adoption of the Affordable Housing SPD and until the date upon which the payment becomes due

**“Initial Intermediate Unit Sale”**

means the first disposal of a Shared Ownership Unit or a Shared Equity Unit

**“Initial Intermediate Unit Value”**

Means the market value of the Dwelling at the time of the Initial Market Sale of a Shared Ownership Unit or Shared Equity Unit such valuation having either been determined by three separate estate agents/surveyors being members of the Royal Institution of Chartered Surveyors or being the mean average of overall sales values of equivalent dwellings to the Dwelling within the same settlement as the Site over the previous 12 months from the date of the valuation as may be agreed by the District Council

**“Intermediate Housing”**

means Affordable Housing which meets the criteria of "intermediate housing" in the definition of "affordable housing" in Annex 2 to the National Planning Policy Framework and intended for those who cannot afford to purchase a Dwelling on the open market without assistance or subsidy which may include Shared Ownership Units or Shared Equity Units or any other form of forms of intermediate affordable housing products which may be approved by the District Council and **“Intermediate Unit”** shall be construed accordingly

<b>“Interest”</b>	means 1% over the base lending rent for the time being of Barclays Bank Plc. compounded quarterly from the date the payment is due until the date of actual payment
<b>“Local Housing Allowance”</b>	means the rent rate set annually by the Valuation Office (or any successor body thereto) for the area the Affordable Housing Units are located and which is used to calculate the maximum housing benefit entitlement for each tenant thereof
<b>“Management Company”</b>	means a company to be set up for the purposes of managing and maintaining the Open Space Land in perpetuity
<b>“Market Units”</b>	means Dwellings which are not Affordable Housing Units and “Market Unit” shall be construed accordingly
<b>“Monitoring Fee”</b>	means the sum of £750 to be used towards the District Council’s administration and monitoring costs associated with this Deed
<b>“National Planning Policy Framework”</b>	means the National Planning Policy Framework dated 27 March 2012 (and any future guidance or initiative that replaces or supplements it)
<b>“Nomination Deed”</b>	Means the nomination deed substantially in the form of the draft annexed as Appendix 1
<b>“Notice of Commencement”</b>	means written notification from the Owner to the District Council addressed to the Head of Planning of the Commencement Date in accordance with the provisions of paragraph 1 of the First Schedule hereof
<b>“North Yorkshire HomeChoice”</b>	means the North Yorkshire Home Choice choice based lettings scheme (or any replacement or successor scheme having the same or similar functions from time to time)
<b>“Occupation”</b>	means occupation for the purposes authorised by the Planning Permission but not including occupation by personnel engaged in construction or fitting out or occupation in relation to marketing or display or security operations
<b>“Open Space Land”</b>	means an area of open space to be provided within the Site in the location as shown on the attached drawing marked proposed siteplan to be used as public open space and laid out in accordance with the Open Space

Works Specification and in accordance with the provisions of the First Schedule.

**"Open Space Contribution"**

means a financial contribution calculated in accordance with the standard charges of the Council at the time the Open Space Land is transferred and which is certified by the Council as necessary to cover the cost of repairing and maintaining the Open Space Land for a period of 15 years.

**"Open Space Works Specification"**

means a scheme, to be agreed with the Council, including plans drawings and specifications showing but not limited to the layout and design of the Open Space Land including details of any proposed play areas and equipment, landscaping paths and access arrangements, street furniture and fencing together with details of the proposed permanent Open Space Land management regime in perpetuity

**"Plan"**

means the plan of the Site attached to this Deed at Appendix 2 and marked Plan A

**"Planning Permission"**

means the planning permission subject to conditions granted pursuant to the Application

**"Practically Completed"**

means constructed, fitted out and Fully Serviced so as to be available for immediate Occupation and "Practical Completion" shall be construed accordingly

**"Qualifying Person and Qualifying Persons"**

means a person or persons with a local connection who may be selected by the District Council or by a Registered Provider to Occupy an Affordable Housing Unit and, in the case of Social or Affordable Rented Units, who are registered with North Yorkshire HomeChoice or in the case of Intermediate Units able to be so registered

**"Registered Provider"**

means a private registered provider of Affordable Housing as defined in section 80 of the Housing and Regeneration Act 2008 which is registered with and regulated by the HCA or any similar future authority carrying out substantially the same regulatory or supervisory functions

**"Rented Housing"**

means Affordable Housing Units let by a Registered Provider as Social Rented Units and/or Affordable Rented Units

**"Reserved Matters Approvals"**

means the relevant approvals by the District Council of a

reserved matters application made pursuant to the Planning Permission

**"Selby District"**

means the administrative area of the District Council

**"Shared Equity Lease"**

means the lease of an Affordable Housing Unit where 75% of the equity is sold on a long lease to a Qualifying Person and the remainder of the equity is retained in perpetuity by the Registered Provider and a registered as such pursuant to the Shared Equity Sale Restriction

**"Shared Equity Unit"**

means an Affordable Housing Unit which is available on a Shared Equity Lease in accordance with the First Schedule and which is disposed of to Qualifying Persons subject to the Shared Equity Restriction and "Shared Equity Units" shall be construed accordingly

**"Shared Ownership Lease"**

means a shared Ownership lease in the model form approved by the HCA the premium being no less than 25% and not more than 75% of the Initial Market Value as defined in the model lease (PROVIDED THAT all reasonable endeavours shall be used to procure a lease share of 50% on such disposals) with the rent at or below 2.75% of the outstanding equity

**"Shared Ownership Unit"**

means an Affordable Housing Unit which is disposed of by way of a Shared Ownership Lease granted by the Register Provider to Qualifying Persons and "Shared Ownership Units" shall be construed accordingly

**"Site"**

means the land known as the land to the north west of Castle Close, Cawood, near Selby North Yorkshire, YO8 3SY and being part of the land registered at Land Registry under title numbers NYK164354 against which this Deed may be enforced as shown edged red on the Plan

**"Social Rent"**

means social rented housing owned by the approved Registered Provider to be occupied by Qualifying Persons on an assured tenancy agreement or an equivalent rental arrangement as approved by the District Council at a rent not exceeding the guideline target rent determined through the national rent regime

**"Social Rented Unit"**

means an Affordable Housing Unit which is let subject to a Social Rent and "Social Rented Units" shall be construed accordingly



<b>“Unencumbered”</b>	means free from all adverse rights, easements, restrictions or other encumbrances which would interfere with the use of the Open Space Land as public open space
<b>“Waste and Recycling Contribution”</b>	means the sum of £65 per dwelling to be paid to the District Council in accordance with the provisions of the First Schedule and to be used for the provision of waste and recycling facilities as set out therein

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where the context so requires:
- 2.1.1 Reference to any clause, paragraph or schedule or recital such reference is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.1.2 Words importing the singular meaning include the plural meaning and vice versa
- 2.1.3 Words of one gender include all and any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 2.1.4 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
- 2.1.5 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
- 2.1.6 References to any party 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 District Council and the successors to its statutory functions
- 2.1.7 The clause headings in this Deed are for reference only and shall not affect construction of this Deed
- 2.1.8 Any reference to any officer of the District Council shall include such officer for the time being of the District Council as appropriate or anyone authorised by him or the District Council to act on his behalf
- 2.1.9 Any reference to a working day shall exclude any day between 27<sup>th</sup> and 31<sup>st</sup> December in any year

2.1.10 Where any expiry date falls on a Saturday or Sunday then the period concerned shall actually expire on the next business day

2.1.11 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing by any person authorised by them

### **3. LEGAL BASIS**

3.1 This Deed is made pursuant to the following statutory provisions:

3.1.1 Section 106 of the Act;

3.1.2 Section 111 of the Local Government Act 1972;

3.1.3 Section 2 of the Local Government Act 2000;

3.1.4 Section 1 of the Localism Act 2011.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council against the Owner and shall bind any successors in title to the Sitesave for the purchasers of any individual Market Unit.

3.3 To the extent that any of the obligations are not planning obligations within the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers.

3.3 The parties to this Agreement have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and agree that the planning obligations it contains are:

3.3.1 necessary to make the Development acceptable in planning terms;

3.3.2 directly and fairly related to the Development; and

3.3.3 fairly and reasonably related in scale and kind to the Development.

### **4. CONDITIONALITY**

4.1 The covenants within Clause 5 shall come into effect upon the grant of the Planning Permission.

4.2 The covenants within Clause 7 (Costs), Clause 10 (Change in Ownership), Clause 14 (Jurisdiction), Clause 15 (Delivery), Clause 16 (Notices), Clause 17 (Disputes), Clause 18 (Warranty) shall come into effect immediately upon completion of this Deed.

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

5.1 The Owner covenants with the District Council as set out in the First Schedule.

## **6. THE DISTRICT COUNCIL'S COVENANTS**

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

## **7. COSTS**

7.1 The Owner shall pay on completion of this Deed:

7.1.1 the reasonable legal costs of the District Council incurred in the preparation, negotiation, and execution of this Deed up to a maximum of £1,500 inclusive of VAT

7.1.2 on the grant and issue of the Planning Permission, the Monitoring Fee to the District Council.

## **8. MISCELLANEOUS**

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

8.2 This Deed shall be registered as a local land charge by the District Council.

8.3 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.

8.4 This Deed shall cease to have effect (insofar only as it has not already 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 or expires prior to the Commencement of Development.

8.5 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.6 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties or obligations of the District Council in the exercise of its functions as Local Planning Authority and its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations may be fully and effectually exercised as if the District Council were not a party to this Deed.

8.7 Nothing in this Deed shall be construed as granting planning permission or any other approval, consent or permission required from the District Council in the exercise of any other statutory function.

**9. WAIVER**

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

**10. CHANGE IN OWNERSHIP**

The Owner agrees with the District Council to give the District Council immediate written notice 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 or unit of occupation purchased by reference to a plan.

**11. INDEXATION**

Any sum referred to as due in the First Schedule shall be increased by an amount equivalent to the increase in the Index from the date of adoption of the Affordable Housing SPD until the date of payment of the sum payable.

**12. INTEREST**

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of payment.

**13. VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

**14. JURISDICTION**

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

**15. 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.

**16. NOTICES**

- 16.1** Any notice or other communication given or made in accordance with this Deed shall be in writing and:
- 16.1.1** shall be delivered personally or sent by registered or recorded delivery;
- 16.1.2** shall not be sent by email or DX;
- 16.1.3** shall in the case of a notice or other communication to the District Council be served on the District Council and addressed to The Lead Planning Officer at the District Council's address shown on the first page of this Deed or such other address as the District Council may from time to time notify the Owner and its successors as being its address for service for the purposes of this Deed;
- 16.1.4** shall in the case of a notice or other communication to the Owner be served on the Owner at the address of the Owner shown on the first page of this Deed or such other address as it may have from time to time notified to the District Council as being its address for service for the purposes of this Deed;

## **17. DISPUTES**

- 17.1** All differences and disputes which may arise between the Parties hereto concerning this Deed shall:
- 17.1.1** Where the difference or dispute relates to the construction or interpretation of this Deed be referred to the determination (as an expert and not as an arbitrator) of an independent leading planning counsel (of not less than 7 years call) agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales or his Deputy on the application of any of the parties in dispute;
- 17.1.2** Where any dispute or difference shall arise between the parties hereto as to any works to be done or achieved and the costings thereof pursuant to this Deed the same shall be referred to the determination (as an expert and not as an arbitrator) of a surveyor agreed upon between the parties in dispute but in default of such agreement by the President for time being of the Royal Institution of Chartered Surveyors or his Deputy appointed upon the application of any party hereto
- 17.2** Any expert appointed pursuant to Clauses 17.1.1 or 17.1.2 shall:
- 17.2.1** act as an expert and not as an arbitrator;
- 17.2.2** on his appointment serve written notice thereof on the parties in dispute;
- 17.2.3** consider any written representations by or on behalf of those parties which are received by him within twenty one (21) working days of such service and immediately to forward a copy of the written representations of one party to the other parties;

- 17.2.4 allow all parties to the dispute an opportunity of commenting in writing on the other party's representations within fourteen (14) days of receipt by the other party thereof;
- 17.2.5 serve notice of his determination as soon as he has made it;
- 17.2.6 give full and clear reasons for his decision and whose decision (including the question of who shall pay his fees and outgoings in relation thereto) shall be delivered in writing to the parties hereto and shall be final and binding upon the parties.
- 17.3 If the expert shall die delay or become unwilling or incapable of acting or if for any reason the President or his Deputy appointing the expert shall in his absolute discretion think fit he may in writing discharge the expert and appoint another in his place.

**18. WARRANTY**

The Owner warrants that there are no other interests in the Site as at the date of this Deed other than David Pulleyn as shown on H.M. Land Registry title numbers NYK164354.

## **THE FIRST SCHEDULE**

### **The Owner's Covenants**

The Owner covenants with the District Council as follows:

#### **Affordable Housing**

##### **Part I**

##### **1. Notices**

- 1.1 To give the District Council seven working days' prior written notice of the Commencement of Development.
- 1.2 To give the District Council seven working days' prior written notice of first Occupation and seven working days' prior written notice of Occupation of 50% of the Market Units.

##### **2. Affordable Housing Land**

- 2.1 The Owner for itself and its successors in title to the Affordable Housing Land covenants with the District Council with the intention that the following provisions shall bind the Affordable Housing Land and every part of it into whosoever's hand it may come):
  - 2.1.1 Not to submit an application for the Reserved Matters Approvals unless accompanied by the Affordable Housing Plan

##### **Quantum**

- 2.1.2 The number of Affordable Housing Units shall be identified in the Affordable Housing Scheme and shall be not less than 40% of the total number of Dwellings on the Site (rounded up to the nearest whole number)

##### **Distribution**

- 2.1.3 The location of the Affordable Housing Units shall be in accordance with the Affordable Housing Plan (or any subsequent modification of the same approved by the District Council)

##### **Clustering**

- 2.1.4 To ensure the creation of mixed and integrated communities the Affordable Housing Units shall not be visually distinguishable from the Market Units and unless the District Council

agrees otherwise it shall be in accordance with and shown on the Affordable Housing Plan to be approved at Reserved Matters stage.

### **Tenure**

2.1.5 The Affordable Housing Units shall be in the numbers and percentages set out in the Affordable Housing Plan which shall comply with the following tenure split:

- (a) 30- 50% Intermediate Housing; and
- (b) 50-70% Rented Housing.

### **Mix**

2.1.6 The mix of Affordable Housing Units shall be as set out in the Affordable Housing Plan to be submitted and approved by the District Council

### **Construction**

- 2.1.7 Not to construct the Affordable Housing Units otherwise than in accordance with the Affordable Housing Standards approved by the District Council.
- 2.1.8 Not to construct the Affordable Housing Units otherwise than in accordance with the Affordable Housing Plan approved by the District Council.
- 2.1.9 Not to Occupy more than 75 % of the Market Units (rounded down to the nearest whole Market Unit) until all of the Affordable Housing Units (comprising 40% of the total number of Dwellings) have been Practically Completed.

### **Rented Units**

- 2.1.10 The rent payable by the occupant of any Social Rented Unit shall be the Social Rent.
- 2.1.10.1 The rent payable by the occupant of any Affordable Rented Unit shall be the Affordable Rent.

### **Occupation**

- 2.1.11 The Affordable Housing Units shall be occupied only by Qualifying Persons as their sole and main residence.



- 2.1.12 Not to Occupy or cause or permit the Occupation of the Affordable Housing Units otherwise than in accordance with this Schedule 1 hereof and the tenure split in the Affordable Housing Plan approved by the District Council.
- 2.1.13 The Affordable Housing Units shall be advertised and allocated by the Registered Provider to Qualifying Persons.
- 2.1.14 Not to Occupy or cause or permit the Occupation of more than 75% of the Market Units (rounded down to the nearest whole Market Unit) until all of the Affordable Housing Units have been transferred to the Registered Provider approved by the District Council
- 2.1.15 Not to Occupy or cause or permit the Occupation of the Affordable Housing Units other than under the management and supervision of a Registered Provider as landlord and/or freeholder in accordance with usual and normal terms and conditions of the type and style recommended by the HCA in such form as shall be appropriate for the Rental Units and Intermediate Housing Units and as shall be approved in advance of its first use by the District Council (which approval shall not be withheld or delayed in the case of drafting which is in accordance with the requirements of the HCA and amended as may be necessary as to take account of this Deed).

### **3 Registered Provider**

- 3.1 The Owner shall appoint a Registered Provider approved by the District Council and enter into the Affordable Housing Sale Contract prior to practical completion of Market Units on the Site PROVIDED THAT if such approved Registered Provider cannot or will not proceed to enter into the Affordable Housing Sale Contract then the provisions of Part II of this First Schedule shall take effect SUBJECT ALWAYS to the District Council first confirming that such provisions may come into effect.
- 3.2 Within two (2) months of the Commencement of Development the Owner shall notify one or more Registered Providers to the District Council for approval.
- 3.3 The Owner shall only be entitled to dispose of the Affordable Housing Dwelling to a Registered Provider approved in advance in writing by the District Council.
- 3.4 Immediately upon receiving confirmation of the District Council's approval in accordance with paragraph 3.3 of this Part I to the First Schedule (above) the Owner shall offer to enter into negotiations with the approved Registered Provider and use reasonable endeavours to enter into the Affordable Housing Sale Contract with the approved Registered Provider.

- 3.5 the Owner shall leave the offer open for acceptance by the approved Registered Provider for a period of two (2) months and will during that period use reasonable endeavours to agree the Affordable Housing sale Contract with the approved Registered Provider.
- 3.6 In the event that the nominated Registered Provider declines to accept a transfer of the Affordable Housing Units or no sale of the Affordable Housing units has been effected within four (4) calendar months of the date when the Owner notified the Registered Provider in accordance with paragraph 3.2 of this Part I to the First Schedule (whichever is the later) then Part II of this First Schedule shall become operable.
- 3.7 Not to cause or permit the commencement of the Development until the Owner has:
- (a) first submitted to the District Council the details of the proposed Registered Provider with whom it intends to enter an Affordable Housing Sale Contract; and
  - (b) obtained the District Council's approval of the Registered Provider or other Landlord proposed.
- 3.8 Not to dispose of the Affordable Housing Land to anyone other than to a Registered Provider approved in advance in writing by the District Council.
- 3.9 Not to Practically Complete any more than 8 of the Market Dwellings on the Site until the Affordable Housing Sale Contract has been entered into with the Registered Provider approved by the District Council.
- 3.10 Not to complete the Affordable Housing Sale Contract referred to in paragraph 3.1 of this Part I to the First Schedule (above) unless such transfer contains covenants which comply with this Schedule 1 hereof.
- 3.11 Prior to Occupation of the Affordable Housing Units the approved Registered Provider shall enter into a Nomination Deed substantially in the form annexed hereto at Appendix 1.
- 3.12 The approved Registered Provider shall obtain the District Council's approval in advance of any changes to its nominations requirements or its criteria for selection of occupants for the Affordable Housing Units.

## **Part II**

### **Appointment of Alternative Registered Provider**

- 4.1 In the event that the Affordable Housing Sale Contract with the approved Registered Provider has not been secured before the expiry of the four month period ("the Expiry

Date") specified in paragraph 3.6 of Part I to this First Schedule then the Owner shall within five (5) days of the Expiry Date submit to the District Council in writing:

- (a) evidence as to why despite taking reasonable steps to do so it has been unable to enter into the Affordable Housing Sale Contract; and
- (b) evidence from the nominated Registered Provider that they are not willing to purchase the Affordable Housing Units

and thereupon with the prior written approval of the District Council the Owner shall be entitled to nominate an alternative Registered Provider PROVIDED ALWAYS THAT the Owner shall nominate an alternative Registered Provider within 10 days of the Expiry Date.

- 4.2 Immediately upon receiving confirmation of the District Council's approval to the alternative Registered Provider pursuant to paragraph 4.1 of this Part II to the First Schedule (above) the Owner will offer to enter into negotiations with the alternative Registered Provider and use reasonable endeavours to enter into the Affordable Housing Sale Contract with the alternative Registered Provider PROVIDED THAT the terms of any transfer shall accord with the provisions in paragraph 3 of Part I of this First Schedule.
- 4.3 In the event that the Owner complies with the requirements of paragraph 6.2 and the alternative Registered Provider cannot or will not enter into an Affordable Housing Sale Contract for the Affordable Housing Units, the Owner shall be entitled to pay to the District Council the Affordable Housing Contribution in lieu of the provision of Affordable Housing Units on the Site and the Owner shall be entitled to dispose of the Affordable Housing Units as Dwellings free of the restrictions and unperformed requirements in Part I and Part II of the First Schedule.

### **Part III**

#### **5. EXCLUSIONS**

- 5.1 The provisions of this First Schedule and the Nomination Deed at Appendix 1 shall not be binding against any tenant Occupying the Affordable Housing Units (save for any Discounted Sale Units) (or person claiming title from such person) or any mortgagee chargee or receiver of such Affordable Housing Units in the event of such person mortgagee chargee or receiver having acquired 100% of the equity of any such dwelling whether this is acquired pursuant to the rights granted by the lease of such dwelling or pursuant to the right to buy provisions of the Housing Act 1985 or the Housing Act 1996

(or any legislation amending or replacing the same) or any future legislation conferring such a right to buy which is binding on any Registered Provider.

**6. Waste and Recycling Contribution**

6.1 The Waste and Recycling Contribution to be paid to the District Council to be used by the District Council towards the provision of waste and recycling facilities in the vicinity of the Site and such contribution shall be paid prior to Occupation of the first Dwelling.

**7. Open Space Land**

7.1 Not to Commence or allow Commencement of Development unless and until the extent of the Open Space Land has been agreed with the District Council and the Open Space Works Specification has been submitted to and approved in writing by the District Council (such approval not to be unreasonably withheld or delayed)

7.2 Not to Occupy or allow Occupation of 50% of the Market Units unless and until the Open Space Land has first been provided in accordance with the approved Open Space Works Specification to the written satisfaction of the District Council

7.3 To thereafter maintain the Open Space Land in accordance with the Open Space Works Specification and to a standard suitable for use by members of the public as approved by the District Council until such time as the Open Space Land has been transferred to the Management Company in accordance with the provisions contained herein

7.4 Not to Occupy or allow Occupation of any Dwelling unless and until:

a) the Management Company has been created to the satisfaction of the District Council acting reasonably;

and

b) the memorandum and articles of association together with the form of transfer of the Open Space Land to the Management Company has been submitted to the District Council for approval and has been approved by the District Council prior to the transfer taking place (such approval not being unreasonably withheld or delayed).

7.5 Not to Occupy or allow Occupation of 75% of the Dwellings comprised on the Site unless and until the Open Space Land has been transferred to the Management Company and the Open Space Contribution has been paid to the Management

Company to be used for the purposes of maintaining the Open Space, in accordance with the reasonable requirements of the District Council (which for the avoidance of doubt includes a requirement for the Open Space Land to be transferred free from all encumbrances restrictions or easements which might affect the use as Open Space Land and subject to a restriction on the future use of the Open Space Land for recreational and amenity purposes by the general public)

- 7.6 The Owner covenants that following the transfer to the Management Company the maintenance of the Open Space Land is to be undertaken in accordance with a maintenance programme which shall have been approved in writing by the District Council such approval not to be unreasonably withheld or delayed.
- 7.7 To give the District Council immediate written notice of any change in Ownership or dissolution of the Management Company and to give details of the transferees full name and registered office and company number (if a company or usual address if not).

## **THE SECOND SCHEDULE**

### **The District Council's Covenants**

The District Council covenants with the Owner as follows:

- 1. Discharge of obligations**
- 1.1 That at the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been entirely and completely performed.
- 1.2 Following the discharge of the obligations contained in this Deed pursuant to paragraph 1.1 of this Second Schedule hereof or if pursuant to Clause 8.4 of **MISCELLANEOUS** above the Planning Permission shall be quashed, revoked or otherwise withdrawn or expires prior to the Commencement of Development the District Council shall remove the entry in the Land Charges Register.
- 1.3 To use the Waste and Recycling Contribution towards the provision of waste and recycling facilities on the Site and to use the Affordable Housing Contribution towards the provision of Affordable Housing within Selby District.



It is hereby agreed that the Council shall henceforth have the right for a period of 80 years (which period shall be the perpetuity period applicable to this Agreement) except as expressly otherwise provided to nominate as tenants of vacant Social Rented Unit/Affordable Rented Units or any Social Rented Unit/Affordable Rented Unit which fall vacant during the said period of 80 years any person in housing need to whom the Council owes a statutory duty or any other persons who are from time to time on the housing register (including waiting lists of existing tenants of the Council seeking transfers) maintained by or for the Council.

### **3 NOMINATION PROCEDURE**

Selby District Council is a member of the Sub Regional Choice Based Lettings Scheme North Yorkshire Home Choice, where properties may be advertised and made available to applicants on the housing waiting list through the said scheme by either party by agreement. Nomination rights shall be met through assessment as part of the Choice Based Lettings Scheme which is governed by an agreement dated 24 July 2009, or through any subsequent arrangements for letting affordable rented properties in the district.

### **4 NOMINATION**

4.1 On request the Registered Provider shall promptly give the Council:

4.1.1 full details of any lettings made by it of each Social Rented Unit/Affordable Rented Unit;

4.1.2 full details of any offer of a tenancy made by it to a nominee and whether such an offer has been accepted or rejected.

### **5 DISPUTES**

Any dispute or difference relating to any matter arising out of or in connection with this agreement shall be referred to expert determination in accordance with the procedures contained in the Principal Deed.

### **6 NOTICES**

Any notices required to be served hereunder shall be sufficiently served on the parties if sent by pre-paid first class recorded delivery post to the address of the parties indicated above or such other address notified by one party to the other any notice shall be deemed to have been served two business days after posting.

7 This deed shall not be binding upon any mortgagee or chargee of the Registered Provider or its successors in title exercising its power of sale in relation to any of the Social Rented Unit/Affordable Rented Unit who shall be able to sell free from the provisions hereof and also upon and following the appointment of a receiver by any such mortgagee or charge.





**APPENDIX 2**

**Plan**

Plan of Site ref: Title Plan

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL OF SELBY DISTRICT COUNCIL )  
was affixed in the presence of: )

Gillian Marshall  
Solicitor to the Council

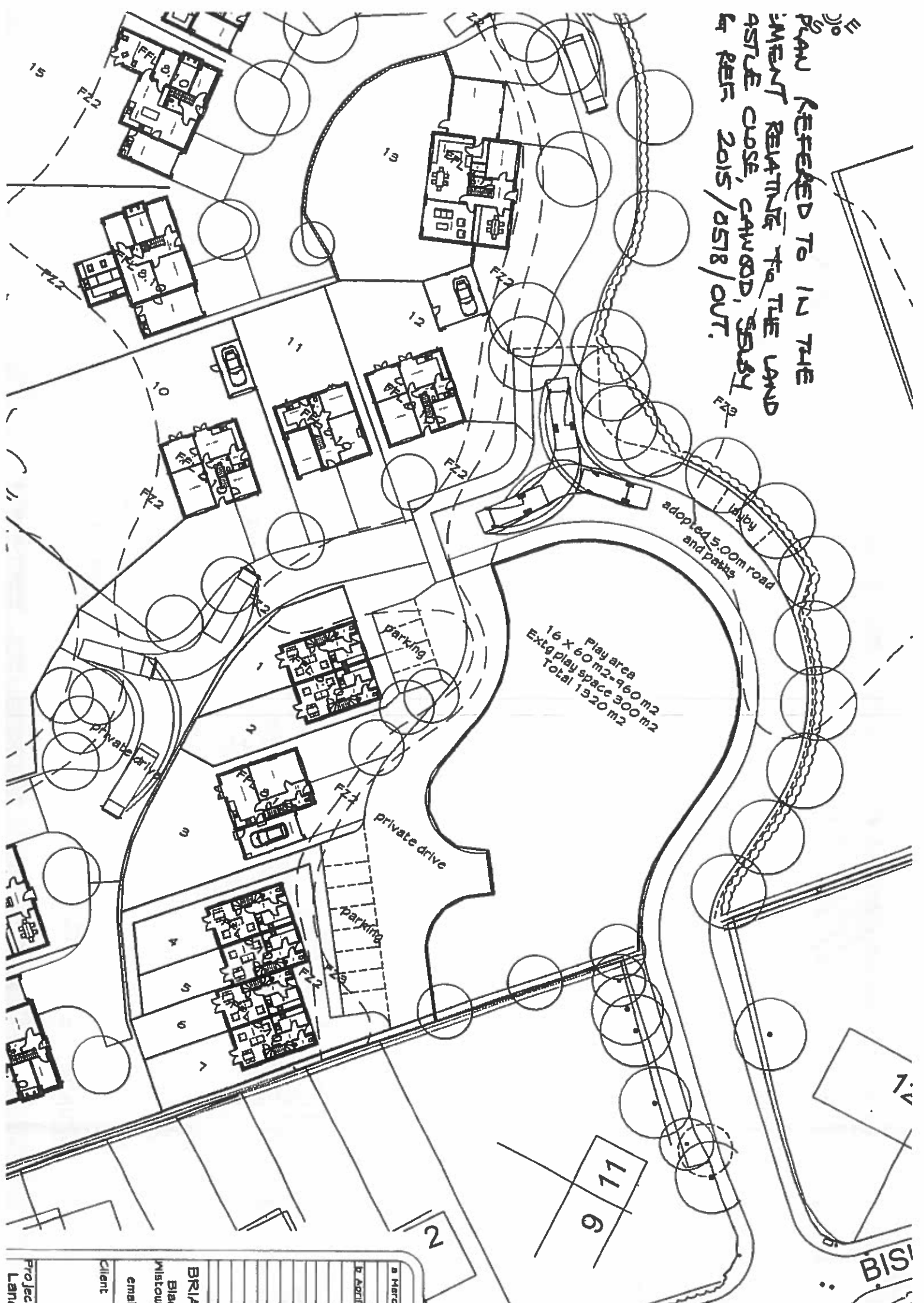
Authorised Signatory:



EXECUTED AS A DEED by DAVID PULLEYN )  
in the presence of: )

BLACKSMITHS COTTAGE,  
WISTON, SELBY. YO8 3UZ.  
2/12/2015

No  
 10  
 Plan Referred to in the  
 Inherent Remaining to the Land  
 After Close, Caswood, Study  
 by Refr 2015/0518/OUT.



PLANNING REFERENCE 2015/251810UR

EXECUTED AS A DEED BY DAVID FULLER



IN THE PRESENCE OF  
BRAN BROOK  
BACE SMITHS COTTAGE  
WISTON, SE19, 408 3UZ  
2/12/2015.

Site area 12950 m2

