

DATED 24 December 2019

(1) NETWORK RAIL INFRASTRUCTURE LIMITED

- and -

(2) THE HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)

- and -

(3) THE COUNCIL OF THE CITY OF YORK

## **PLANNING OBLIGATION**

relating to  
pursuant to Section 106 of the Town and  
Country Planning Act 1990 affecting Land at  
York Central

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THIS PLANNING OBLIGATION is made on

24 December

20[19]

**BETWEEN:**

- (1) **NETWORK RAIL INFRASTRUCTURE LIMITED** (Company Number 02904587) whose registered office is at 1 Eversholt Street London NW1 2DN ("**First Owner**");
- (2) **THE HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)** of One Friargate, Coventry, CV1 2GN ("**Second Owner**");
- (3) **THE COUNCIL OF THE CITY OF YORK** of West Offices Station Rise York YO1 6GA ("**Council**").

**BACKGROUND:**

- A The First Owner and Second Owner (the "Owners") together (not jointly) are the freehold proprietors of that part of the Site comprising Block 3.
- B The Outline Planning Application was submitted by the Owners to the Council pursuant to the Act for planning permission to carry out the Development within the Application Site of which includes land that comprises the Site.
- C The Council is the local planning authority, the local education authority and the local highway authority for the purposes of the Act for the area within which the Site is situated.
- D The Owners and the Council have agreed to enter into this Deed and have agreed that the obligations contained herein may be enforced by the Council, as planning obligations, in relation to the Site, comprising that part of the Application Site against which the obligations of this Deed are to be bound, in accordance with and to the extent set out in this Deed:
- E The Council shall be entitled to enforce relevant obligations of this Deed as against the Owners in relation to the Development as from the date of this Deed subject only to the other stipulations and conditions of this Deed.
- F The Council is the freehold proprietor of that part of the Site comprising Block 2 subject to other interests. Those parts of the Site comprising Block 1 are owned by other third parties.
- G The Owners have agreed with the Council that no Development shall Commence on or in relation to Block 1 and/or Block 2 or such parts thereof until such time as supplemental agreement(s) pursuant to Sections 106 and 106A of the Act in the form of the Confirmatory Deed have been entered into by the relevant owners of Block 1 and/or Block 2 or parts thereof, as is appropriate, so as to be bound by the relevant obligations in this Deed.
- H The Council is satisfied that the obligations contained herein are compliant with Regulation 122 of the CIL Regulations and are necessary to make the Development acceptable in planning terms; directly related to the Development; and fairly related in scale and kind to the Development.
- I This Deed is a planning obligation entered into pursuant to Section 106 of the Act and shall be enforceable as such against the Owners of Blocks 3 (and their successors) and any other persons (and their successors) who are or become bound by its terms pursuant to a Confirmatory Deed.



**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings:

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

**"Affordable Housing"** has the meaning given to it in Schedule 1

**"Application Site"** means the application site boundary of the Outline Planning Application shown edged red the plan attached hereto at Appendix F with drawing number YC-SP 001;

**"Block 1"** means that part of the Site shown on Plan 1 as Block 1;

**"Block 2"** means that part of the Site shown on Plan 1 as Block 2;

**"Block 3"** means that part of the Site shown on Plan 1 as Block 3;

**"Blocks"** means one or more or all of Blocks 1, 2 and 3;

**"Building Cost Index"** means BCIS All-In Tender Price Index of construction costs published by the Building Cost Information Service;

**"CIL Regulations"** means the Community Infrastructure Levy Regulations 2010 as amended;

**"Commencement Date"** means the first date upon which a Material Operation is carried out and **"Commence"** and all cognate expressions shall be construed accordingly;

**"Completed"** means, as appropriate:

- (a) having connections for mains water, sewerage gas electricity and telecommunications appropriate to the proposed use of the land and adequate for the purposes of the prospective users of the land and either at the boundary of the site of the relevant facility or reasonably proximate to it to enable connections to be made thereto and with sufficient vehicular and pedestrian access to the land from a public highway;
- (b) in respect of any Affordable Housing Dwelling within the Development built in accordance with the approved Affordable Housing Scheme and the Specification to a point where the accommodation is fit and ready for residential Occupation; and
- (c) in the case of any infrastructure works within the Development that it is completed in accordance with the relevant specification;

and the words **Complete** and **Completion** and all cognate expressions shall be construed accordingly;

**"Confirmatory Deed"** means a deed to be completed pursuant to clause 7 and/or Planning Condition No. 5 substantively in the form provided at Appendix B;

**"Development"** means the redevelopment of the Site as authorised by the Outline Planning Permission to provide a mixed-use development of up to 379,729 m<sup>2</sup> of floor space Gross External Area (GEA) primarily comprising up to 2,500 homes (Class C3), between 70,000 m<sup>2</sup>

and 87,693 m2 of office use (Class B1a), up to 11,991 m2 GEA of retail and leisure uses (Class A1-A5 or D2), hotel with up to 400 bedrooms (Class C1), up to 12,120 m2 GEA of non-residential institutions (Class D1) for expansion of the National Railway Museum, multi-storey car parks and provision of community uses all with associated works including new open space, ancillary car parking, demolition of and alterations to existing buildings and associated vehicular, rail, cycle and pedestrian access improvements;

**"Director"** means the Assistant Director responsible for Planning & Public Protection of the Council for the time being or such other officer of the Council nominated to carry out an equivalent function;

**"Dwelling"** means any individual self-contained residential unit that falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (including the Affordable Housing Dwellings) constructed on the Application Site pursuant to the Outline Planning Permission intended for occupation by one or more private individuals and reference to **"Dwellings"** shall be construed accordingly;

**"Education Contributions"** means the Early Years and Childcare Contribution, the Primary Education Contribution and the Secondary Education Contribution together as defined in Schedule 5;

**"Expert"** an independent and suitable person holding appropriate professional qualification in relation to the dispute with not less than ten years recent and relevant professional experience in the matter in dispute;

**"First Occupation"** means first Occupation of a Dwelling excluding all subsequent occupations;

**"Footpath Plan"** means the plan attached hereto at Appendix G titled Proposed Path and dated 14 March 2019;

**"Gypsy and Traveller Contribution"** means the sum of £900,000 to be paid to the Council for the purposes of the provision of six (6) serviced pitches within the administrative area of the Council and payable in accordance with the requirements of Paragraph 4 of Schedule 1 to this Deed;

**"Index Linked"** means:

- (a) for the purposes of Sports Provision Contribution, Gypsy and Traveller Contribution and Open Space Contribution means adjusted in accordance with the Building Cost Index by multiplying in each case the payment due by a fraction whose denominator shall be the first Building Cost Index monthly figure published after the date of this Deed and whose numerator shall be the last Building Cost Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure; and
- (b) for the purposes of the Sustainable Transportation Measures Sum means adjusted in accordance with the Inflationary Index by multiplying in each case the payment due by a fraction whose denominator shall be the first Inflationary Index monthly figure published after the date of this Deed and whose numerator shall be the last Inflationary Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure



**"Inflationary Index"** means The Consumer Prices Index issued by the Office for National Statistics;

**"Material Operation"** means a material operation to implement the Outline Planning Permission as defined in Section 56(4) of the Act carried out as part of the Development provided always that the following operations shall not be treated as Material Operations for the purposes of this Deed:

- (a) site survey works;
- (b) ground investigations including archeological investigations, exploratory boreholes and related environmental investigation;
- (c) site decontamination and remediation;
- (d) the erection of fences, hoardings and scaffolding;
- (e) site preparation and establishment preparatory to the commencement of construction, including clearance, infilling or re-grading;
- (f) works of demolition and clearance;
- (g) the construction of temporary site accesses, including the construction of haul roads and associated accesses for construction and site preparation traffic;
- (h) the diversion, decommissioning and/or laying of services for the supply or carriage of electricity, gas, water, sewerage, telecommunications or other utilities, media or services;
- (i) the installation of approved schemes of drainage, floor attenuation and structural landscaping;
- (j) the carrying out of works associated with any approved schemes of environmental mitigation or mitigation relating to any of the above;
- (k) any operations permitted by the Town and Country Planning (General Permitted Development) Order 2015, as amended that are not otherwise excepted by Planning Condition;
- (l) any other preparatory works as may be agreed in writing with the Council; and
- (m) any Material Operation undertaken in relation to Blocks 1 and 2 prior to the completion of a Confirmatory Deed pursuant to clause 7 of this Deed;

**"Month"** means a calendar month;

**"Occupation"** means the physical occupation of any part of the Site (or as the context so permits any Phase of the Development) for any purpose (but not including occupation for marketing or fitting out purposes) and **"Occupy"** and **"Occupied"** shall be construed accordingly and with regard to any unit of residential accommodation shall include the residential occupation by way of sale, lease or letting and **"Occupy"** and **"Occupier(s)"** shall be construed accordingly;

**"Open Space Contribution"** means together the sum of £100,000 to be paid to the Council towards the provision of a link path to and/or an extension of the riverside path being shown on the Footpath Plan and being approximately 750 metres in length between Water End alongside and parallel to the south bank of the River Ouse in the direction of Scarborough Bridge and the sum of £25,000 to be paid to the Council to increase allotment capacity at Holgate and Howe Hill being works to include the installation of timber post and rail fencing and site clearance in order to bring more land within each site into cultivation;

**"Open Market Dwellings"** means those Dwellings forming part of the Development which are not Affordable Housing Dwellings and **"Open Market Dwelling"** shall be construed accordingly;

**"Outline Planning Application"** means the application for outline planning permission submitted to the Council given reference number 18/01884/OUTM;

**"Outline Planning Permission"** means the planning permission to be granted by the Council pursuant to the Outline Planning Application;

**"Owners"** means the First Owner and the Second Owner and to the extent that any other parties enter into a Confirmatory Deed(s), those parties shall also become Owners for the purposes of this Deed in so far and to the extent prescribed by clause 7 of this Deed;

**"Phase"** means the amount and extent of Development as is approved by the Council pursuant to a Reserved Matters Application;

**"Plan 1"** means the plan attached hereto at Appendix A titled Section 106 Development Plot Plan with drawing number YCL-ARP-ZZ-ZZ-DR-CX-2507;

**"Planning Condition"** means a planning condition on the Outline Planning Permission;

**"Relevant Reserved Matters Application"** means a Reserved Matters Application which includes the distribution of Dwellings;

**"Relevant Reserved Matters Approval"** means a Reserved Matters Approval granted pursuant to a Relevant Reserved Matters Application;

**"Reserved Matters Application"** means a reserved matters application pursuant to the Outline Planning Permission for the approval of details in relation to all or one of layout, scale, appearance means of access or landscaping to be carried out as part of the Development;

**"Reserved Matters Approval"** means any reserved matters approval granted for any Reserved Matters Application made pursuant to the Outline Planning Permission;

**"Secretary of State"** means the Secretary of State for the Ministry of Housing Communities and Local Government including, if appropriate, an Inspector appointed by him or any successor minister exercising town and country planning functions;

**"Site"** means all that area of as is for the purpose of identification only outlined in red on Plan 1, which takes the benefit of the Outline Planning Permission;

**"Sports Provision Contribution"** means the sum or sums as calculated in accordance with Schedule 2 to this Deed to be paid by the Owner to the Council towards the provision of alternative and improved off-site outdoor sports provision comprising the redevelopment/works to improve York Railway Institute, Queen Street; development of an artificial grass pitch at



York Railway Institute, New Lane; the development of a 2nd team pitch at York Clifton Alliance Cricket Club; the development of York Hospital Bootham Park pitches and/or redevelopment of/works to improve the existing boat house at York City Rowing Club and/or such other provision of off-site outdoor sports provision within the vicinity of the Development identified in consequence of Paragraph 1.2(a) of Schedule 6;

**"Sustainable Transportation Contribution"** means the sum of £3,892,000 to be paid to the Council towards the Sustainable Transportation Measures as set out in Schedule 4 to this Deed; and

**"Working Day"** means any day from Monday to Friday but not including any public holiday in England and Wales.

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

- 2.1 References in this Deed to clauses, paragraphs and Schedules (or any part of them) are (unless the context otherwise requires) to clauses, paragraphs and Schedules in this Deed.
- 2.2 References to the Owners shall include their respective personal representatives, successors in title and permitted assigns and to any person deriving title through or under them.
- 2.3 References to the Council shall include the successors to their respective statutory functions.
- 2.4 Singular words shall include the plural and vice versa.
- 2.5 Words of masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations firms and other bodies and all such words shall be construed interchangeably in that manner.
- 2.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all such obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.7 Any reference to an Act of Parliament shall include any modification, extension or reenactment 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.
- 2.8 The headings to clauses paragraphs and Schedules are for reference only and shall not be taken into account in the construction or interpretation of this Deed.
- 2.9 References to the Site include where the context so admits references to any part or parts of the Site or to the relevant part of the Site.
- 2.10 An obligation on a Party not to do any act or thing includes an obligation not to cause permit allow or suffer the doing of that act or thing.
- 2.11 References to the consent of the Council shall mean the prior written consent of the Council which may be given by electronic communication and which consent shall be expressed to be pursuant to this Deed and such consent shall be in addition to and not in substitution for any other permission that may be necessary.

### **3. STATUTORY AUTHORITY**

- 3.1 To the extent that this Deed contains obligations that are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in Sections 111 and 172 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the Localism Act 2011 and all other enabling powers and in relation to any highway obligations Sections 38, 72 and 278 Highways Act 1980 as appropriate.
- 3.2 This Deed is entered into pursuant to Section 106 of the Act.
- 3.3 To the extent that they fall within the terms of Section 106 of the Act, the obligations contained in this Deed on the part of the Owners are (amongst other things) planning obligations pursuant to Section 106 of the Act and the said obligations shall subject to clauses 4, 7 and 8 of this Deed:
- (a) bind the interests held by the Owners in Block 3 and their successors in title and assigns; and
  - (b) be enforceable by the Council against the Owners' successors in title to Block 3 or any part thereof and all persons deriving title to Block 3 or any part thereof through or under them or either of them.
- 3.4 Subject to the entering into of one or more Confirmatory Deed(s) pursuant to clause 7, all and any such land in Blocks 1 and/or 2 or parts thereof that become bound by one or more of the obligations contained in this Deed shall be obligations pursuant to Section 106 of the Act and shall subject to clauses 4 and 8 and any unfulfilled part of clause 7 of this Deed:
- (a) bind the interests held by the relevant owners in Blocks 1 and/or 2 or such relevant parts thereof and their successors in title and assigns; and
  - (b) be enforceable by the Council against the relevant owners' successors in title to Blocks 1 and/or 2 or such relevant parts thereof and all persons deriving title from through or under them.

### **4. LEGAL EFFECT**

- 4.1 The obligations in this Deed are conditional upon:
- (a) the grant of the Outline Planning Permission; and
  - (b) the occurrence of the Commencement Date;
- save that the obligations in clauses 3 and 7 to 24 (inclusive), as relevant; Schedule 1, Paragraph 4.1(a); Schedule 2, Paragraph 1.2(a); Schedule 4, Paragraph 2.1(a); Schedule 5, Paragraphs 2.1(a), 3.1(a) and 4.1(a) and Schedule 6 shall come into effect upon the grant of the Outline Planning Permission.
- 4.2 In the event that the Outline Planning Permission is quashed or revoked or ceases to have effect by operation of law or (without the consent of the Owners) is modified by any statutory procedure or expires then the obligations contained in this Deed shall cease to have effect.



## **5. THE OWNERS' COVENANTS**

- 5.1 The Owners covenant with the Council to carry out the obligations in Schedules 1 to 5 (inclusive).

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

- 6.1 The Council covenants with the Owners as set out in Schedule 6 and to comply with and observe any relevant obligations on the Council in Schedules 1 to 5 (inclusive).

## **7. DEED OF CONFIRMATION**

- 7.1 The Parties hereby agree that no Phase shall Commence within Block 1 and/or Block 2 or part thereof unless and until a Confirmatory Deed has been completed in order to bind all relevant estates and interests in the land in that Phase as required by Planning Condition No.5.
- 7.2 The Parties hereby agree that any Confirmatory Deed to be entered into shall be bound by the obligations contained in the Owners obligations in Schedules 1 to 5 (inclusive) of this Deed in so far as they are to be performed on or in relation to Blocks 1 and/or 2 or part thereof (the subject of that Confirmatory Deed) and/or such proportion of the liability upon the Owners in clause 5 as the Council determines (acting reasonably) is appropriate to apportion to that Confirmatory Deed having regard to, amongst other things, the extent of the land contained in that Confirmatory Deed and the nature and quantum of Development permitted by the Outline Planning Permission for the Phase to which the Confirmatory Deed relates.
- 7.3 The Council hereby agrees with the Owners that the Council in entering into any Confirmatory Deed pursuant to Planning Condition No. 5 will secure from the other parties entering into that Confirmatory Deed the performance of obligations in this Deed from those parties on terms that accord with the requirements in clause 7.2.
- 7.4 The Council hereby agrees that in the event that one or more Confirmatory Deeds are entered into in relation to Blocks 1 and/or 2 or part thereof, that the Owners (as at the date of this Deed and those parties that become bound by a Confirmatory Deed(s)) shall only be liable to the Council severally and shall only be required to perform obligations as they apply to their respective interests in the Site as apportioned by clause 7.2. For the avoidance of doubt, the Council hereby agrees that the requirements of this Deed shall not create joint liability between any of the Blocks unless or except to the extent that owners of those Blocks are the same persons or entities and without prejudice to the generality of clause 2.6 in so far as it relates to Block 3.
- 7.5 Save for any Development comprising exceptions in parts (a) to (l) of the definition of Material Operation in clause 1 the Parties hereby agree that no other Development within Block 3 or any part thereof shall Commence unless or until a Confirmatory Deed has been completed by Network Rail (and/or any other relevant parties) in order to bind all relevant estates and interests in the balance of Block 3 that is not otherwise already bound by this Deed as at the date of the Deed.

## **8. ENFORCEABILITY OF OBLIGATIONS**

- 8.1 The Parties agree that the Council shall be entitled to enforce the obligations of this Deed in accordance with its statutory powers and duties subject to the terms of this Deed and in particular shall have regard to the requirements and stipulations in clause 7 of this Deed.

- 8.2 The obligations contained in this Deed shall not be binding upon nor enforceable against any person with an interest in any part of Block 1 and/or Block 2 unless and until a Confirmatory Deed has been completed in respect of the relevant part of Block1 and/or Block 2.
- 8.3 The obligations contained in this Deed shall not be binding upon nor enforceable against:
- (a) any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage or telecommunication services;
  - (b) any individual owner and/or occupier and/or mortgagee of an individual Open Market Dwelling save that any individual owner (and their occupiers and/or mortgagee) acquiring the freehold interest of more than a single Open Market Dwelling at any one time shall be bound by the obligations contained in this Deed;
  - (c) any owner and/or tenant and/or their mortgagees of a non-residential unit within the Site;
  - (d) save as referred to in Schedule 1, any individual purchaser or lessee or their mortgagees of an individual Affordable Housing Dwelling;
  - (e) save as referred to in Schedule 1, any Approved Registered Provider and/or any mortgagee and/or any receiver appointed by such mortgagee of an Approved Registered Provider;
  - (f) any party acquiring an interest in the Site solely by way of registered legal charge or mortgage, unless that party takes possession of the Site, in which case they will be bound by obligations of this Deed as a successor, in relation to any parts of the Site over which it has a legal charge but not further or otherwise and provided that, at all times the rights and obligations in this clause shall not require any mortgagee or chargee to act contrary to its duties under the charge or mortgage.
- 8.4 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 entire interest in the Site except in respect of any breach subsisting before parting with such interest. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 8.4.

## **9. CONSENTS APPROVALS AND SATISFACTIONS**

- 9.1 Where any agreement consent approval or expression of satisfaction of the Council is required in this Deed such agreement consent approval or expression of satisfaction shall only be valid if given in writing and shall not be unreasonably withheld or delayed.
- 9.2 Any agreement consent approval or expression of satisfaction to be given by the Council shall be given in writing by the Director or such other officer of the Council as shall be notified in writing to the Owners.

## **10. NO RESTRICTION**

- 10.1 This Deed does not prohibit or restrict the development of any part of the Site in accordance with a planning permission other than the Outline Planning Permission granted by the Council or by the Secretary of State on appeal or following a reference to or call-in by the Secretary of State after the date of this Deed.



## **11. REGISTRATION AND REMOVAL**

- 11.1 The Council shall register this Deed in its Register of Local Land Charges.
- 11.2 Immediately on compliance by the Owners with all of its covenants in Schedules 1 to 5, or in any event if all of the obligations have ceased to have effect pursuant to clause 4.2, the Council shall remove all references to this Deed or its content from the Register of Local Land Charges at no cost to the Owners.

## **12. DISPUTE RESOLUTION**

- 12.1 Except where expressly provided otherwise in this Deed, any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this Deed shall be referred to an Expert and the parties agree that:
- (a) the identity of the Expert shall be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors;
  - (b) the Expert shall be appointed subject to an express requirement that he reaches the decision and communicates it to the parties as expeditiously as possible allowing for the nature and complexity of the dispute;
  - (c) the Expert shall be required to give notice to the parties inviting each of them to submit to him within a period to be determined by the Expert but which shall not be less than 20 (twenty) Working Days any written submissions and supporting material and shall afford the Parties an opportunity to make counter-submissions within a further period in respect of any submissions and materials; and
  - (d) The Expert is not to take oral representation from the parties without giving both parties opportunity to be present to give evidence and to cross examine each other.
- 12.2 The determination of the Expert will be in writing reasoned final and binding on the parties having regard to all of the evidence submitted by or on behalf of the parties save in the case of manifest or legal error.
- 12.3 Costs (including the Expert's costs) will be borne in such proportion as the Expert shall reasonably determine and direct and failing such determination shall be borne by the parties in equal shares.
- 12.4 The provisions of this clause 12 shall not affect the ability of any of the parties to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

## **13. PERFORMANCE**

- 13.1 The failure of any party hereto at any time to require performance by any other party or parties of any of the terms obligations and/or covenants of this Deed shall in no way affect the right of such party or parties to require performance of those terms covenants and/or obligations.

**14. ENTIRE AGREEMENT**

- 14.1 This Deed (and any documents annexed to or incorporated in it) constitutes the entire agreement between the parties with respect to the grant of the Outline Planning Permission and supersedes any previous agreement between the parties in relation thereto.
- 14.2 Each party to this Deed acknowledges that this Deed has not been entered into in reliance on any statement or representation made by or on behalf of any other party and nothing in this clause limits or excludes liability for fraud.

**15. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

- 15.1 A person who is not (or is not a successor in title) a party to this Deed does not have any rights to enforce any term of it pursuant to the Contracts (Rights of Third Parties) Act 1999.

**16. NOTICES**

- 16.1 Any notice or other communication to be given under this Deed must be in writing and must be:
- (a) delivered by hand; and/or
  - (b) sent by pre-paid first class post or recorded delivery.
- 16.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.
- 16.3 Any notice or other communication given in accordance with clauses 16.1 and 16.2 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
  - (b) if sent by pre-paid first class post at 9.00 am on the second Working Day after posting; or
  - (c) if sent by recorded delivery, at the time delivery was signed for.
- 16.4 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 16.5 A notice given under this Deed must quote the planning reference number 18/01884/OUTM.
- 16.6 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.



**17. COSTS**

The Owners shall pay on the date of this Deed the Council's proper and reasonable legal costs incurred in the preparation and settlement of this Deed in the sum of ten thousand pounds (£10,000) (no VAT).

**18. INTEREST**

If the Owners fail to pay any sum (or part thereof) due under this Deed by the date on which it is due then the Council shall have the right to charge interest on such unpaid sum from the date payment is due until the date payment is made at the rate of 2% per annum above the base rate of the Bank of England at that time.

**19. INDEXATION**

19.1 Any sums (other than the sum mentioned in clause 17) referred to as payable to the Council under this Deed shall be Index Linked.

19.2 If the Inflationary Index and/or the Building Cost Index cease to exist or are replaced or rebased then they shall include reference to any index which replaces them or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the Inflationary Index and/or the Building Cost Index are not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

**20. CHANGE IN OWNERSHIP**

Save for in relation to the transfer of an individual Open Market Dwelling to any individual owner and/or occupier and/or mortgagee, the Owners shall give the Council immediate written notice of any change in ownership of any of their interests in the Site occurring before all of 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.

**21. FETTER OF DISCRETION**

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities in relation to the Site or otherwise.

**22. VAT**

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

**23. JURISDICTION**

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

**24. DELIVERY OF THIS DEED**

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.

## SCHEDULE 1: AFFORDABLE HOUSING

### 1. DEFINITIONS

**"Affordable Housing"** shall have the meaning given to it in Annex 2 of the NPPF;

**"Affordable Housing Commuted Sum"** means the Intermediate Affordable Dwellings Commuted Sum and/or the Social Rented Dwellings Commuted Sum as the case may be;

**"Affordable Housing Dwellings"** means the Social Rented Dwellings and Intermediate Affordable Dwellings (or the Dwellings of such other Affordable Housing tenure as may with the agreement in writing of the Council be included in the Affordable Housing Scheme) to be constructed on the Site as part of the Development in accordance with this Deed and the Affordable Housing Scheme and made available to Eligible Occupiers all of which are to be provided pursuant to this Deed and **"Affordable Housing Dwelling"** shall mean any one of them

**"Affordable Housing Scheme"** means the written scheme including any plan(s) and all relevant supporting information which sets out how the Affordable Housing Dwellings comply with the requirement of this Schedule including how they are to be provided, their location with reference to a layout plan(s), proposed Tenure Mix, proposed Specification and details of any proposed Quantum Discount; the scheme shall be submitted by the Owners to the Council for approval in writing in accordance with paragraph 2.3 of this Schedule and references to such approved Affordable Housing Scheme shall include any amendments to such scheme as may be agreed in writing from time to time between the Council and the Owners;

**"Alternative Tenure Mix"** means an alternative to the Default Tenure Mix that accords with Paragraphs 2.4 or 2.5 of this Schedule.

**"Approved Registered Provider"** means a Registered Provider who is on the Council's list of Approved Registered Providers from time to time or such other Registered Provider as is first approved in writing by the Council upon the request of the Owners;

**"Associated Activities"** means any activity (including the recruitment of staff) directly associated with the provision of Affordable Housing to include enabling provision purchase construction renovation and repair of dwellings and/or the acquisition of land within the Council's area to be used for Affordable Housing;

**"Choice Based Letting Scheme"** means the choice based lettings scheme operated by the Council (or such alternative scheme operated by or on behalf of the Council from time to time) whereby applicants (and existing Affordable Housing tenants who are seeking to move) on the Council's and/or Approved Registered Provider's Affordable Housing waiting and transfer lists are given the opportunity to apply for vacancies in Council and/or Approved Registered Provider homes which are suitable for their needs priority being given to individuals who have a local connection with the City of York in accordance with the Council's appropriate policies and procedures or the appropriate policies and procedures of the Approved Registered Provider as may be approved in writing by the Council in respect of Part 6 of the Housing Act 1996 and the Localism Act 2011;

**"Development Plan Document"** means any document within the definition of "development plan" in Annex 2 of the NPPF;

**"Eligible Occupier"** means a person or household who cannot afford to purchase dwellings of a similar kind generally available on the open market in the district of York and;



- (a) in respect of the Social Rented Dwellings, identified and in accordance with the Choice Based Letting Scheme or such other criteria from time to time of the Council; and
- (b) in respect of Intermediate Affordable Dwellings, identified and in accordance with the Council's Discount Sale Nomination Policy comprised in the Nomination Agreement;

**"Homes England"** means Homes England or any bodies undertaking the existing functions of the Homes England 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 an Act);

**"Intermediate Affordable Dwellings"** means those Dwellings to be constructed on the Site in accordance with the Outline Planning Permission and this Deed as 'intermediate affordable housing' falling with one or more of the categories defined in paragraphs (c) (discounted market sales housing) and / or (d) (other affordable routes to home ownership) of the definition of 'affordable housing' in the NPPF;

**"Intermediate Affordable Dwellings Commuted Sum"** means a sum equal to the difference between the estimated sale price for each Intermediate Affordable Dwelling not transferred to an Approved Registered Provider that would enable the Registered Provider to provide an Intermediate Affordable Dwelling without the need for any public subsidy and the Market Value of that Intermediate Affordable Dwelling on the date that it is sold on the open market or becomes subject to any residential occupation in accordance with the provisions of Paragraph 3.6 of this Schedule 1;

**"Local Housing Need Assessment"** is as defined in the NPPF conducted using the standard method in national planning guidance;

**"Local Plan"** shall have the same meaning as is given to this term in Annex 2 of the NPPF;

**"Market Value"** means the estimated amount for which a Dwelling should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion;

**"NPPF"** means the National Planning Policy Framework dated February 2019 as may be amended / or any document which may supersede it;

**"Nomination Agreement"** means a binding agreement with the Council for the nomination of Eligible Occupiers to the Affordable Housing Dwellings substantially in the form of the draft appended at Appendix C and amended to reflect the provision of this Deed and the specific forms or types of Affordable Housing Dwellings in relation to which the nomination agreement is required;

**"Officer"** means the Assistant Director for Housing & Community Safety of the Council for the time being or such other officer of the Council nominated to carry out an equivalent function;

**"Price"** means a price for the Social Rented Dwellings which shall be at or below a price which enables the Registered Provider to charge a Social Rent without the need for public subsidy as agreed between the Seller and Buyer in accordance with the terms of paragraph 3.8 of this Schedule 1;

**"Quantum Discount"** is as defined in paragraph 2.2 of this Schedule;

**"Registered Provider"** means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) or any company or other body approved by the Homes England for receipt of social housing grant;

**"Social Rent"** means a rent which is set in accordance with the Government's rent policy for Social Rent in the rent standard and related guidance as may be amended / or any document which may supersede it;

**"Social Rented Dwellings"** means those Dwellings to be constructed on the Site in accordance with the Outline Planning Permission this Deed and the Affordable Housing Scheme and to be made available for rent at a Social Rent and reference to **"Social Rented Dwelling"** shall be construed accordingly;

**"Social Rented Dwellings Commuted Sum"** means a sum equal to the difference between the estimated sale price for each Social Rented Dwelling not transferred to an Approved Registered Provider that would enable the Registered Provider to charge a Social Rent without the need for any public subsidy and the Market Value of that Social Rented Dwelling on the date that it is sold on the open market or becomes subject to any residential occupation in accordance with the provisions of Paragraph 3.6 of this Schedule 1;

**"Specification"** means for the Affordable Housing Dwellings:

- (a) the level of internal and external fixtures and fittings shall be equivalent to Open Market Dwellings; and
- (b) the external appearance finish and landscaping shall be visually indistinguishable from that of the Open Market Dwellings throughout the Development;

**"Supplementary Planning Document"** shall have the same meaning as is given to this term in Annex 2 of the NPPF; and

**"Tenure Mix"** means a tenure mix of Affordable Housing that accords with the Default Tenure Mix in Paragraph 2.3(c) of this Schedule or such other Alternative Tenure Mix as may be agreed with the Council as part of the submission of an Affordable Housing Scheme(s).

## **2. AFFORDABLE HOUSING**

### **2.1 The Owners covenants with the Council:**

- (a) that the Development of the Site as a whole shall provide not less than 20% Affordable Housing as a proportion of the total number of Dwellings constructed as part of the Development subject only to any relaxation permitted under Paragraph 3.6 of this Schedule;
- (b) that any Phase shall provide not less than 20% Affordable Housing as a proportion of the total number of Dwellings constructed as part of that Phase (the **"Required Affordable Housing Quantum"**) subject only to the relaxations in:
  - (i) Paragraph 2.2 of this Schedule and approval having first been approved by the Council as part of an Affordable Housing Scheme; or
  - (ii) Paragraph 3.6 of this Schedule.



- 2.2 Notwithstanding the generality of the requirement in Paragraph 2.1(b) of this Schedule, the Council hereby agrees that in the event that any Development carried out delivers more than the Required Affordable Housing Quantum ("**Surplus**") in any Block, the Owners of that Block shall be entitled to seek approval (as part of an Affordable Housing Scheme) for a reduction in the Required Affordable Housing Quantum in another part of the Development in that Block by an amount that does not exceed the Surplus ("**Quantum Discount**").
- 2.3 The Owners covenant with the Council that:
- (a) each submission of a Relevant Reserved Matters Application shall be supported by a draft Affordable Housing Scheme relevant to that Relevant Reserved Matters Application; and
  - (b) no Development shall Commence pursuant to the Relevant Reserved Matters Approval unless and until the Affordable Housing Scheme for that part of the Development has been approved in writing by the Council.
  - (c) subject to Paragraphs 2.4 and/or 2.5 of this Schedule, the tenure mix of Affordable Housing Dwellings in each Relevant Reserved Matters Application shall accord with the following:
    - (i) 80% of the Affordable Housing Dwellings shall be Social Rented Dwellings; and
    - (ii) 20% of the Affordable Housing Dwellings shall be Intermediate Affordable Dwellings;(the "**Default Tenure Mix**").
  - (d) unless otherwise agreed by the Council as part of an Affordable Housing Scheme, the location of Affordable Housing Dwellings comprising of terrace, semi-detached or detached houses shall be pepper-potted throughout each Phase with no more than two such Affordable Housing Dwellings placed next to each other;
  - (e) unless otherwise agreed by the Council as part of an Affordable Housing Scheme, Affordable Housing Dwellings comprising of flats shall be pepper-potted throughout each Phase except where agreement is made with a Registered Provider for construction of a group of flats in any block or building in the interest of better housing management and in the event that any block within a Phase is comprised entirely of Affordable Housing where such a block is transferred to an Approved Registered Provider in accordance with the provisions of Paragraph 3 of this Schedule such transfer will include the freehold of the said block;
  - (f) the Affordable Housing Dwellings shall be provided pro rata across different Dwellings sizes and types throughout the Development of each Block unless otherwise agreed by the Council; and
  - (g) unless otherwise first agreed with the Council in writing or otherwise permitted elsewhere in this Deed, no Affordable Housing shall be made available by the Owners or transferred to another party other than as Affordable Housing.
- 2.4 Notwithstanding the requirement in paragraph 2.3(c) of this Schedule to provide Affordable Housing Dwellings in accordance with the Default Tenure Mix, the Owners shall be entitled to propose to the Council (as part of the submission of an Affordable Housing Scheme) an

Alternative Tenure Mix in respect of any Relevant Reserved Matters Application where the Owners demonstrate, following assessment by the District Valuer Service (the cost of such assessments being met by the Owners), that the provision of Affordable Housing Dwellings in that Relevant Reserved Matters Application is not viable and the Owners shall submit to the Council relevant supporting information and evidence to substantiate that the Phase cannot be viably delivered without the alternative tenure mix.

- 2.5 In the event that the Council adopts: a Local Plan, a Development Plan Document, a Supplementary Planning Document, a Local Housing Need Assessment or such similar document (which shall first have been approved by the relevant Council committee) which evidences that the Default Tenure Mix no longer meets Affordable Housing needs in the area of York as a whole or specifically in relation to Holgate Ward or the needs of those living within the Site (an "**Approved Document**"), the Owners shall be entitled to propose (as part of the submission of an Affordable Housing Scheme) an Alternative Tenure Mix in respect of any Relevant Reserved Matters Application that accords with that Approved Document.
- 2.6 The Council hereby agrees that it shall in determining any Affordable Housing Scheme have so far as appropriate due regard to the requirements and relaxations of this Schedule alongside all other relevant material considerations and for the avoidance of doubt:
- (a) the Owners shall be entitled to promote such forms or types of Affordable Housing Dwellings as they determine so long as such forms or types fall within the definition of Tenure Mix and otherwise comply with the other requirements of this Schedule 1; and
  - (b) in the case of Intermediate Affordable Dwellings:
    - (i) the Owners shall be entitled to request the approval of the Council to promote forms and types of Intermediate Affordable Dwellings that may be offered direct to Eligible Occupiers or another body/bodies or entities that are not a Registered Provider, so long as the Owners are able to demonstrate to the satisfaction of the Council acting reasonably that the purposes and requirements of the NPPF, the Local Plan and the Local Housing Need Assessment and any other such relevant statutory and/or non-statutory requirements relating to transfer and/or control of such dwellings is met;
    - (ii) such request shall detail those elements of this Schedule 1 (in particular paragraph 3) that are deemed not to apply in respect of such Intermediate Affordable Dwellings;
    - (iii) as part of any such request the Owners shall submit to the Council relevant supporting information, evidence and justification to explain the reasons for seeking variation to the requirements of paragraph 3 of this Schedule; and
    - (iv) the Council hereby confirms that paragraph 3 of this Schedule 1 does not apply in relation to any approval given under this sub-section and, if appropriate, shall confirm if it requires the Owners to comply with any other replacement conditions and/or stipulations governing the transfer of such Intermediate Affordable Dwellings in lieu of the application of those provisions.
- 2.7 The Owners covenant not to Occupy or allow Occupation of:
- (a) more than 65% of Open Market Dwellings comprised in a Phase until such time as 50% of the Affordable Housing Dwellings to be provided within that Phase shall have been Completed and written notification of such has been received by the Council; and



- (b) more than 90% of Open Market Dwellings comprised a Phase until such time as 100% of the Affordable Housing Dwellings to be provided within that Phase shall have been Completed and written notification of such has been received by the Council.

2.8 Subject to the provisions of paragraphs 3.6, 3.7 and 3.8(b) of this Schedule 1 the Owner covenants that the Affordable Housing Dwellings shall not be used for purposes other than providing housing accommodation to Eligible Occupiers in need of Affordable Housing in accordance with this Deed and the approved Affordable Housing Scheme.

### **3. TRANSFER OF AFFORDABLE HOUSING**

3.1 Subject to paragraph 2.6 of this Schedule 1, the Owners covenant with the Council:

- (a) not to transfer any interest in or part of the Site for the construction of Affordable Housing Dwellings to anyone other than an Approved Registered Provider and under a transfer deed containing:
  - (i) a covenant by the Approved Registered Provider to the Owners and the Council that the Approved Registered Provider will not dispose of or grant a lease of any Affordable Housing Dwelling other than in accordance with the provisions of the Nomination Agreement;
  - (ii) a covenant by the Approved Registered Provider to the Owners and the Council that the Approved Registered Provider will within 10 Working Days of completion of the transfer deed simultaneously apply to the Land Registry for registration of both the transfer and of a restriction against the Approved Registered Provider's title to the Affordable Housing Dwelling(s) in question in the following terms: 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 City of York that the provisions of the Nomination Agreement dated [date of Nomination Agreement] between The Council of the City of York and [name of Approved Registered Provider] and the provisions of a Planning Agreement dated [date of Planning Agreement] made between (1) Network Rail Infrastructure Limited, (2) Homes England and (3) The Council of the City of York, have been complied with or that they do not apply to the disposition; and
  - (iii) a covenant by the Approved Registered Provider that it shall deal promptly and properly with any requisitions raised by the Land Registry and shall upon completion of registration supply evidence to the Council of the registration of the restriction against the Approved Registered Provider's registered title to the relevant Affordable Housing Dwelling(s) provided for in paragraph 3.1(a)(ii).
- (b) that it will within 10 Working Days of the date of this Deed apply to the Land Registry for registration of a restriction against the Owners title in the Site on the following terms: 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 City of York that the provisions of paragraphs 3.1(a) and (c) of Schedule 1 of a Planning Agreement dated [date of Planning Agreement] made between (1) Network Rail Infrastructure Limited, (2) The Homes and Communities Agency and (3) The Council of the City of York have been complied with or that they do not apply to the disposition.



- (c) that the Owners shall not dispose of any Affordable Housing Dwellings to an Approved Registered Provider without procuring that the Approved Registered Provider enters into a Nomination Agreement with the Council in respect of the Affordable Housing Dwellings.
  - (d) that the Owners shall give the Council notices in writing not less than five Working Days prior to first Occupation of:
    - (i) 65 per cent of the Open Market Dwellings; and
    - (ii) 90 per cent of the Open Market Dwellings.
  - (e) that upon receipt of a reasonable written request from the Council to send to the Officer written notification of the number of Open Market Dwellings that are Occupied as at the date of the notification such notification to be given within 10 Working Days of the date of receipt of the request from the Council.
- 3.2 The Council shall within 10 Working Days of receiving a solicitor certified copy of the completed transfer deed complying with Paragraph 3.1(a) of this Schedule, as relevant, give its written consent to the registration of the disposition of an Affordable Housing Dwelling by the Owners to the Approved Registered Provider.
- 3.3 For the avoidance of doubt, the Parties hereby agree that nothing in this Schedule shall prohibit or prevent the Owners from transferring an interest in the Site to an Approved Registered Provider prior to the construction and Completion of any Affordable Housing to be carried out on that part of the Site, together with the transfer of any obligation on the Owners for the delivery of that Affordable Housing by the Affordable Housing Provider (as a successor to the Owners), in accordance with the other requirements of this Schedule.
- 3.4 In the event that the Owners are unable to enter into a contract for sale of the Affordable Housing Dwellings on a Phase or part of a Phase to an Approved Registered Provider following a marketing period of not less than three months from the date upon which each Affordable Housing Dwelling is first released for sale then the Owners will notify the Officer within 5 Working Days in writing to that effect with an explanation as to why exchange of contracts has not been secured together with evidence of reasonable endeavours taken to dispose of the Affordable Housing Dwellings including details of the offers made and received and related correspondence.
- 3.5 If the Council is satisfied that reasonable endeavours have been taken to dispose of the Affordable Housing Dwellings to an Approved Registered Provider then it will notify the Owners in writing to that effect within 10 Working Days of receipt of the written notification under Paragraph 3.4 otherwise it shall require further marketing of the units to an alternative Approved Registered Provider or additional evidence of reasonable endeavours taken and shall notify the Owners in writing to that effect within 10 Working Days of receipt of the written notification under Paragraph 3.4. In the event that further marketing or additional evidence is required, at the end of that further marketing period or on provision of the additional evidence the Owners will notify the Officer in writing and the procedure set out in Paragraph 3.4 and this Paragraph shall apply.
- 3.6 In the event the Council is satisfied and written notice has been given pursuant to Paragraph 3.5 the Owners shall be entitled to dispose of or allow other residential occupation of the remaining Affordable Housing Dwellings that has/have not been transferred to an Approved Registered Provider on the open market subject to the provisions set out below:



(a) The Owners shall pay the Affordable Housing Commuted Sum to the Council within 20 Working Days of the earlier of:

- (i) the date of First Occupation of each relevant Affordable Housing Dwelling; or
- (ii) the date of the sale of each relevant Affordable Housing Dwelling on the open market,

as a commuted sum to be applied by the Council towards the provision of Affordable Housing and Associated Activities within the Council's area.

(b) On payment of the sum referred to in Paragraph 3.6(a) the Owners shall be released from all obligations in this Schedule relating to that or those Affordable Housing Dwellings in respect of which an Affordable Housing Commuted Sum has been paid.

3.7 Notwithstanding any of the provisions herein contained none of the covenants or obligations contained in this Deed shall apply to a disposal of any of the Affordable Housing Dwellings being required by:

- (a) any statutory provisions now or hereafter in force; or
- (b) the Owners in excess of those Affordable Housing Dwellings required by Paragraph 2.1(a) of Schedule 1 of this Deed; or
- (c) a Court Order,

and upon any such disposal of the Affordable Housing Dwellings as Open Market Dwellings they shall cease to be subject to the provisions of this Deed.

3.8 In the event that any of the Affordable Housing Dwellings are disposed of to an Approved Registered Provider the following provisions shall apply to those Affordable Housing Dwellings disposed of to an Approved Registered Provider:

- (a) a mortgagee, chargee or a receiver (including an administrative receiver howsoever appointed) of the Approved Registered Provider who exercises any power of sale or takes any enforcement action under the terms of its charge or mortgage over any of the Affordable Housing Dwellings (Seller) shall use reasonable endeavours to effect the sale or other disposition of the same upon the following terms:
  - (i) for a minimum period of 12 weeks to market the Affordable Housing Dwellings exclusively to Approved Registered Providers and to use reasonable endeavours to enter into a binding sale agreement with an Approved Registered Provider (Buyer) at the Price and upon terms which are reasonably acceptable to the Seller including an obligation to complete the transaction within a period of four weeks after the expiry of the period of 12 weeks referred to in this Paragraph 3.8(a)(i);
  - (ii) upon the commencement of marketing to notify the Council in writing of the commencement date with reference to this Deed; and
  - (iii) to ensure that any sale made under this Paragraph 3.8 shall be subject to the obligations in paragraphs 3.1(a) and (c) of this Schedule in respect of the Affordable Housing Dwellings set out in this Deed as if references in those Paragraphs to the Approved Registered Provider were references to the Buyer.

- (b) If despite the Seller using reasonable endeavours the Seller cannot dispose of the Affordable Housing Dwellings (or relevant part or parts of them) to a Buyer after having complied with the terms of Paragraph 3.8 the Seller shall be at liberty to dispose of the same on the open market free of the restrictions in this Deed.
  - (c) In the event that Paragraph 3.8(b) becomes effective then the Council will upon written request promptly remove any entry in the Local Land Charges Register in respect of the relevant Affordable Housing Dwelling(s).
- 3.9 In exercising its rights under this Paragraph a Seller shall be entitled to seek to dispose of individual dwellings within the definition of Affordable Housing Dwellings and the provisions of this Paragraph shall apply to the individual Dwelling or Dwellings identified by the Seller.
- 3.10 Service of any notice under this Paragraph upon the Council shall be served upon the Officer.

#### **4. GYPSY AND TRAVELLER CONTRIBUTION**

- 4.1 The Owners covenant with the Council to:
- (a) not Commence any Phase consisting of any Dwellings where the total number of Dwellings constructed within the Development following completion of that Phase will be 500 Dwellings until it shall have paid to the Council the first tranche of three hundred thousand pounds (£300,000) of the Gypsy and Traveller Contribution;
  - (b) not Commence any Phase consisting of any Dwellings where the total number of Dwellings constructed within the Development following completion of that Phase will be 1,000 Dwellings until it shall have paid to the Council the second tranche of one hundred and fifty thousand pounds (£150,000) of the Gypsy and Traveller Contribution;
  - (c) not Commence any Phase consisting of any Dwellings where the total number of Dwellings constructed within the Development following completion of that Phase will be 1,500 Dwellings until it shall have paid to the Council the third tranche of one hundred and fifty thousand pounds (£150,000) of the Gypsy and Traveller Contribution;
  - (d) not Commence any Phase consisting of any Dwellings where the total number of Dwellings constructed within the Development following completion of that Phase will be 2,000 Dwellings until it shall have paid to the Council the fourth tranche of one hundred and fifty thousand pounds (£150,000) of the Gypsy and Traveller Contribution; and
  - (e) not Commence any Phase consisting of any Dwellings where the total number of Dwellings constructed within the Development following completion of that Phase will be 2,475 Dwellings until it shall have paid to the Council the final tranche of one hundred and fifty thousand pounds (£150,000) of the Gypsy and Traveller Contribution.



## **SCHEDULE 2: SPORTS PROVISION**

### **1. SPORTS PROVISION CONTRIBUTION**

- 1.1 The Parties hereby agree that the amount of Sports Provision Contribution payable in respect of each Phase shall be calculated by multiplying the total number of bedrooms contained in all of the Dwellings in that Phase (if any) by £213 or such other sum calculated following Indexation in accordance with the provisions of the Agreement.
- 1.2 The Owners covenant with the Council:
- (a) that no Phase shall Commence unless and until 50% of the Sports Provision Contribution for that Phase has been paid to the Council;
  - (b) not to Occupy or to permit Occupation of more than 50% of the Dwellings within a Phase unless and until the remaining 50% of the Sports Provision Contribution for that Phase has been paid to the Council.

### **SCHEDULE 3: OPEN SPACE**

#### **1. OPEN SPACE CONTRIBUTION**

- 1.1 The Owners covenant with the Council that they shall not First Occupy or allow First Occupation of any Dwellings within Block 2 or Block 3 until it shall have paid to the Council the Open Space Contribution.



## SCHEDULE 4: SUSTAINABLE TRANSPORT

### 1. DEFINITIONS

**"Baseline Position Survey"** means a base line survey of bus journey times and residential on-street parking in furtherance of the Transport Assessment to the Outline Planning Permission carried out by the Owners and verified by the Travel Plan Coordinator as described in Schedule 6;

**"Annual Transport Survey"** means an update to the Baseline Position Survey carried out by the Owners and verified by the Travel Plan Coordinator;

**"Annual Report"** means an annual report to be produced by the Travel Plan Coordinator in accordance with Paragraph 3.1(d) of Schedule 6;

**"Bus Service Enhancements"** means the provision of financial support for the enhancement of existing bus services through the Site comprising contributions to the running costs of relevant bus operators of two (2) additional services per hour passing through the Site subject to a minimum of four (4) non park and ride services in both directions along the new access road per hour) to be expended at the Council's discretion;

**"Bus Lane"** means a bus lane of 3.5 metres in width located on the eastbound side of the Primary Vehicle Route (as shown on the approved Parameter Plans to the Outline Planning Permission) commencing no further west than at the eastern extent of Development Zone Plot F and extending at least by the 'mean' maximum queue length typically experienced within the Site to a maximum length of 500m as shown indicatively on the Bus Lane Plan the final extent of which is to be the subject of Reserved Matters Approval;

**"Bus Lane Plan"** means the plan attached hereto at Appendix E titled Bus Lane Plan with drawing number YCL-ARP-PR-ZZ-DR-CX-001 Rev P01.1;

**"Bus Lane Specification"** means works first approved by the Council in accordance with drawing number YCL-ARP-IP2-ZZ-SP-ZX-001 that meets all necessary and relevant standards to make up the Bus Lane as part of the adopted highway maintainable at the public expense;

**"Bus Lane Trigger"** means the date at which the average peak hour journey time delay (between the Water End/Salisbury Road intersection and Leeman Road/Station Avenue/Station Rise intersection) exceeds an additional 60 seconds above the equivalent Baseline Position Survey and determined by the Annual Transport Survey;

**"City Car Club Facilities"** means provision of city car club facilities comprising two vehicle bays within the Development for and including the provision of two vehicles at a location to be first agreed between the Owners and the Council;

**"Detailed Travel Plans"** means the detailed travel plans submitted and approved pursuant to the Planning Conditions;

**"Floor Space"** means floor space that has been Completed within the Development comprising of all or any uses falling within Use Classes A, B, C and D as permitted by the Outline Planning Permission as a percentage of 379,729 square metres of GEA permitted by the Outline Planning Permission;

**"Framework Travel Plan"** means the framework travel plan submitted and approved as part of the Outline Planning Application;

**"Framework Travel Plan Coordinator"** means a Site wide Travel Plan Coordinator appointed by the Council to promote monitor and report on the progress of sustainable modes of transport and the achievement of the Travel Plan Targets in accordance with the Framework Travel Plan as supplemented by Detailed Travel Plans and to make recommendations to the Council as to which measures of the Sustainable Transportation Measures to prioritise in order to achieve the Travel Plan Targets in accordance with Paragraph 3.1 of Schedule 6;

**"GEA"** means gross external area;

**"Highway Agreement"** means any agreement entered into between the Owners (or its agent or contractors) and the Council pursuant to (amongst other things) Section 38 and/or Section 278 of the Highways Act 1980;

**"Modal Shift"** means the Framework Travel Plan target modal shift split reduction in car driver journeys accessing the development during the AM and PM peak (when compared against the baseline mode shares within the Transport Assessment / Framework Travel Plan submitted as part of the Outline Planning Application). For the Yard South and Foundry Quarter the target modal shift is 5% and for the Station Quarter (Employment and Residential) the target modal shift is 10%. For the avoidance of doubt, the target mode shares are specified in Tables 11 and 12 of the Framework Travel Plan submitted as part of the Outline Planning Application;

**"Network Capacity Enhancements"** means highway network works for the upgrade and improvement of junction design and infrastructure within the vicinity of the Site to provide new road layouts and signaling including traffic detection and associated technological systems with the purposes of improving journey time reliability and which shall include but shall not be limited to:

- (a) four (4) network capacity enhancement schemes for junctions on Water End or adjacent routes to allow linking of junctions and provide infrastructure to improve journey time reliability;
- (b) junction and signal improvements at A19/Water End/Water Lane; and/or
- (c) junction and signal improvements at A59/Water End;

**"Park & Ride Services"** means the provision of enhanced services and/or the provision of additional parking capacity at one or more of the pre-existing Park & Ride facilities within the York area;

**"Pedestrian and Cycle Infrastructure"** means the improvements to existing pedestrian and cycle infrastructure within the immediate vicinity of the Site which may include but is not limited to all or any of the following included in the Pedestrian and Cycle Audit within the Transport Assessment:

- (a) improvements to the southern footway and cycleway on Water End between Salisbury Terrace and A59;
- (b) improvement to safety through the A59 / Water End junction;
- (c) cycle provision on the A59 Boroughbridge Road between Water End and Sandacre Court;
- (d) cycle provision on A59 Poppleton Road between Water End and Ash Street;



- (e) cycle provision on Acomb Road between the Fox junction and Gratham Drive;
- (f) pedestrian / cycle improvements on Dalton Terrace;
- (g) improvements to the Riverside pedestrian / cycle path;
- (h) improvements to the signage / legibility of the Bright Street / Bromley Street cycle route; and
- (i) the provision of signage to the Riverside pedestrian / cycle path on Jubilee Terrace.

**"Public Transport Infrastructure"** means public transport infrastructure improvements provided off-site comprising one or more of the following:

- (a) A59 South-Eastbound Bus Lane - delivery of 200m (approximate length) of inbound bus lane beginning at a point broadly 50m east of the A59/Carr Lane traffic signal junction and terminating circa 15m east of the A59/Lavender Grove priority intersection; and
- (b) Water End South-Westbound Bus Lane - delivery of 375m (approximate length) of bus lane beginning as a point immediately south-west of the Water End bridge (over the River Ouse) and terminating at a point consistent with the current left-turn lane at the Water End/Salisbury Road junction;
- (c) A bus gate facility controlling access to Leeman Road / the new access road from Kingsland Terrace;

**"Residential Parking Measures"** means measures to be promoted, implemented, enforced and delivered by the Council forming part of the Sustainable Transportation Measures to manage the impact of additional parking in residential streets comprising a scheme of controlled parking zones within an approximate 20 minute walk of the outer boundary of the Site;

**"Second Sustainable Transportation Contribution"** means the sum or sums (if paid in part) of £2,328,000 to be paid by the Owners in Paragraph 3.1 of this Schedule to and to be used by the Council towards the provision of the Sustainable Transportation Measures and/or the Park & Ride Services as the Council determines in its discretion subject to any requirements of and/or stipulations in this Schedule;

**"Sustainable Transportation Contribution"** means the sum or sums (if paid in part) to be paid by the Owners to the Council in Paragraph 2.1 of this Schedule totaling £3,892,000 to be used by the Council towards the provision of Sustainable Transportation Measures as the Council determines in its discretion subject to any requirements of and/or stipulations in this Schedule;

**"Sustainable Transportation Measures"** means one or more of the following measures to be provided, procured or implemented by the Council in accordance with the terms of this Schedule and otherwise at its discretion so as to benefit residents of the Development and to encourage sustainable modes of transportation;

- (a) the Pedestrian and Cycle Infrastructure;
- (b) the Public Transport Infrastructure;
- (c) Bus Service Enhancements;

- (d) Network Capacity Enhancements;
- (e) appointment of the Framework Travel Plan Coordinator;
- (f) Residential Parking Measures; and
- (g) City Car Club Facilities.

**"Sustainable Travel Pack Contribution"** means the commuted sum contribution, paid by the Owners in addition to any other contribution, set out in Paragraph 5 of this Schedule for the purposes of the funding Sustainable Travel Packs;

**"Sustainable Travel Packs"** means travel packs prepared and developed for Occupiers of the Development to promote targeted sustainable travel measures including, but not limited to, the provision of subsidised bus passes, vouchers for use of the City Car Club Facilities and cycle purchase vouchers in accordance with the requirements and stipulations in this Paragraph and Paragraph 5 of this Schedule;

**"Transport Assessment"** means the Transport Assessment submitted as part of the Outline Planning Application with document number YCL-ARP-ZZ-XX-RP-RP-TP-0001 Rev A;

**"Travel Plan Targets"** means the Modal Shift and the Trip Reduction;

**"Travel Plan Trigger Date"** means the date of the fifth, or subsequent, Annual Reports; and

**"Trip Reduction"** means the Framework Travel Plan target of a minimum 30% reduction in Development related car trips accessing the development during the AM and PM peak (when compared against the predicted residential, office and hotel trips set out within the Transport Assessment / Framework Travel Plan submitted as part of the Outline Planning Application). For the avoidance of doubt, this level of trips is specified in Table 13 of the Framework Travel Plan submitted as part of the Outline Planning Application .

## 2. SUSTAINABLE TRANSPORTATION CONTRIBUTION

### 2.1 The Owners covenant with the Council:

- (a) not to Commence any Development within Blocks 2 or 3 until they have paid to the Council the first tranche of nine hundred and thirty thousand pounds (£930,000) of the Sustainable Transportation Contribution to the Council ("the First Instalment");
- (b) not to First Occupy or allow First Occupation of any part of the Development within Blocks 2 or 3 until they have paid to the Council the second tranche of nine hundred and forty one thousand pounds (£941,000) of the Sustainable Transportation Contribution to the Council ("the Second Instalment");
- (c) not to First Occupy or allow First Occupation of more than 40% of the permitted Floor Space until they have paid to the Council the third tranche of one million one hundred and forty one thousand pounds (£1,141,000) of the Sustainable Transportation Contribution to the Council ("the Third Instalment");
- (d) not to First Occupy or allow First Occupation of more than 60% of the permitted Floor Space until they have paid to the Council the fourth tranche of seven hundred and five thousand pounds (£705,000) of the Sustainable Transportation Contribution to the Council ("the Fourth Instalment"); and



- (e) not to First Occupy or allow First Occupation of more than 80% of the permitted Floor Space until they have paid to the Council the fifth tranche of one hundred and seventy five thousand pounds (£175,000) of the Sustainable Transportation Contribution to the Council ("the Final Instalment").

### 3. SECOND SUSTAINABLE TRANSPORTATION CONTRIBUTION

3.1 Subject to paragraph 3.2 of this Schedule the Owners covenant with the Council to pay on the year anniversary of a Travel Plan Trigger Date the Second Sustainable Transportation Contribution unless on or before that date one of the following events ("**Event**") has occurred or occurs:

- (a) the subsequent Annual Report (as defined in Schedule 6) demonstrates that the Travel Plan Targets are achieved; or
- (b) the third anniversary of First Occupation of 80% of the permitted Floor Space.

3.2 In the event that the Event in sub-paragraph 3.1(b) occurs without the Second Sustainable Transportation Contribution becoming payable, the obligation upon the Owners in Paragraph 3.1 shall expire and cease to have effect.

### 4. BUS LANE

4.1 The Owners covenant with the Council that:

- (a) unless or until the Bus Lane Trigger occurs, they shall not carry out any Development within the area required for the Bus Lane, other than site clearance, levelling, demolition, land remediation and any other enabling works unless otherwise with the prior written approval of the Council;
- (b) in the event that Bus Lane Trigger occurs, they shall:
  - (i) construct and Complete the Bus Lane to the Bus Lane Specification, including costs of any traffic signals required, within a period of 12 calendar months from the Bus Lane Trigger, unless an extension is otherwise agreed in writing with the Council; and
  - (ii) to dedicate to the Council as part of a Highway Agreement that part of the Site over which the Bus Lane is constructed for the adoption of the Bus Lane as a public highway maintainable at the public expense and on the proviso that the Highways Agreement shall provide as a minimum that;
    - (A) the maintenance period from substantial completion of the construction of the Bus Lane to the Bus Lane Specification shall not be required to exceed 12 calendar months ("**Maintenance Period**");
    - (B) the Owners are not required to make any commuted contributions towards the future maintenance of the Bus Lane in addition to the Sustainable Transportation Contribution and Second Sustainable Transportation Contribution; and
    - (C) the Council shall be required to adopt the Bus Lane as a public highway maintainable at the public expense following satisfactory

completion of the Maintenance Period and necessary road safety audits.

- (c) they shall commission the carrying out of the Baseline Position Survey to be submitted to the Framework Travel Plan Coordinator for its approval within 6 calendar months prior to or upon Commencement of the Development; and
  - (d) in the event that the Bus Lane Trigger does not occur within 20 years of the date of Commencement, then the requirements of sub-paragraphs 4.1(a) to (c) inclusive shall no longer be binding and shall cease to apply.
- 4.2 The Parties covenant that if at any time within 20 years of the date of Commencement the Council determines that it would be in the public benefit to construct the Bus Lane the Council shall have the right to construct the Bus Lane at the Council's cost and the Owners shall dedicate to the Council that part of the Site over which the Bus Lane is constructed to adoptable standards as a public highway maintainable at the public expense provided that in the event the Council elects to do so then the requirements of sub-paragraphs 4.1(a) to (c) inclusive shall no longer be binding and shall cease to apply.

## **5. SUSTAINABLE TRAVEL PACKS**

- 5.1 The Parties hereby agree that the amount of Sustainable Travel Pack Contribution payable in respect of each Phase shall be calculated by multiplying the total number of Dwellings in that Phase (if any) by £440.
- 5.2 The Owners covenant with the Council that they shall not First Occupy or permit First Occupation of any Dwelling within any Phase unless and until the Sustainable Travel Pack Contribution for that Phase has been paid to the Council.
- 5.3 The Sustainable Travel Pack funding will be controlled and distributed by the Travel Plan Coordinator at the Council's discretion.



## **SCHEDULE 5: EDUCATION**

### **Part 1: Education Obligations**

#### **1. DEFINITIONS**

**"Affected Education Providers"** means St. Paul's C.E. Primary School, St. Paul's Terrace, Holgate, York, YO24 4BJ; St Barnabas CE Primary School, Jubilee Terrace, Leeman Road, York, YO26 4YZ; Poppleton Road Primary School, Poppleton Road, York, YO26 4UP; and Milthorpe School, Nunthorpe Avenue, York, YO23 1WF

**"Early Years and Childcare Contribution"** means the sum or sums as are duly calculated in accordance with the provisions of Part 2 to this Schedule 5 to be paid by the Owners to the Council to be used by the Council for the purposes of expansion of existing or development of new early years and childcare provision;

**"Early Years and Childcare Facility"** means an early years and childcare facility to be constructed within the Development;

**"Early Years and Childcare Facility Cost"** means the capital costs, expenses and fees associated with the enabling, marketing, constructing and transferring/letting of the Early Years and Childcare Facility for and to an Early Years and Childcare Facility Provider on a Lease;

**"Early Years and Childcare Facility Provider"** means a nationally and/or locally recognised early years and childcare operator in respect of which the Owners have provided to the Council prior to the appointment of that provider:

- (a) confirmation that the relevant provider has been procured by the Owners so far as applicable in accordance with the Council's procurement guidelines appended at Appendix D; and
- (b) the latest Ofsted Inspection Reports in respect of that provider's other operations;

**"Early Years and Childcare Lease"** means with regard to the Early Years and Childcare Facility any lease shall:

- (a) be of the whole of the Early Years and Childcare Facility;
- (b) for a term of at least 5 years certain;
- (c) prohibit assignment or subletting of part only of the Early Years and Childcare Facility;
- (d) prohibit assignment of the whole of the Early Years and Childcare Facility except to a provider approved by the Council in writing;
- (e) shall not contain a break option for either the landlord or the tenant however the lease may be terminated should the Facility Provider receive an Inadequate or Requires Improvement Ofsted judgment;
- (f) limit the permitted use of the Early Years and Childcare Facility to use as a facility within Class D1 of the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification;

- (g) not be varied without the consent of the Council (such consent not to be unreasonably withheld or delayed if the variations(s) would not alter or conflict with any of the requirements set out in (a) to (f) and (h) herein); and
- (h) not be surrendered without the consent of the Council such consent not to be unreasonably withheld or delayed where the Owners either grant a new Early Years and Childcare Lease to another Facility Provider or transfer the freehold ownership of the Early Years and Childcare Facility to the Council in consideration of a peppercorn.

**"Early Years and Childcare Provision Assessment"** means the requirements identified in accordance with the provisions of Part 2 of this Schedule 5 for the provision of Early Years and Childcare places as part of a Phase;

**"Primary Education Contribution"** means the sum or sums as are duly calculated in accordance with the provisions of Part 2 to this Schedule 5 to be paid by the Owners to the Council to be used by the Council for the purposes of expansion at St. Paul's CE Primary School, St Barnabas CE Primary School and/or Poppleton Road Primary School to provide additional school places;

**"Primary Education Provision Assessment"** means the requirements identified in accordance with the provisions of Part 2 of this Schedule 5 for the provision of Primary school places as part of a Phase;

**"Secondary Education Contribution"** means the sum or sums as are duly calculated in accordance with the provisions of Part 2 to this Schedule 5 to be paid by the Owners to the Council to be used by the Council for the purposes of one or more of the following proposed works to support additional pupils at Millthorpe School:

- (a) provision of five additional non-specialist teaching spaces plus associated storage;
- (b) expansion of dining facilities, food service and reconfigured preparation areas;
- (c) additional student WCs;
- (d) additional outdoor hard play areas; and/or
- (e) additional indoor social areas and reconfiguration of circulation areas;

**"Secondary Education Provision Assessment"** means the requirements identified in accordance with the provisions of Part 2 of this Schedule 5 for the provision of Secondary school places as part of a Phase;

## **2. EARLY YEARS AND CHILDCARE PROVISION**

### **2.1 The Owners covenant with the Council:**

- (a) not to Commence any Phase consisting of any Dwellings within the Development on the Site until they have submitted to the Council and the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Early Years and Childcare Provision Assessment for that Phase calculated in accordance with the provisions set out in Part 2 of this Schedule 5 and in the event such assessment concludes that a Early Years and Childcare Contribution is payable pursuant to the provisions set out in Part 2 of this Schedule 5 to pay that Early Years and Childcare Contribution for that Phase to the Council in order to fund the increased Early Years



and Childcare provision required by the Early Years and Childcare Facility Provider for that Phase of Development; and

- (b) not to Occupy any Dwellings within a Phase unless and until the Early Years and Childcare Contribution for that Phase has been paid to the Council.

- 2.2 if at any time the Owners elect to construct an Early Years and Childcare Facility as part of the Development, the Owners shall be entitled to a reduction in any yet unpaid and/or repayment of any unexpended Early Years and Childcare Contribution up to the Early Years and Childcare Facility Cost subject to the Owners having first constructed and Completed a Early Years and Childcare Facility and transferred the Early Years and Childcare Facility on the terms that at least meet the requirements of a Early Years and Childcare Lease to an Early Years and Childcare Facility Provider.

### **3. PRIMARY EDUCATION**

- 3.1 The Owners covenant with the Council:

- (a) not to Commence any Phase consisting of any Dwellings within the Development on the Site until they have submitted to the Council and the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Primary Education Provision Assessment for that Phase calculated in accordance with the provisions set out in Part 2 of this Schedule 5 and in the event such assessment concludes that a Primary Education Contribution is payable pursuant to the provisions set out in Part 2 of this Schedule 5 to pay that Primary Education Contribution for that Phase to the Council in order to fund the increased education provision required by the Affected Education Providers for that Phase of Development; and
- (b) not to Occupy any Dwellings within a Phase unless and until the Primary Education Contribution for that Phase has been paid to the Council.

### **4. SECONDARY EDUCATION**

- 4.1 The Owners covenant with the Council:

- (a) not to Commence any Phase consisting of any Dwellings within the Development on the Site until they have submitted to the Council and the Council has approved in writing (such approval not to be unreasonably withheld or delayed) the Secondary Education Provision Assessment for that Phase calculated in accordance with the provisions set out in Part 2 of this Schedule 5 and in the event such assessment concludes that a Secondary Education Contribution is payable pursuant to the provisions set out in Part 2 of this Schedule 5 to pay that Secondary Education Contribution for that Phase to the Council in order to fund the increased education provision required by the Affected Education Providers for that Phase of Development; and
- (b) not to Occupy any Dwellings within a Phase unless and until the Secondary Education Contribution for that Phase has been paid to the Council.

## **Part 2: Education Provision Assessment**

### **1. DEFINITIONS**

**"Cost Multiplier"** means the figure representing the respective costs of a school place to educate one child in the primary or secondary school sector, as relevant, as published by the Department for Education and adjusted for costs in the City of York area and to account for the period of time between the date of publication of that figure and the date of payment by the BCIS Public Sector All In Trade Price Index. The 2019/20 cost multipliers for permanent expansion are £18,237 for the primary sector; £24,987 for the secondary sector. The 2019/20 Early Years and Childcare cost multiplier for new nursery provision is £10,776;

**"Development Pupil Yield"** means the number of Dwellings of two bedrooms or more (excluding any Dwellings constructed for use as senior housing) in any Phase comprising of houses and/or flats and the combined number of such houses and flats each multiplied by the relevant Pupil Yield Ratio set out in the table below:

<b>Pupil Yield Ratio</b>	<b>House</b>	<b>Flat</b>
Early years and childcare	0.125	0.125
Primary	0.25	0.10
Secondary	0.143	0.03

**"Surplus Space"** means:

- (a) for early years and childcare:
  - (i) registered early years and childcare providers within a 1.5KM radius of the development who have an occupancy rate of less than 80% to support the delivery of flexible provision. A projected minimum of 20% operational capacity is required at the anticipated time of completion of each phase, adjusted to account for capacity that has already been increased for this development or other extant planning obligations. Any Surplus Spaces would be deducted from the final total projected pupil yield calculation from the development.
- (b) for primary and secondary age pupils in schools, academies and free schools:
  - (i) unless net capacity has already been increased for this development or other planning obligations, the agreed net capacity (which is either (1) for maintained, non-academy schools the agreed net capacity figure less 5% operational capacity as calculated by the local authority, or (2) for academy or free schools, the figure as indicated in the school's funding agreement with the Department for Education less 5% operational capacity) of the schools that fall within the definition of Affected Education Providers;

MINUS

  - (ii) the projected number of pupils on the roll at such schools on completion of each phase (based on patterns of parental preferences and the latest January school census as at the time of calculation of the Education Provision Assessment); and



- (iii) the sum total of the calculated primary or secondary school pupil yields from other developments within the area of the Affected Education Providers that have obtained full planning permissions and that remain extant.

## **2. EDUCATION PROVISION ASSESSMENT CALCULATION**

2.1 For the purpose of the Education Provision Assessment calculation in this Part of Schedule:

- (a) 'Development Pupil Yield' is to be represented by the letter A;
- (b) 'Surplus Space' is to be represented by the letter B; and
- (c) 'Cost Multiplier' is to be represented by the letter D.

2.2 In order to calculate whether an Early Years and Childcare Contribution and/or Primary Education Contribution and/or Secondary Education Contribution, as relevant, is payable for a Phase, the following formula must be used to establish whether or not there is a pupil need for primary or secondary school education:

$$A - B = C \text{ (i.e. the pupil need)}$$

2.3 Following the calculation, if C is a positive number, a contribution will be required for primary or secondary school education and the calculation in Paragraph 2.5 of Part 2 of this Schedule shall be carried out to establish the amount of the Early Years and Childcare Contribution and/or Primary Education and/or Secondary Education Contribution payable.

2.4 However, if C is a negative number then no such contribution will be required and no Early Years and Childcare Contribution and/or Primary Education and/or Secondary Education Contribution will be payable in relation to that Phase.

2.5 In order to calculate the amount of the Early Years and Childcare Contribution, Primary or Secondary Education Contribution payable for a Phase, the following formula must be used:

$$C \times D = E \text{ (i.e. the education cost)}$$

2.6 Following the calculations in Paragraph 2.5 of Part 2 of this Schedule the education cost figures represented by E shall be the relevant Early Years and Childcare Contribution and/or Primary Education Contribution and/or Secondary Education Contribution payable for that Phase.

## **SCHEDULE 6: COUNCIL COVENANTS**

### **1. OWNERS CONTRIBUTIONS**

#### **1.1 The Council hereby covenants with the Owners:**

- (a) save for the sum referred to in clause 17 to pay all contributions or sums received from the Owners under the terms of this Deed into an interest bearing account or in separate interest bearing accounts as the Council shall in its discretion decide immediately upon receipt;
- (b) to use:
  - (i) all contributions or sums received under the terms of this Deed only for the express purpose(s) for which they have been paid; and
  - (ii) all land transferred or dedicated to the Council only for the purposes for which it is transferred or dedicated pursuant to the terms of this Deed;
- (c) within 10 Working Days of receipt by the Council of a written reasonable request of the Owners to provide written confirmation and suitable evidence of the expenditure by the Council of the sums paid by the Owners to the Council under this Deed.

#### **1.2 The Council hereby covenants with the Owners:**

- (a) not to expend the Sports Provision Contribution other than in accordance with the allocation set out in the definition of Sports Provision Contribution save that if for whatever reason the Council:
  - (i) determines a different allocation of all or any of the Sports Provision Contribution for the defined uses; or
  - (ii) that all or any of the Sports Provision Contribution should be spent on one or more Sports Provision Contribution of similar mitigating effect;then it shall provide the Owners with a reasoned justification for such decision and provide the Owners with a reasonable opportunity to make written representations on such alternative allocation ahead of any reallocation of all or any of the Sports Provision Contribution PROVIDED ALWAYS that any such reallocation shall be decided by the Council in its sole discretion; and
- (b) that if at the expiry of the period of 5 years from the date of any payment of any instalment of Sports Provision Contribution it shall not have expended all of that instalment of Sports Provision Contribution on the prescribed purposes or on a different allocation of similar mitigating effect pursuant to Paragraph 1.2(a) of this Schedule then unless the Owners otherwise agree in their discretion to extend the period for repayment it shall (within 20 Working Days of written demand) repay such unexpended sum to the relevant party which made the payment of such unspent Sports Provision Contribution (together with any unspent interest that may have accrued thereon from the date of payment to the date of repayment) provided that the Council shall not be required to repay:
  - (i) any sum or sums which the Council is contractually committed to pay to another party at the date of expiration of the said period of 5 years; or



- (ii) any sum which is required by the Council to secure the completion of any works which have commenced and are being undertaken as quickly as reasonably practicable but have not been completed as at the expiration of such period.

1.3 The Council hereby covenants with the Owners:

- (a) not to expend the Sustainable Transportation Contribution other than in accordance with the prescribed purposes as set out in Schedule 4 of this Deed;
- (b) that if at the expiry of:
  - (i) the period of 7 years from the date of any payment of the Third Instalment it shall not have expended all of the First Instalment, Second Instalment or Third Instalment of the Sustainable Transportation Contribution on the prescribed purposes; and/or
  - (ii) the period of 5 years from the date of any payment of the Fourth Instalment it shall not have expended all of the Fourth Instalment of the Sustainable Transportation Contribution on the prescribed purposes; and/or
  - (iii) the period of 5 years from the date of any Final Instalment it shall not have expended all of the Final Instalment of the Sustainable Transportation Contribution on the prescribed purposes;

then unless the Owners otherwise agree in their discretion to extend the period for repayment it shall (within 20 Working Days of written demand) repay such unexpended sum to the relevant party which made the payment of such unspent Sustainable Transportation Contribution (together with any unspent interest that may have accrued thereon from the date of payment to the date of repayment) provided that the Council shall not be required to repay:

- (iv) any sum or sums which the Council is contractually committed to pay to another party at the date of expiration of the said period; or
- (v) any sum which is required by the Council to secure the completion of any works which have commenced and are being undertaken as quickly as reasonably practicable but have not been completed as at the expiration of such period.

1.4 The Council covenants with the Owners:

- (a) not to spend (or commit to spend) the Education Contributions otherwise than towards their respective prescribed purposes as set out elsewhere in this Deed;
- (c) that if all or any part of the Education Contributions have not been spent or committed for their prescribed purposes within 10 years of the date of receipt of the relevant Contribution (or an instalment of a Contribution) the Council will (within 20 Working Days of written demand) repay such unexpended sum to the relevant Owners of each Block (with any unspent interest that may have accrued thereon from the date of payment to the date of repayment) provided that the Council shall not be required to repay:

- (i) any sum or sums which the Council is contractually committed to pay to another party at the date of expiration of 10 years of the date of receipt of the relevant Contribution (or instalment of a Contribution); or
- (ii) any sum which is required by the Council to secure the completion of any works which have commenced and are being undertaken as quickly as reasonably practicable but have not been completed as at the expiration of such period.

1.5 The Council covenants with the Owners:

- (a) not to spend (or commit to spend):
  - (i) the Second Sustainable Transportation Contribution;
  - (ii) the Gypsy and Traveller Contribution;
  - (iii) the Open Space Contribution; and/or
  - (iv) the Sports Provision Contribution.

(the "**Contributions**") otherwise than towards their respective prescribed purposes as set out elsewhere in this Deed
- (b) not to spend (or commit to spend) or to permit or allow the Travel Plan Co-ordinator to spend (or commit to spend) more than one million pounds (£1,000,000) of the Sustainable Transportation Contribution and any Second Sustainable Transportation Contribution towards Bus Service Enhancements without the prior written approval of the Owners (acting reasonably);
- (c) that if all or any part of the Contributions have not been spent or committed for their prescribed purposes within the period (stated below in Paragraph 1.5(d) of this Schedule) of the date of receipt of the relevant Contribution (or an instalment of a Contribution) the Council will (within 20 Working Days of written demand) repay such unexpended sum to the relevant Owners of each Block (with any unspent interest that may have accrued thereon from the date of payment to the date of repayment) provided that the Council shall not be required to repay:
  - (i) any sum or sums which the Council is contractually committed to pay to another party at the date of expiration of the said period in Paragraph 1.5(d) of this Schedule; or
  - (ii) any sum which is required by the Council to secure the completion of any works which have commenced and are being undertaken as quickly as reasonably practicable but have not been completed as at the expiration of such period;
- (d) The period within which any Contributions are to be repayable to the Owners for the purposes of Paragraph 1.5(c) of this Schedule is 5 years unless the Owners otherwise agree at their discretion to extend any period.



## **2. BUS LANE**

- 2.1 The Council covenants with the Owners that in the event that the Bus Lane Trigger occurs that it will enter into an Highways Agreement to accept the dedication of the Bus Lane and to maintain the Bus Lane as a public highway maintainable at the public expense from the adoption of the Bus Lane works following satisfactory completion of the Maintenance Period and necessary road safety audits.

## **3. TRAVEL PLAN COORDINATOR**

- 3.1 The Council covenants with the Owners that it shall:

- (a) appoint and keep appointed for not less than 15 years the Framework Travel Plan Coordinator from first Development within Blocks 2 or 3 with aims and objectives that meet the requirements and stipulations in the Framework Travel Plan as supplemented by Detailed Travel Plans, from time to time, to include but not limited to the following responsibilities (the defined terms of which are to accord with those in the Framework Travel Plan unless separately defined in this Deed):
  - (i) implementation and day-to-day running of the Framework Travel Plan and any Detailed Travel Plans;
  - (ii) liaison with any other residential and commercial Travel Plan Coordinators appointed by the owners/operators of Occupied Development within the Site working to Detailed Travel Plans;
  - (iii) chair a Travel Plan Steering Group and Travel Plan Management Group (as set out in the Framework Travel Plan) and organising and holding of meetings with these Groups and any other relevant working groups;
  - (iv) communication, including the keeping of an updated website, of the Framework Travel Plan and of relevant corresponding Sustainable Transportation Measures to the Occupiers and other users of the Development and acting as a point of contact for the employees of any commercial Development and owner/occupiers of Dwellings who require information on sustainable travel measure or opportunities;
  - (v) assisting the Owners, residential and commercial developers of the Site and commercial Occupiers and operators of the Site with establishing any Detailed Travel Plans, including the provision of information to support travel surveys for the approval of Detailed Travel Plans;
  - (vi) maintaining a list of all Travel Plan Coordinators appointed as part of the Development;
  - (vii) acting as Travel Plan Coordinator for the Occupiers of residential and commercial Development that are not required to have a Detailed Travel Plan;
  - (viii) periodically reviewing the Framework Travel Plan and recommending changes to its identified measures as appropriate to increase Modal Shift and Trip Reduction;
  - (ix) undertaking of surveys and monitoring of trip generation and of other matters consistent with the aims, objectives and measures of the Framework Travel

Plan and to report the findings of surveys/monitoring to the Council, the Owners and any other owner/occupiers of the Development, as required by this Deed, the Framework Travel Plan (as supplemented by Detailed Travel Plans) or otherwise as appropriate;

- (x) pursuing and actioning such other matters and liaising with any other persons or parties consistent with the aim, objectives and requirements of the Framework Travel Plan as supplemented by Detailed Travel Plans;
  - (xi) commission the carrying out of an Annual Transport Survey no later than each year anniversary of the Baseline Position Survey having been approved.
  - (xii) having regard to any Baseline Position Survey and Annual Transport Surveys as part of the discharge of its responsibilities;
  - (xiii) producing the Bi-Annual Reports and Annual Reports;
  - (xiv) upon receipt of the Sustainable Travel Packs Contribution for any Phase to promote and make available Sustainable Travel Packs to the Occupiers of the Dwellings Completed as part of the Phase, on the following terms:
    - (A) Car Club membership of up to £40 per Dwelling; and
    - (B) subsidised bus tickets and/or discounted cycle purchase of up to £400 inclusive per Dwelling;
- (b) procure that the Framework Travel Plan Coordinator expends the Sustainable Transportation Contribution and any Second Sustainable Transportation Contribution towards achieving the Travel Plan Targets and otherwise to fulfil its duties in line with all relevant obligations and requirements on the Council in this Deed;
- (c) provide to the Owners every six months following the first appointment of the Framework Travel Plan Coordinator a report of the activities/tasks undertaken, performance, findings, recommendations of the Framework Travel Plan Coordinator having regard to each of the Framework Travel Plan Coordinator's responsibilities identified in Paragraph 3.1(a) of this Schedule and which shall more particularly include:
- (i) the measures upon which (with reference to corresponding amounts of) the Sustainable Transportation Contribution and any Second Sustainable Transportation Contribution have been expended (or committed) by the Council (the "**Measures**"); and
  - (ii) the take up of the City Car Club and Sustainable Travel Packs;
- (the "**Bi-Annual Reports**");
- (d) provide to the Owners on the year anniversary of the first appointment of the Framework Travel Plan Coordinator an annual report of the activities/tasks undertaken, performance, findings, recommendations of the Framework Travel Plan Coordinator having regard to each of the Framework Travel Plan Coordinator's responsibilities identified in Paragraph 3.1(a) of this Schedule and which shall more particularly include but not be limited to the matters in sub-Paragraph(c) and:



- (i) the status of any such Measures and an assessment of their effect on the Travel Plan Targets;
- (ii) an assessment of the extent of Modal Shift and Trip Reduction achieved including details of recorded trip generation;
- (iii) the results of any other monitoring surveys carried out by the Framework Travel Plan Coordinator.

(the "**Annual Reports**");

- (e) have due regard to any representations that the Owners may provide to the Framework Travel Plan Coordinator and/or the Council in respect of the matters identified in Paragraph 3.1(c) and (d) of this Schedule and which may include recommendation from the Owners as to matters that the Framework Travel Plan Coordinator should take into account:
  - (i) in the fulfilment of his/her appointment and duties outlined in Paragraph 3.1(a);
  - (ii) in his/her recommendations to the Council as to the Sustainable Transportation Measures against which the Sustainable Transportation Contribution should be directed to bring about the Travel Plan Targets; and
  - (iii) in the event that any Second Sustainable Transportation Contribution is payable, in his/her recommendations to the Council as to the Sustainable Transportation Measures against which the Second Sustainable Transportation Contribution should be directed.
- (f) upon the Owners written request, provide a response in writing within 20 Working Days to any such representations provided by the Owners pursuant to Paragraph 3.1(e) of this Schedule explaining how due regard has been had to those representations;
- (g) the Owners shall be entitled to seek from the Framework Travel Plan Coordinator periodic updates (not greater than at 3 month intervals) on the matters and progress towards such matters identified in this Paragraph and shall procure that the Framework Travel Plan Coordinator provides a response in writing to the Owners upon such request within 20 Working Days.

### 3.2 The Council covenants with the Owners:

- (a) that it will not and shall procure that the Travel Plan Coordinator will not spend (or commit to spend) the Sustainable Travel Packs Contribution otherwise than towards the prescribed purpose as set out in this Deed:
- (b) that if all or any Sustainable Travel Packs Contribution has not been spent or committed for its prescribed purposes within 12 months after final Occupation of the Phase in respect of which the Sustainable Travel Packs Contribution was paid the Council will (within 20 Working Days of written demand) repay such unexpended sum to the relevant Owners of each Block (with any unspent interest that may have accrued thereon from the date of payment to the date of repayment) provided that the Council shall not be required to repay any sum or sums which the Council is contractually

committed to pay to another party at the date of expiration of the said period of 12 calendar months.

**4. MONITORING OF TRAVEL PLAN**

- 4.1 The annual performance of the Travel Plan in relation to its principal targets to achieve the Modal Shift and Trip Reduction should be informed by a month long period of monitoring (in a neutral month such as March or October every year throughout the life of the strategy) using ANPR cameras or similar, with additional parking surveys used to inform the conclusions drawn, in order to establish the quantum of traffic generated by the site and un-related 'through-movements' on the wider network.

**5. APPROVED REGISTERED PROVIDER**

- 5.1 The Council covenants with the Owners that in the event that it ceases to maintain a list of Approved Registered Providers and / or is requested to approve to the identity of a Registered Provider pursuant to the provisions of Schedule 1 it shall not unreasonably withhold or delay such approval and its approval shall be deemed to be granted if the Council has failed to respond to a request for approval within one month of receipt of the application for such approval, where such request complies with the service of notice requirements on the Owners elsewhere in this Deed.

**6. GENERAL**

- 6.1 The Council covenants with the Owners to perform and observe the obligations on the Council in Schedules 1 to 6 of this Deed.



IN WITNESS whereof the parties have executed this Deed the day and year first above written:

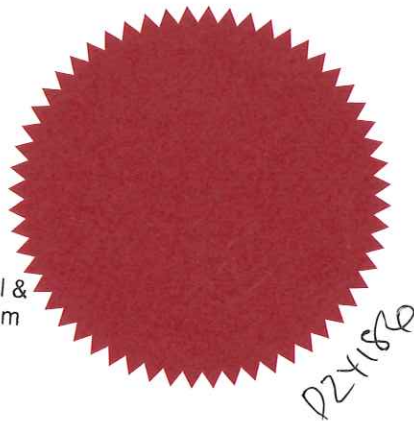
*just signed*  
affixing the common seal of  
Executed as a deed by **Network Rail Infrastructure Limited** acting by two directors or by a director and its secretary. *in the presence of:*

*Neil An*  
~~Director~~ *Authorised signatory* **ASSISTANT COMPANY SECRETARY** **SEAL NO.**  
43228

~~Director/Secretary~~  
Authorised Signatory as approved  
by a resolution of the board of  
Network Rail Infrastructure Limited  
on 19 October 2015

The COMMON SEAL of  
**THE HOMES AND COMMUNITIES**  
**AGENCY** was hereunto  
affixed in the presence of:

*Christine Wilson*  
.....  
Authorised Signatory  
Christine Wilson  
Deputy General Counsel &  
Head of Legal Land Team



The common seal of  
**The Council of the City of York** was affixed  
to this deed in the presence of:

*[Signature]*  
Authorised signatory



**APPENDIX A: PLAN 1**





Section 106 Development Plot Plan  
 YCL\APR\22\22\JUN\CA\2501  
 P01.1  
 Scale at A1  
 1:2000

*NW*

*P24186*

Christine Wilson  
 Deputy General Counsel &  
 Head of Legal Land Team

*[Signature]*

*12001*

Key:  
 Block 1  
 Block 2  
 Block 3

Rev	Date	Description	By	Check	App'd	Auth
P01.1						



## **APPENDIX B: CONFIRMATORY DEED**

THIS **CONFIRMATORY DEED** is made on

### **BETWEEN:**

- (1) [ ] whose [registered office]/[address] is at [ ] ("Covenantor"); and
- (2) **THE COUNCIL OF THE CITY OF YORK** of West Offices Station Rise York YO1 6GA ("Council").

### **WHEREAS:**

A This Confirmatory Deed relates to the Covenantor's land and interests in the Site (as defined in the agreement entered into by the (1) Network Rail Infrastructure Limited (2) Homes England and (3) the Council under Section 106 of the Act and dated [DATE] ("the Initial Planning Agreement")).

B The Council is the local planning authority for the area within which the Site is situated.

C The Covenantor is the [freehold]/[leasehold] proprietor of that part of the Site [which is registered at the Land Registry with [title absolute] under title number [ ] shown [ ] on the plan attached hereto with drawing number [ ] ("the Covenantor's Land").

D In accordance with clause 7 of the Initial Planning Agreement the Covenantor intends in this Confirmatory Deed to covenant to observe perform and comply with and that Covenantor's Land shall henceforth be subject to and bound by the obligations covenants agreements and other provisions contained in the Initial Planning Agreement insofar as they remain to be complied with and relate to the Covenantor's Land as confirmed in this Deed.

### **IT IS AGREED:**

#### **1. OPERATION OF THIS CONFIRMATORY DEED**

1.1 References in this Deed to clauses, paragraphs and Schedules (or any part of them) are (unless the context otherwise requires) to clauses, paragraphs and Schedules in this Deed.

1.2 This Confirmatory Deed and the obligations contained in it are:

- (a) made pursuant to Section 106 and 106A of the Act as planning obligations;
- (b) executed by the Covenantor so as to bind and subject its estate or interest in the Covenantor's Land to the obligations covenants agreements and other provisions expressed as being on the part of "the Owner" contained in the Initial Planning Agreement (insofar as relevant and applicable to the Covenantor's Land) as confirmed in this Deed; and
- (c) enforceable in accordance with this Confirmatory Deed and the Initial Planning Agreement against the Covenantor and its successors in title to the Covenantor's Land by the Council acting as local planning authority.

#### **2. THE OBLIGATIONS**

2.1 The Covenantor hereby covenants agrees and undertakes (for itself and its successors in title to the Covenantor's Land) that its estate and interest in the Covenantor's Land shall henceforth be bound by the obligations covenants and agreements expressed as being on the part of "the Owners" in clause

---



5 and Schedules 1 to 6 (inclusive) of the Initial Planning Agreement subject to any apportionment of liability by the Council in accordance with clause 7.2 of the Initial Planning Agreement as set out below:

*[insert details of obligations and apportionment of liability and of obligations pursuant to clause 7 of the Initial Planning Agreement]*

2.2 For the avoidance of doubt any references in the Initial Planning Agreement to "the Owners" shall be read to the extent required in accordance with this Confirmatory Deed as including references to the Covenantor.

2.3 The Council hereby covenants and undertakes to observe and perform the covenants and obligations on the part of the Council and contained in the Initial Planning Agreement.

### 3. MISCELLANEOUS PROVISION

3.1 All words phrases and expressions in this Confirmatory Deed shall bear the same meaning as defined in the Initial Planning Agreement except where defined otherwise in this Confirmatory Deed.

3.2 This Confirmatory Deed shall be registrable as a local land charge by the Council.

3.3 The Covenantor shall pay to the Council on the date of completion of this Confirmatory Deed its reasonable legal costs incurred in the preparation and execution of this Confirmatory Deed.

3.4 No provision in this Confirmatory Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

3.5 Any invalidity illegality or unenforceability of any clause or paragraph in the Initial Planning Agreement or this Confirmatory Deed shall not affect the validity or enforceability of the remaining provisions of this Confirmatory Deed.

3.6 This Confirmatory Deed shall immediately cease to have effect if and to the extent that the Initial Planning Agreement ceases to have effect and in any such circumstance all reference to this deed shall be removed from the local land charges register.

Executed as a deed by [Covenantor]

[Appropriate Signatory provision]

The common seal of

**The Council of the City of York** was affixed

to this deed in the presence of

Authorised signatory

---

## **APPENDIX C: NOMINATION AGREEMENT**



Dated \_\_\_\_\_ 201[ ]

(1) [ ]

- and -

(2) **THE COUNCIL OF THE CITY OF YORK**

---

**NOMINATION AGREEMENT**

---

**THIS AGREEMENT** is made the ..... day of .....201[ ]

**BETWEEN:**

- (1) [ ] of [ ] (the "**Approved Registered Provider**")
- (2) **THE COUNCIL OF THE CITY OF YORK** of West Offices, Station Rise, York YO1 6GA (the "**Council**")

**NOW IT IS HEREBY AGREED** as follows:

**RECITALS**

1. It is the intention of the Parties that the Council will have the right during the Nominations Period from the date of this Agreement to nominate, any person in housing need to whom the Council owes a statutory duty or any other persons who are on the Council's housing register to:
  - 1.1 the Social Rented Dwellings or the Discount Sale Dwellings to be provided in accordance with the Planning Agreement;
  - 1.2 the Social Rented Dwellings shall be in respect of 100% (one hundred per centum) of all initial lettings and the first three out of every four of all subsequent re-lettings in strict rotation;
  - 1.3 the Discount Sale Dwellings shall be in respect of 100% (one hundred per centum) of all initial sales and thereafter for each and every subsequent sale during the Nominations Period shall be in accordance with the Discount Sale Dwellings Procedure as set out in Schedule 3 of this Agreement;

**DEFINITIONS AND INTERPRETATION**

In this Deed the following expressions shall where the context so admits have the following meanings:



<b>"Accommodation Officer"</b>	means such officer as the Approved Registered Provider may from time to time nominate to the Council in writing being the person who shall be responsible for implementing the provisions of this Deed on the part of the Approved Registered Provider;
<b>"Affordable Housing"</b>	has the same meaning as the definition in Annex 2 of the Framework;
<b>"Affordable Housing Dwellings"</b>	means the Social Rented Dwellings and the Discount Sale Dwellings that will be provided pursuant to the Planning Agreement and made available to Eligible Occupiers;
<b>"Approved Registered Provider"</b>	means a Registered Provider who is on the Council's list of Approved Registered Providers;
<b>"Associated Activities"</b>	means any activity (including the recruitment of staff) directly associated with the provision of Affordable Housing to include enabling provision purchase construction renovation and repair of dwellings and/or the acquisition of land within the Council's area to be used for Affordable Housing;

**“Choice Based Letting Scheme”**

means the choice based lettings scheme operated by the Council (or such alternative scheme operated by or on behalf of the Council from time to time) whereby applicants (and existing Affordable Housing tenants who are seeking to move) on the Council's and/or Approved Registered Provider's Affordable Housing waiting and transfer lists are given the opportunity to apply for vacancies in Council and/or Approved Registered Provider homes which are suitable for their needs priority though being given to individuals who have a local connection with the City of York in accordance with the Council's appropriate policies and procedures or the appropriate policies and procedures of the Approved Registered Provider as may be approved in writing by the Council in respect of Part 6 of the Housing Act 1996 and the Localism Act 2011;

**“Completion”**

has the same meaning as in the Planning Agreement;

**"Default Notice"**

means a notice served by the Council on the Approved Registered Provider on the occurrence of an Event of Default;



**"Discount Percentage"**

means the percentage of discount of the sale price given on the initial sale of a Discount Sale Dwelling calculated at the time of that sale by reference to the following formula: -

$$\frac{\text{Discount Sale Price}}{\text{Market Value}} \times 100$$

**"Discount Sale Dwellings"**

has the same meaning as in the Planning Agreement and **"Discount Sale Dwelling"** means any one of them;

**"Discount Sale Dwelling Marketing Period"**

a period of not less than six months starting no later than 3 months in advance of the estimated date for Completion of the Discount Sale Dwellings (which date shall be notified to the Officer and the Approved Registered Provider not less than three Months before that date);

**"Discount Sale Price"**

means the price of a Discount Sale Dwelling paid by the first Eligible Occupier to the Approved Registered Provider in each case as set out in Table A of Schedule 1 to the Planning Agreement;

**"Dispute"**

means any difference or dispute of whatever nature between the parties to this Deed, including failing to agree on any matter requiring to be agreed pursuant to this Deed (including any interpretation thereof) and where matters are subject to the consent of a Party, which consent cannot be unreasonably withheld, any difference or dispute as to whether the consent has been unreasonably withheld;

**"Dispute Resolution"**

means the procedure set out in clause 12;

**"Dwelling"**

means a Social Rented Dwelling;

**"Eligible Occupier"**

means a person or household who cannot afford to purchase dwellings of a similar kind generally available on the open market in the district of York and identified and approved in accordance with the Choice Based Letting Scheme or criteria from time to time of the Council;

**"Event of Default"**

means on the part of the Approved Registered Provider:

- (a) a material breach of this Deed (other than a breach of any obligation falling within any other paragraph of this definition of "Event of Default").



- (b) where the Approved Registered Provider is placed under supervision of the Homes and Communities Agency (or any successor body) specifically following misconduct by the Approved Registered Provider and not by any other member of a group structure the Approved Registered Provider may be part of;
- (c) the occurrence of an Insolvency Event;

**"Framework"**

means The National Planning Policy Framework (and any replacement and amendment of it) issued in March 2012 by the Department for Communities and Local Government;

**"Head of Housing Services"**

means the Head of Housing Services of the Council for the time being or such other officer of the Council nominated to carry out an equivalent function;

**"Insolvency Event"**

means where:

- (a) the Homes and Communities Agency presents a petition for the winding up of the Approved Registered Provider under the Insolvency Act 1986 where it is either:

(i) a company incorporated under the Companies Act 1985 (including such a company which is also a registered charity); or

(ii) an Industrial and Provident Society pursuant to section 55 of the Industrial and Provident Societies Act 1965;

(b) the Homes and Communities Agency receives notice pursuant to Sections 40 and 41 of the Housing Act 1996;

means a rent which does not exceed 80% of the Market Rent;

**“Intermediate Rent”**

**"Land"**

means that land the subject of the Planning Agreement;

**"Law"**

means

(a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, and any exercise of the Royal Prerogative,

(b) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

(c) any applicable judgment of a relevant court of law which is binding precedent,

in each case in the United Kingdom;

**“Lender”**

means any mortgagee or chargee of the Approved Registered Provider or the successors in title to such mortgagee or charge;

**"Liaison Procedure"**

means the procedure set out in Schedule 2;

**“Market Rent”**

means the average Market Rent for a Dwelling in York with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease;

**"Market Value"**

means a figure calculated having regard to the estimated amount for which a relevant dwelling should sell on the date of valuation between a willing buyer and a willing seller;



**"Nomination List"**

Means:

1. in relation to the Social Rented Dwellings the Choice Based Letting Scheme or other such scheme as may be adopted by the Council from time to time or a local lettings policy operated by the Approved Registered Provider and approved in writing by the Council;
2. in relation to the Discount Sale Dwellings the Choice Based Letting Scheme or other such scheme as adopted by the Council from time to time;

**"Nomination Notice"**

means a notice in a form as the Parties shall agree from time to time to be provided by the Council to the Approved Registered Provider for the purpose of nominating Affordable Housing Dwellings in accordance with the Nominations Procedure;

**"Nominations Officer"**

means such officer as the Council may from time to time nominate to the Approved Registered Provider in writing being the person or body who shall be responsible for implementing the provisions of this Deed on the part of the Council;

**"Nominations Period"**

means the period of eighty (80) years commencing on the date of this Deed;

<b>"Nominations Procedure"</b>	means the procedure for the Council to nominate Nominees for Affordable Housing Dwellings which is set out in Schedule 1 of this Deed;
<b>"Nominee"</b>	means a person on the Nomination List in respect of whom a Nomination Notice has been or will be served pursuant to the Nominations Procedure;
<b>"Notification of Availability"</b>	<p>means the notice to be served by the Accommodation Officer on the Nominations Officer specifying full details of the Dwelling including;</p> <ul style="list-style-type: none"> <li>• the date on which Dwelling is due to become vacant or is vacant;</li> <li>• Address or location of the Dwelling;</li> <li>• The rental and Council Tax charge amounts, and any other service charges;</li> <li>• Number of bedrooms;</li> <li>• Bedroom sizes and living room sizes (where available);</li> <li>• Type of Dwelling (house, flat etc);</li> <li>• Maximum number of occupants;</li> <li>• The floor level of the Dwelling;</li> <li>• Any restrictions that may apply to applicants such as age or pet ownership;</li> <li>• Details of whether the Dwelling has a communal or separate entrance.</li> </ul>

<b>"Officer"</b>	means the Nominations Officer;
<b>"Original Transfer"</b>	means the transfer dated [ ] and made between (1) [ ] and (2) [ ]
<b>"Planning Agreement"</b>	means the agreement made pursuant to S106 of the Town & Country Planning Act 1990 dated [ ] and made between the Council and [ ] a copy of which is annexed to this Deed at Schedule 4; means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant;
<b>"Registered Provider"</b>	



**"Restriction"**

means the restriction in the following format referred to in paragraph 2.4.1.2 of Schedule 1 of the Planning Agreement:

"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 is to be registered without a certificate signed by or on behalf of The Council of the City of York of West Offices, Station Rise, York YO1 6GA that the provisions of a Nomination Agreement dated [ ] made between (1)[The Council of the City of York ] and [ ] (2) and the provisions of a Planning Agreement dated [ ] made between (1) The Council of the City of York and (2) Del Monte (UK) Limited have been complied with or that they do not apply to the disposition";

**"Service Charge Period"**

means a period of 3 calendar months in each year;

**"Social Rented Dwellings"**

has the same meaning as in the Planning Agreement and **"Social Rented Dwelling"** means any one of them;

**"Subsequent Sale"**

means a disposal by way of assignment transfer or lease of a Discount Sale Dwelling by an Eligible Occupier or anyone deriving title under them or disposing on their behalf;

**“Subsequent Sale Price”** means the maximum price for which a Discount Sale Dwelling can be sold on a Subsequent Sale which is to be calculated by means of the following formula:

Market Value x Discount Percentage;

**"Tenant"** means a person to whom a Tenancy is granted;

**“Tenancy”** means an assured non shorthold tenancy or a starter tenancy;

**“Vendor Discount Sale Dwelling Commuted Sum”** means at the date of a sale of a Discount Sale Dwelling on the open market a sum equal to the difference between the Market Value of the Discount Sale Dwelling and the Subsequent Sale Price;

**"Working Day(s)"** means Monday to Friday inclusive (excluding days which in England and Wales are public holidays and 24 December to 2 January inclusive);

Unless there is something in the subject or context inconsistent therewith:

The Approved Registered Provider includes its successors in title and assigns;

References to "the Council" shall be to The Council of the City of York and to its successors in title and assigns;

Reference to parties shall mean the parties to this Deed and their successors in title;

Where two or more persons are included in the expression "the Approved Registered Provider" or "the Council" the covenants which are expressly

made by the Approved Registered Provider and the Council shall be deemed to be made by such persons jointly and severally;

References to a housing need shall include any person who might reasonably expect to live with that person as part of the same family unit;

Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made issued or given thereunder or deriving validity therefrom;

References to the Land include any part of parts of it;

The titles or headings appearing in this Agreement are for reference only and shall not affect its construction;

Save where a contrary intention is expressed any reference herein to a clause or paragraph or Schedule shall mean a clause paragraph or Schedule of this Deed and reference to a sub-clause or sub-paragraph shall mean a sub-clause or sub-paragraph of the clause or Schedule in which such reference appears;

Reference to the singular includes the plural and vice versa and reference to the masculine includes the feminine and vice versa;

Where there is any conflict or inconsistency between the body of this Agreement and any Schedule, the provisions of the body of this Agreement shall take precedence.

### **3. DURATION**

This Agreement shall commence on the date hereof and shall terminate automatically on the expiry of the Nominations Period unless terminated earlier pursuant to Clause 9.



#### **4. SOCIAL RENTED DWELLINGS**

##### **APPROVED REGISTERED PROVIDER'S OBLIGATIONS**

- 4.1 The Approved Registered Provider shall procure that the Accommodation Officer liaises regularly with the Nominations Officer and consults and keeps him fully informed in accordance with the Liaison Procedure set out in Schedule 2.
- 4.2 The Approved Registered Provider will accept nominations for 100 per centum of the initial lettings of the Social Rented Dwellings and thereafter the first three out of every four of all subsequent re-lettings in strict rotation.
- 4.3 The Approved Registered Provider shall grant Tenancies for the Tenancy Period to Nominees nominated in accordance with the Nomination Procedure set out in **Schedule 1** ;
- 4.4 The Approved Registered Provider shall prepare and complete all legal and other documents relating to the letting of the Social Rented Dwellings;

#### **5. COUNCIL'S OBLIGATIONS**

The Council shall procure that the Nominations Officer at all times uses all reasonable endeavours to comply with the Nominations Procedure in a timely manner;

#### **6. LIAISON ARRANGEMENTS**

The Approved Registered Provider shall comply with the obligations set out at Schedule 2 to this Agreement or with such other similar obligations as the parties shall agree in writing from time to time.

#### **7. DISCOUNT SALE DWELLINGS**

##### **APPROVED REGISTERED PROVIDER'S OBLIGATIONS**

- 7.1 The Approved Registered Provider shall enter into and complete transfers to it of the Discount Sale Dwellings in accordance with paragraph 5.5 of Schedule 1 to the Planning Agreement.

- 7.2 The Approved Registered Provider consents to the entry of the Restriction against the Approved Registered Provider's titles to the Discount Sale Dwellings at the Land Registry following the registration of the Planning Agreement against such dwellings and shall provide the Council with all necessary assistance and/or documentation to permit the entries to be made.
- 7.3 The Approved Registered Provider shall market the Discount Sale Dwellings to Eligible Occupiers during the Discount Sale Dwelling Marketing Period until a contract has been executed for the sale of each individual dwelling comprised in the Discount Sale Dwellings and shall provide a copy of the sale contract to the Council.
- 7.4 The Approved Registered Provider shall transfer each individual dwelling comprised in the Discount Sale Dwellings to an Eligible Occupier at the Discount Sale Price (who shall acquire in the case of a house an appropriate freehold interest and in the case of a flat or apartment an appropriate long leasehold interest from the Approved Registered Provider) simultaneously with the transfer to the Registered Provider.
- 7.5 The Approved Registered Provider shall ensure that transfers of subsequent sales of the Discount Sale Dwellings shall contain a covenant that any Subsequent Sale shall be to an Eligible Occupier and that a direct covenant will be given by the Eligible Occupier to the Council to comply with the terms and obligations of the Original Transfer and paragraph 5.5.5 of Schedule 1 to the Planning Agreement.
- 7.6 If after the Discount Sale Dwelling Marketing Period has expired any of the Discount Sale Dwellings are disposed of to the Approved Registered Provider for Intermediate Rent pursuant to paragraph 5.6 of Schedule 1 of the Planning Agreement, such Discount Sale Dwellings shall be let to Eligible Occupiers at an Intermediate Rent only by way of an assured or assured shorthold tenancy without any prejudice to their status as a Discount Sale Dwellings PROVIDED ALWAYS THAT when a Discount Sale Dwelling so disposed of to the Approved Registered Provider for Intermediate Rent becomes available for occupation again after 5 years from the date on which it is first occupied at an Intermediate Rent and every 5 years thereafter:-
- (i) the Approved Registered Provider shall give written notice to the Council that the relevant Discount Sale Dwelling has become available for occupation again;

- (ii) the relevant dwelling shall be marketed as a Discount Sale Dwelling and the provisions of paragraphs 7.4, 7.5, 7.7 and 7.8 of this Deed shall again apply;
- (iii) the Approved Registered Provider shall not allow a subsequent letting of the relevant Discount Sale Dwelling at Intermediate Rent without the prior written approval of the Council.

7.7 The Approved Registered Provider shall ensure that all future disposals of any of the Discount Sale Dwellings disposed of to it pursuant to the Planning Agreement are made in accordance with the provisions and procedures set out in Schedule 3 to this Deed.

7.8 The Approved Registered Provider shall be entitled to collect from an Eligible Occupier who purchases a Discount Sale Dwelling an administrative fee of £300 upon completion of the sale to the Eligible Occupier.

## **8. ASSISTANCE AND CO-OPERATION**

8.1 Each Party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Deed.

8.2 Each Party shall provide the other with such information as the other may from time to time reasonably request in connection with the performance of its obligations under this Deed.

## **9. DETERMINATION**

9.1 If at any time the Council wishes to determine this Deed it shall give to the Registered Provider not less than twelve (12) months prior written notice at any time and this Deed shall determine on that date.

## **10. EARLY DETERMINATION FOR BREACH**

10.1 If the Approved Registered Provider commits an Event of Default, the Nomination Officer shall serve a Default Notice on the Approved Registered Provider. The Default Notice shall require the Approved Registered Provider to rectify the breach within a reasonable period of time having regard to the seriousness of the breach.



- 10.1.1 if the breach has not in the reasonable opinion of the Council been rectified (where a period has been given and has expired); or
  - 10.1.2 where either Party has referred the Dispute to Dispute Resolution and it has been determined that an Event of Default has occurred
- the Council is entitled to terminate this Deed.
- 10.2 Either Party may acting in good faith refer to Dispute Resolution whether any Event of Default has occurred or whether any Event of Default is remediable. Where such a referral is made to Dispute Resolution any periods of time specified in a Default Notice shall be suspended until the matter referred for determination has been determined.
  - 10.3 The Council shall not be entitled to exercise its right of determination where the Approved Registered Provider has bona fide referred for determination by Dispute Resolution pursuant to Clause 12 whether there has been an Event of Default and in case of such a reference for the purposes of this Clause 9 the Event of Default shall be deemed to arise on the date that the expert appointed in accordance with clause 12.3 sends notification to the parties and the Lender of his determination that there has or has been an Event of Default.

## **11. NOTICES**

- 11.1 Any notice required to be given under this Deed shall be in writing and shall either be delivered personally or sent by first class prepaid post or by commercial courier to the address set out in this Clause or to such other address as one Party notifies to the other in writing by not less than five (5) Working Days' prior notice.
- 11.2 Service under Clause 11.10 shall be deemed to have been effected as follows:
  - 11.2.1 if personally delivered at the time of delivery to the addressee during working hours or if not during working hours at 10.00 am on the following Working Day;
  - 11.2.2 if sent by first class prepaid post on the second Working Day after it has been put in the post; or

11.2.3 if sent by facsimile at the time of transmission or if the time of transmission is outside normal working hours at 10.00 am on the next Working Day.

11.3 For the purpose of this Clause until further notification:

11.3.1 Notices to be served on the Nominations Officer shall be served on [•] and notices to be served on the Approved Registered Provider shall be served on [•]<sup>1</sup>.

11.3.2 Notices to be served on the Nominations Officer shall be served on the Accommodation Manager. Notices to be served on the Council shall be served on the Director of Communities and Neighbourhoods for the time being or such other officer of the Council nominated to carry out an equivalent function.

11.4 In an emergency the Approved Registered Provider should be contacted by telephone [•]<sup>2</sup> and the Council should be contacted by telephone on [ ] or any number which shall be notified to the Approved Registered Provider in writing.

11.5 In proving service under this Clause 11 it shall be sufficient to prove that personal delivery was made that the letter was properly addressed and posted or that the was properly addressed and dispatched (and confirmed by post).

## **12. DISPUTE RESOLUTION**

12.1 Any Dispute arising from or in connection with this Deed or its performance construction or interpretation shall be dealt with as follows:

12.1.1 The Accommodation Officer and the Nominations Officer shall use their reasonable endeavours to resolve the Dispute;

12.1.2 If they are unable to do so within ten (10) Working Days the Dispute shall be referred by either or both of them to the Head of Housing Services of the Approved Registered Provider and to the Head of Housing Services of the

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<sup>1</sup> details to be filled in by the RP

<sup>2</sup> phone number to be inserted by RP

Council (**“the Head of Housing Services”**) who shall use their reasonable endeavours to resolve the Dispute;

12.1.3 If the Dispute cannot be resolved as provided for in clauses 12.1.1 or 12.1.2 above then the Dispute shall be referred to the determination of a person chosen by the Chief Executive for the time being of the Chartered Institute of Housing and such person so chosen shall act as an expert and not as an arbitrator and shall consider written representations made to him by the Parties and the costs of such persons shall be borne as he may determine.

### **13. PERSONAL DATA**

13.1 In this Clause 13:

13.1.1 **“DPA”** means the Data Protection Act 1998;

13.1.2 **“Process, “Processes”, “Processing” and “Processed”** means as defined in the DPA;

13.1.3 **“Personal Data”** means personal data as defined in the DPA which is received from the Other Party pursuant to this Deed and/or Processed by a Party pursuant to this Deed; and

13.1.4 **“Data Subjects”** means data subjects as defined in the DPA of the Personal Data;

13.2 Each Party shall only Process Personal Data in compliance with the DPA, including (without limitation):

13.2.1 maintaining a valid and up to date registration or notification under the DPA covering the Personal Data it Processes in connection with the performance of this Deed;

13.2.2 providing an appropriate notice at the appropriate time, to Data Subjects as to its Processing of their Personal Data in accordance with Paragraph 2 of Part II of Schedule 1 of the DPA, and any consents required under the DPA. In particular the Approved Registered Provider shall ensure that any Tenants have been notified and consented to the information set



out in Schedule 6 being disclosed to the Council for the purpose of monitoring the success of the take up of Dwellings;

13.2.3 only disclosing Personal Data to the other Party in accordance with the DPA; and

13.2.4 only Processing Personal Data it has received from the Other Party in accordance with the DPA;

13.3 Subject to Clause 13.1.4 neither Party shall undertake any Processing of any Personal Data except as reasonably required for the purposes of performing its obligations under this Deed and (unless permitted by the DPA) shall not transfer any Personal Data outside the United Kingdom;

13.4 Subject to Clauses 13.1.3 and 13.1.4 neither Party shall disclose any Personal Data to any third Party (other than the Data Subject) except:

13.4.1 its employees and sub-contractors to whom such disclosure is reasonably necessary in order to carry out its obligations; or

13.4.2 to the extent required under a court order or otherwise permitted by the DPA;

provided that disclosure under Clause 13.4.1 is made subject to terms substantially the same as, and no less stringent than, the terms contained in this Clause 13 and that each Party shall give notice to the other of any disclosure of Personal Data it is required to make under Clause 13.4.1 as soon as practicable after it becomes aware of any such requirement and/or its intention to make such disclosure;

13.5 Each Party shall bring into effect and maintain reasonable technical and organisational measures to prevent unauthorised or unlawful Processing of the Personal Data and accidental loss or destruction of, or damage to, Personal Data;

13.6 The Approved Registered Provider shall notify the Council should it receive any complaint or legal claim from (or on behalf of) any Data Subject with regard to its Processing of Personal Data and/or any notice, complaint or other correspondence from the Information Commissioner in respect of any Personal

Data, and shall keep the Council updated as to the progress of any resulting investigations, decisions, notices or legal proceedings;

- 13.7 Each Party shall indemnify the other and keep the other indemnified against all losses which the other incurs, pays, suffers or sustains whether directly or indirectly in respect of any breach of this Clause 13.

#### **14. EXERCISE OF NOMINATION RIGHTS**

No liability shall devolve on the Council to reimburse the Approved Registered Provider for any loss of rent or service charge or for any legal or other costs or fees or other expenses incurred by the Approved Registered Provider arising from or in any way connected with the carrying out of the Nominations Procedure.

#### **15. DISPOSAL OF THE LAND**

- 15.1 The Approved Registered Provider agrees with the Council that during the period of this Deed the Approved Registered Provider will not dispose of the Land or any part of it except:

15.1.1 in accordance with the provisions of this Deed; or

15.1.2 to a purchaser or transferee who is an Approved Registered Provider who is willing to enter into an agreement on similar terms to this Deed in so far as such obligations remain to be observed and performed and prior to any such disposal the Approved Registered Provider must seek the written consent of the Council such consent not to be reasonably withheld or delayed or

15.1.3 by way of a mortgage or a charge or loan taken out by the Approved Registered Provider and secured against the Land.

#### **16. ADMINISTRATIVE COSTS**

- 16.1 The Approved Registered Provider shall pay to the Council its reasonable and proper costs and expenses incurred during each Charge Period in connection with the compilation and administration of the North Yorkshire Home Choice

Database, such costs to be agreed in accordance with the charging structure that is put in place by the Council from time to time.

**17. VARIATIONS**

17.1 The terms of this Deed may be varied by agreement in writing between the Parties.

This Agreement is executed as a deed but not delivered until the date hereof.



## **SCHEDULE 1**

### **Nomination Procedure**

1. The Approved Registered Provider shall serve the Notification of Availability on the Nominations Officer when a Dwelling is available for nomination.
2. The Nominations Officer shall within twelve Working Days of receipt of the Notification of Availability, send to the Accommodation Officer a Nomination Notice in respect of such Dwelling and the Accommodation Officer shall acknowledge receipt of such Nomination Notice within 5 Working Days of receipt of such Nomination Notice (such time periods to be subject to review by the Council in the event that it alters the bidding period);
3. The Council shall include the following information in a Nomination Notice:
  - 3.1 the full names of one or more Nominees and the number of other members of the household of each Nominee;
  - 3.2 the current address, telephone numbers and email address of each Nominee;
  - 3.3 any other relevant information including relating to any assessed risk which the Approved Registered Provider requests the Nominations Officer from time to time to include on the Nomination Notice in respect of each Nominee and which the Council considers reasonable in all the circumstances to include and subject always to the provisions of this Schedule;
4. The Accommodation Officer shall notify the Nominations Officer within 10 Working Days of each tenancy commencement date;
5. If a Nominee or the Nominations Officer shall notify the Accommodation Officer that a Nominee no longer wishes to be considered for nomination to a Dwelling the Accommodations Officer shall remove such Nominee from its list and shall notify the Nominations Officer that he has done so;
6. If the Nominee shall not have accepted an offer of a Tenancy or unreasonably delays his agreement to acceptance of the offer for more than two (2) Working Days he shall be deemed to have rejected the offer of any tenancy;

7. In the event of a Nominee rejecting an offer of such a Tenancy the Accommodation Officer shall notify the Nominations Officer within two Working Days of the actual or deemed rejection and shall request a further nomination in accordance with paragraph 1 of this Schedule. In the case of initial lettings this procedure shall be repeated as many times as is necessary until a Nominee accepts an offer;
8. In the event that the nomination is in respect of a re-letting then the Nominations Officer shall make no more than three nominations in respect of any one Dwelling. If the third offer is rejected then the Parties shall have informal discussions within two (2) Working Days of the Accommodation Officer notifying the Nominations Officer, to agree the expeditious letting of the Dwelling;
9. A Nominee who rejects an offer of a Tenancy or shall not have accepted such offer within the time limit specified in paragraph 6 above shall be removed from the Nominations List;
10. The Approved Registered Provider shall be entitled to reject a Nominee if it has reasonable grounds (which may include the fact that letting to such Nominee would be outside the Approved Registered Provider's charitable objects) to do so and taking into account: the letting shall be on terms normally and from time to time offered to applicants by the Approved Registered Provider and in the form of the Approved Registered Provider's standard assured non-shorthold tenancy agreement or starter tenancy agreement from time to time.

## **SCHEDULE 2**

### **Liaison Procedure**

#### **1. ACCOMMODATION OFFICER**

The Accommodation Officer will be responsible for the following:

- 1.1 Production of legal documentation for new lettings of accommodation;
- 1.2 Reporting to the Nominations Officer in accordance with the agreements reasonably reached between the Council and the Registered Provider;
- 1.3 Regular liaison with the Nominations Officer;

Administration and management of nominations.



### **SCHEDULE 3**

#### **Discount Sale Dwellings**

#### **1. SUBSEQUENT DISPOSALS OF DISCOUNT SALE DWELLINGS**

1.1 The following provisions shall apply and regulate the future disposals of the Discount Sale Dwellings disposed of to the Approved Registered Provider pursuant to the Planning Agreement: -

1.1.1 the legal interest of any of the Discount Sale Dwellings shall not subsequently be assigned transferred or disposed of other than at the Subsequent Sale Price;

1.1.2 when any of the Discount Sale Dwellings becomes available for re-sale the person seeking to resell ("**Vendor**") will write to the Approved Registered Provider informing it and inviting the Approved Registered Provider to market the property on behalf of the Vendor;

1.1.3 on receiving notification referred to at paragraph 1.1.2 of this Schedule the Approved Registered Provider shall either:

(ii) write to the Nominations Officer requesting a list of Eligible Occupiers who have registered an interest in purchasing homes of this type, size and location. The Council will forward this list within 15 Working Days of the request. The Approved Registered Provider shall write to each person on the list giving sales details of the property, or

(iii) pursue such alternative marketing strategy as may be agreed by the Council in writing;

1.1.4 during the first 12 weeks from the commencement of marketing pursuant to paragraph 1.1.3 of this Schedule no interest in any of the Discount Sale Dwellings shall be offered for sale other than to an Eligible Occupier residing within the Council's area;

1.1.5 if required by the Council the Registered Provider shall satisfy the Council that the relevant unit has been actively marketed for a period of at least 12 weeks from the commencement of marketing to Eligible Occupiers residing within the Council's area ;

1.2 In the event that any interest is offered for sale in accordance with the provisions of paragraphs 1.1.4 and 1.1.5 of this Schedule and on either: -

(a) the expiration of the period of 12 weeks from the date of commencement of marketing there is no buyer who has made an offer to purchase the interest in the relevant dwelling at a price not exceeding the Subsequent Sale Price of such interest upon the terms that are reasonably acceptable to the Vendor; or

(b) if there is such a person who is prepared to proceed on that basis who has not entered into a contract to purchase and which has not been completed at that price upon terms that are reasonably acceptable to the Vendor within 20 weeks of the relevant dwelling having been placed on the market for sale pursuant to the provisions of paragraphs 1.1.4 to 1.1.5 of this Schedule;

then the following provisions shall apply:

1.2.1 The Approved Registered Provider may within 10 Working Days thereof offer to purchase the Vendor's interest in the Discount Sale Dwelling at a price not exceeding the Subsequent Sale Price;

1.2.2 The Vendor and the Approved Registered Provider will use reasonable endeavours to exchange contracts for the sale of the Discount Sale Dwelling within a period of three Months from the date of the offer by the Registered Provider referred to in paragraph 1.2.3 of this Schedule;

1.2.3 In the event that a Discount Sale Dwelling is disposed of to the Approved Registered Provider pursuant to this paragraph 1.2 the Approved Registered Provider will write to the Officer informing it within 5 Working Days thereof and the Registered Provider shall let the Discount Sale Dwelling to an Eligible Occupier either at an

Intermediate Rent only by way of an Assured Tenancy or Social Rent without any prejudice to its status as a Discount Sale Dwelling PROVIDED ALWAYS THAT when a Discount Sale Dwelling so disposed of to the Approved Registered Provider for Intermediate Rent or Social Rent becomes available for occupation again the provisions of the Nomination Agreement shall again apply to the relevant Discount Sale Dwelling

1.2.4 If the Approved Registered Provider does not offer to purchase the Discount Sale Dwelling in accordance with paragraph 1.2.3 of this Schedule or contracts have not been exchanged with the Approved Registered Provider within the period referred to in paragraph 1.2.4 of this Schedule for the sale of the Discount Sale Dwelling then he Vendor having complied with the provisions of paragraphs 1.1.1 to 1.1.5 inclusive of this Schedule may dispose of his interest in the Discount Sale Dwelling on the open market upon such terms as he thinks fit.

- 1.3 In the event of a disposal of a Discount Sale Dwelling on the open market pursuant to paragraph 1.2 of this Schedule the Vendor shall be required to pay to the Council a sum equivalent at the date of such sale the Vendor Discount Sale Dwelling Commuted Sum
- 1.4 In the event of a disposal of a Discount Sale Dwelling on the open market in accordance with paragraph 1.2 of this Schedule the Discount Sale Dwelling shall cease to be subject to the terms of this Agreement.
- 1.5 In the event that paragraph 1.3 of this Schedule becomes effective the Council (or its successor) will upon written request supply to any interested party confirmation of the effect and events of the above and will remove the entry in the Local Land Charges Register and any other entry in any other register open to public inspection.
- 1.6 For the purposes of paragraphs 1.1 to 1.5 of this Schedule, the Market Value shall take no account of any Improvements made to the Discount Sale



Dwelling and the Vendor shall be entitled to retain 100% of the increase in open market value attributable to such Improvements.

- 1.7 If a mortgagee, chargee or a receiver of any of the Discount Sale Dwellings exercises any power of sale or takes any enforcement action under the terms of its charge or mortgage so that such mortgagee or chargee or receiver appointed by it wishes to realise its security by a sale or other disposition (of whatever description) of the Eligible Occupier's interest in the Discount Sale Dwellings (or any part or parts of them) then such mortgagee chargee or receiver ("**Seller**") shall use all reasonable endeavours to effect the sale or other disposition of the Discount Sale Dwellings (or any part or parts of it) upon the following terms: -

1.7.1 To market the Discount Sale Dwellings (or any part or parts of them) for a minimum period of 18 weeks (the first 9 weeks of which shall be in respect of persons residing in the Council's area) and;

1.7.2 Provided that the Seller shall effect a sale of the Discount Sale Dwellings (or any part or parts of them) at the Price (as hereinafter defined) and upon other terms that are reasonably acceptable to the Seller to use reasonable endeavours to enter into within the period of 18 weeks a binding agreement for the sale of the Discount Sale Dwellings (or any part or parts of them) at the Price and upon terms which are reasonably acceptable to the buyer ("**Buyer**") which has made an unconditional offer provided that such agreement includes an obligation to complete the transaction within a further four weeks after the expiry of a period of 18 weeks and the delivery to the Council of a full set of sale documentation from the mortgagee, chargee or receiver (as the case may be);

1.7.3 Upon the commencement of marketing of the Discount Sale Dwellings (or any part or parts of them) to notify the Nominations Officer of the commencement of the same and send with such notice a copy of this Deed referring to this provision;

1.7.4 In paragraph 1.7.2 **Price** shall mean a sum to be calculated by multiplying the Market Value by the Discount Percentage of the open market value of the Discount Sale Dwellings (or any part or parts of them) specified by the Seller in its notice served on the Council pursuant to paragraph 1.7.3 of this Schedule or otherwise (or if such value is challenged by the Council) determined by an independent Chartered Surveyor of not fewer than ten years' relevant experience agreed between the Seller and the Council (or appointed on the application of the Seller or the Council by the President for the time being of the Royal Institution of Chartered Surveyors if the parties cannot agree) not more than two weeks after the Seller has specified the value in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual (current at the date of marketing the Property);

- 1.8 Where the approval of the Council is required it shall not be unreasonably withheld or delayed provided that upon any Buyer declaring an interest in purchasing a Discount Sale Dwelling (or any part or parts thereof) and the Seller notifying the Nominations Officer in writing of the identity of such a Buyer the Council shall respond within 10 Working Days of receipt of such notice confirming whether it approves such Buyer for the purpose of paragraphs 1.1 to 1.13 and the following provisions shall apply;
- 1.9 If the Council does not approve the Buyer then within 10 Working Days it shall specify in writing adequate reasons for such refusal;
- 1.10 If no reasons or inadequate reasons are given in the notice referred to in paragraph 1.9 above within the said period of time then the Council will be deemed to have approved the Buyer;
- 1.11 The process for approval referred to in this paragraph [ ] shall be repeated no more than three times and time shall be of the essence;
- 1.12 In the event of a purchase of a Discount Sale Dwelling (or any part or parts thereof) being effected in accordance with this paragraph 1 the Buyer shall

be subject to the obligations in respect of the Discount Sale Dwellings set out in this Deed and the Planning Agreement as if references to the Buyer were references to the Owner;

- 1.13 If despite the Seller using reasonable endeavours the Seller cannot dispose of the Discount Sale Dwellings (or any part or parts thereof) to a Buyer after having complied with the terms of this paragraph 1 the Seller shall be at liberty to dispose of the Discount Sale Dwelling (or any part or parts thereof) on the open market provided that the Seller shall pay to the Council within 10 working days of the day of such sale a sum equivalent to the Vendor Discount Sale Dwelling Commuted Sum of the Discount Sale Dwelling (or any part or parts thereof) to be applied by the Council towards the provision of Affordable Housing and Associated Activities within the Council's area but otherwise upon such terms as it thinks fit and the Seller and any owner thereof of any interest therein including any lessee successor in title assignee or otherwise shall thenceforth cease to be subject to the terms of this this Deed;
- 1.14 In the event that paragraph 1.13 of this Schedule becomes effective then the Council will upon written request supply promptly to any interested party confirmation of the effect and events in relation to the same and will on written request promptly remove any entry in the Local Land Charges Register and any other entry in any other register open to public inspection.

## **2. DETERMINATION OF MARKET VALUE**

- 2.1 That for the purposes of paragraph 1 of this Schedule:-
- 2.2 The Market Value shall be agreed by the owner of the relevant unit of Discount Sale Dwellings and the Approved Registered Provider prior to the disposal of the relevant unit in default of agreement determined by an independent chartered surveyor appointed by agreement between the owner and the Approved Registered Provider.
- 2.3 In the absence of agreement the surveyor shall be appointed by the President of the Royal Institution of Chartered Surveyors.



- 2.4 The surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the parties in equal shares.
- 2.5 That for the purposes of the remainder of this Schedule : -
- 2.5.1 In default of agreement the Market Value shall be determined by an independent chartered surveyor.
- 2.5.2 In the absence of agreement the surveyor shall be appointed by the President of the Royal Institution of Chartered Surveyors.
- 2.5.3 The surveyor shall act as an expert and his decision shall be final and binding and in the absence of a determination by the surveyor his fees shall be borne by the parties in equal shares.

## **APPENDIX D: COUNCIL'S PROCUREMENT GUIDELINES**

Application to deliver xxxxxxxxxx Childcare from  
xxxxxxxxxxxxxxxxxxxxx School / Site



QUESTION ONE	
Are you (please tick)	
Making this application on behalf of an organisation/business?	
Making this application as an individual?	

QUESTION TWO	
Details of organisation / individual	
Full name of organisation	
Owner / Manager / Director (s)	Position
Registered Business address (or address of individual)	
Postcode	Email address
Relevant qualification or accredited certification (of each director / owner / manager as appropriate)	
Has an enhanced DBS disclosure been received within the last five years? (Clearance number and date must be provided)	

From now on in this document when we use the words **you** or **yours** we are referring to:

Your organisation if this application is on behalf of an organisation  
**OR**  
as an individual if this application is on your own behalf

You



### QUESTION THREE

**What is your legal status (please tick)?**

Registered Charity

Other not-for-profit organisation (please specify)

Private Company

## Partnership

Sole Trader

Individual making this application on your own behalf

Other (please specify)

**Date organisation / Charity registered (if applicable):**

**Registered charity / company number (if applicable):**

## QUESTION FOUR

**Do any of the following apply to your organisation, or to any of the Directors / Owners / Managers / Partners and Employees?**

Has been convicted of a criminal offence.  
(If yes, please provide details)

Yes

No

Has been subject to action regarding professional misconduct in the previous 3 years.  
(If yes, please provide details)

Yes

No

Is in a state of bankruptcy, insolvency, compulsory winding up, receivership, composition with creditors, or subject to relevant proceedings.

Yes

No

Has had any Contracts or Service Level Agreements terminated for poor performance in the last three years.

Yes

No

If the answer to any of these is "Yes" please give details below, including how these have been resolved:

**QUESTION FIVE**

**Briefly describe your current childcare business and include examples of the experience, knowledge and skills that you have of providing high quality childcare.**

**QUESTION SIX**

**Please give us, as far as possible, details of the key people who, if you were to be awarded this opportunity, would be directly responsible for the operation/delivery and management of the childcare provision. If you do not already have these key people in place, please leave the name column blank and give us details of the job roles and type of background, qualifications, experience and skills you would be looking for.**

Name	Job Role	Brief description of background, qualifications, experience and skills in this area of work

**QUESTION SIX Continued**

Name	Job Role	Brief description of background, qualification, experience and skills in this area of work

**QUESTION SEVEN**

How many years experience do you and the staff who will be working in the provision have of providing childcare and education?

**QUESTION EIGHT**

Why do you think you are the best provider to offer childcare provision in **Xxxxxxxx**?



**QUESTION NINE**

We are proposing that the after school club will operate from the xxxxxxxx area of the school. Please give details of the number of children you would anticipate providing places for.

Our recommendation is that childcare providers work to a minimum ratio of 1:8 for under eights and 1:10 for over eights.

Children in the Early Years age group	
Children under 8 years	
Children over 8 years	

**QUESTION TEN**

What would be your opening times?

**QUESTION ELEVEN**

Please provide details of the charges you would make for children using your service. Please include details of the different types of session (if applicable) you would make available and how much you would charge for these sessions.

In York the cost of after school provision varies across the city, and this can be between £7.50 - £12.00 per session.

This information will help you when you complete your cashflow forecast.

### QUESTION TWELVE

We would like you to give us your definition of “*high quality childcare*”.

Please identify three things that must happen in a setting in order for quality to be achieved. In the second column please tell us the practical steps you would take to ensure these three things happen consistently.

Aspect/feature of high quality childcare & education	Practical steps you would take to make sure this is achieved

**QUESTION THIRTEEN**

We would like to know what you think the biggest challenges for running childcare provision in **Xxxxxxxx** will be. We would also like to know how think you might overcome these challenges. Please list the three biggest challenges you will face, and in the right hand column what steps you would take to meet each challenge.

Challenge	Solution

**QUESTION FOURTEEN**

Please give us details of the staffing structure / pay that you would offer for staff in the new childcare provision.

This information will help you when you complete your cash flow forecast.

Job title:	Role/responsibilities:	Hourly pay:
Job title:	Role/responsibilities:	Hourly pay:



Job title:	Role/responsibilities:	Hourly pay:
Please give details of other benefits that you would offer to employees		

<b>QUESTION FIFTEEN</b>
<b>We would like to know what systems you would put into place to ensure the effective management of the new childcare provision.</b>
Financial Management
Management of Staff

Management of Childcare Operations

<b>QUESTION SIXTEEN</b>
<b>Please give us a brief plan showing the ways in which you would market, promote and advertise the childcare provision in the first twelve months of operation.</b>

QUESTION SEVENTEEN	
<b>What support and advice do you think that you might need from other partners and agencies (including City Of York Council) in order to successfully provide high quality and sustainable childcare and education at <b>Xxxxxxxxxx Primary School</b>?</b>	
Agency/Organisation	Type of support you might need from this agency/organisation

QUESTION EIGHTEEN	
<b>We need your commitment to working in partnership with School and the Local Authority as an essential part of running this provision. Please can you tick the box to indicate that you would:</b>	
Work in partnership with school to deliver high quality outcomes for children and families	
Participate in quality improvement support and monitoring as required by City of York Council and other key agencies.	

QUESTION NINETEEN	
<b>Please provide us with the details of three organisations / individuals who we can contact as referees. At least one referee should be your current / last employer or someone who you have recently conducted business with. At least one referee should be able to tell us about your experience, commitment and philosophy in providing high quality childcare and education.</b>	
Name of first referee	
Relation to you	



Address	
Telephone (inc code)	
Email address	

Name of second referee	
Relation to you	
Address	
Telephone (inc code)	
Email address	

Name of third referee	
Relation to you	
Address	
Telephone (inc code)	
Email address	

**QUESTION TWENTY**

**Please use this box to give any additional information that you think may support your application**

*I / We confirm that the information submitted in this application is true and accurate*

**Proposal submitted by:**

Signed ..... (Organiser)  
Date .....

**Proposal received by:**

Signed ..... (CYC Officer )  
Date .....

Interview questions – xxxxxxxxx School – Tender for xxxxxxxxxxxx Childcare

Panel Member:
Name of provider/individual interviewee:

Question	Comments	Score
Please tell us about your vision for high quality after school childcare and how would you achieve this?		
How will you ensure that there are positive partnerships in place between the club/childcare setting and the school?		
Thinking about good practice and Ofsted regulation, Do you have knowledge of Ofsted requirements and can you give us some examples how you would apply this knowledge?		
As this is a rural/city centre/other provision, what potential issues have you identified and how do you plan to overcome these?		
How will you ensure that you are able to recruit, retain and effectively support staff to provide high quality provision for children and families?		
*Ties into Workforce Strategy		



Explain how in your previous roles you have ensured effective partnerships with parents/carers?		
How will you finance the startup and what assumptions have you made to come to your fee income levels?		
Do you have any questions for us?		
Score	Criteria for awarding score	
0	No evidence.	
1	Complete failure to grasp/reflect the core issue or does not provide a proposal.	
2	Proposal falls short of achieving expected and reflects limited understanding missing some aspects	
3	Proposal meets the required standard in most material respects, but is lacking or inconsistent in others.	
4	Good understanding and interpretation of requirements	
5	Excellent understanding and interpretation. Innovative and proactive with sound strategy	

xxxxxxxxxx School – xxxxxxxx Provision

	Company/provider :	Completed tender form	Through interview	Finance report
1.1	Have a minimum of two years recent experience of providing childcare and education, either as an organisation, childminder or in a managerial position in a childcare organisation			
1.2	Demonstrate a vision for what constitutes <i>high quality care and education</i> and identify practical strategies for how that vision could be achieved			
1.3	Demonstrate a good understanding of, and be able to implement current childcare legislation, guidance and good practice			
1.4	Demonstrate a good understanding of the importance of working in partnership with parents, carers and families in achieving positive outcomes for children			
1.5	Demonstrate an understanding of local childcare markets, likely patterns of usage / demand and the type of service that would be required to meet local needs			
1.6	Demonstrate an understanding of the importance of working in partnership with other agencies and stakeholders in order to achieve the best possible outcomes for children			
1.7	Demonstrate an understanding of the key differences between delivering childcare and services at a rural/city centre/other provision that do not have this context			
1.8	Be able to show a realistic and sustainable pricing plan for the delivery of childcare services			
1.9	Be able to identify three different and varied challenges that would be faced in delivering <i>high quality childcare</i> in these premises and at this location			
1.10	Understand and be able to implement the different job roles, responsibilities and associated qualifications that will be needed in order to deliver <i>high quality childcare</i> at this location.			
1.11	Be able to show a realistic and sustainable marketing and promotional plan to help			

	encourage the take up and use of childcare services at this location			
1.12	Provide three references that support your experience, success, commitment to quality and philosophy in providing childcare			
1.13	Be able to show a realistic three year cash flow forecast that indicates financial self sustainability after three years			
1.14	Be able to show a realistic and sustainable wages and staff benefits plan			
1.15	Understand and be able to implement the range of systems and arrangements that need to be in place for the successful operations of a setting providing <i>high quality care</i>			

Average interview score (inc Finance) : \_\_\_\_\_

Application form : \_\_\_\_\_

Total score : \_\_\_\_\_

Score	Criteria for awarding score
0	No evidence.
1	Complete failure to grasp/reflect the core issue or does not provide a proposal.
2	Proposal falls short of achieving expected and reflects limited understanding missing some aspects
3	Proposal meets the required standard in most material respects, but is lacking or inconsistent in others.
4	Good understanding and interpretation of requirements
5	Excellent understanding and interpretation. Innovative and proactive with sound strategy



## **APPENDIX E: BUS PLAN**



Christine Wilson  
Deputy General Counsel &  
Head of Legal Land Team

12001

*cool*

D24/50

Key:

- 9: NRM Rail Spur, Planning, Subdivided area for bus lane, Carriageway, Footway, Segregated cycle lane, On-carriageway cycle lane, On-carriageway cycle lane (line demarcation), On-carriageway cycle lane (line demarcation), Surface course color contrast, Tactile paving, Temporary landscaping, Development plot
- 10: [Grey line]
- 11: [Pink line]
- 12: [Blue line]
- 13: [Yellow line]
- 14: [Green line]

**Notes:**

1. This plan is indicative only, and is not fit for approval.

**Project Title**  
**York Central**

**ARUP**

Adriah House Rose Vihar 78 East Street  
Lands, L59 8LE  
Tel: +44 113 242 8438 Fax: +44 113 242 8573  
[www.adriah.com](http://www.adriah.com)

**Client**  
**York Central Partnership**

*M*

[illegible]

Issue at A1	N/A	Civil - General		251865-000	
Name	SO - Initial status or WIP				
Year	By	Chd	Appl	Auth	
P01.1	Date	State	Case	Date	
Name	Project	Original	Value	Location	Time
YCL	- ARP - PR - ZZ	- DR - CX	- 0001		Number

is not a code

## **APPENDIX F: APPLICATION SITE PLAN**



Mr  
Cul

Rev	Date	By	Chkd	Appd
P1	30/07/18	GC	HS	RB

ARUP

Ashted House, Rose Street,  
78 East Street, Leeds, LS2 8EE  
Tel: +44(0)113 242 8408 Fax: +44(0)113 242 8573  
[www.ashted.com](http://www.ashted.com)

1995

**Project Title**  
**York Central**

# Site Location Plan

Scale at A) 1:5000

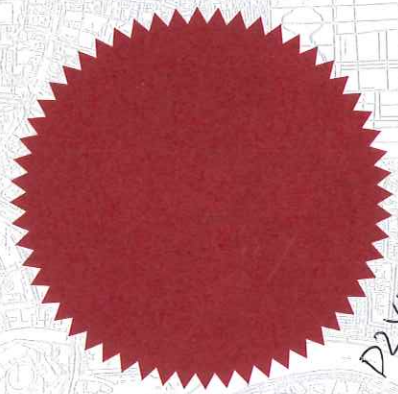
Role	Planning
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S2 Issued for Planning

Asap Job No	Rev
251869-00	P1

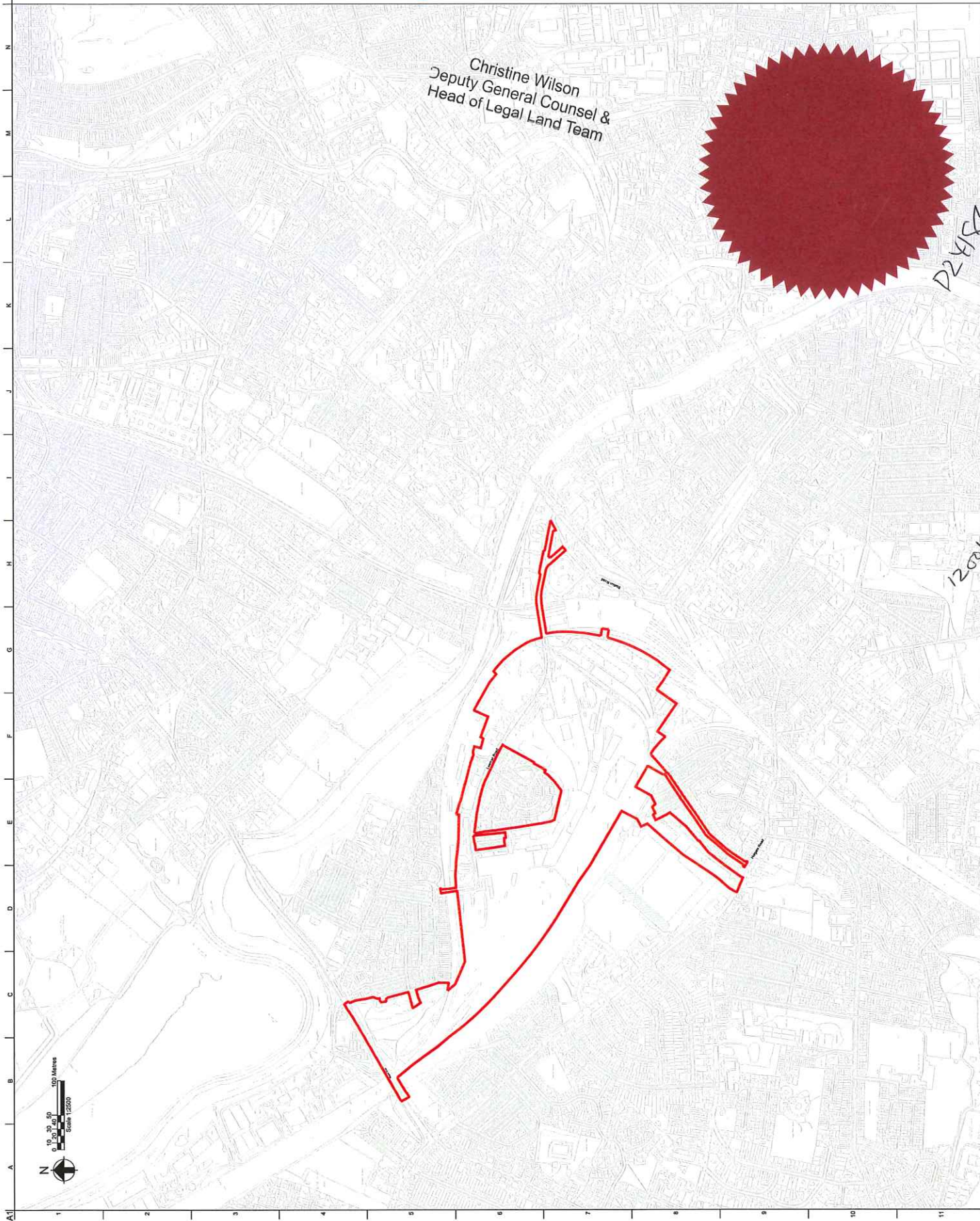
Nome  
YC-SP 001

Christine Wilson  
Deputy General Counsel &  
Head of Legal Land Team



224/56

12021



## **APPENDIX G: FOOTPATH PLAN**



*col*

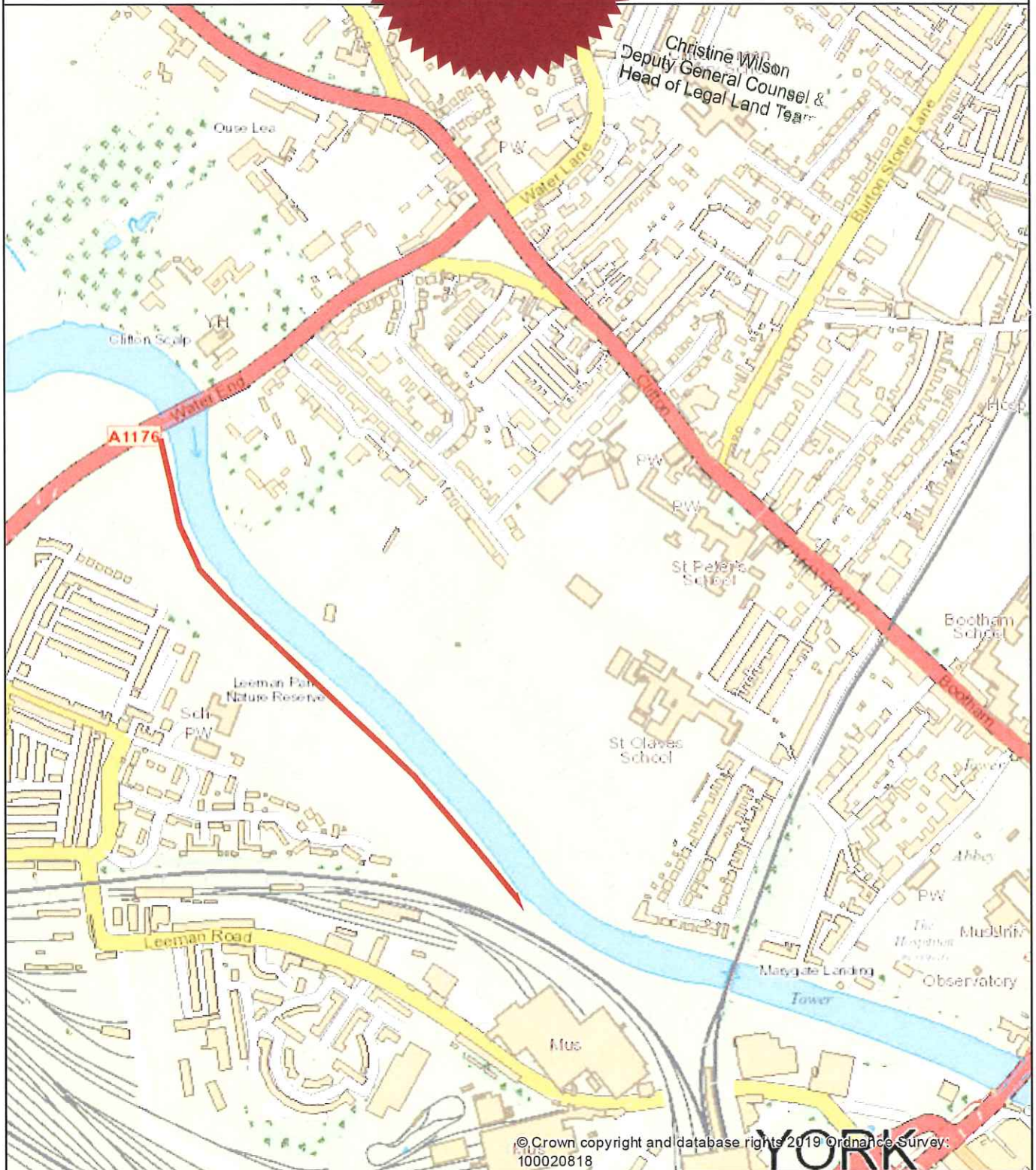
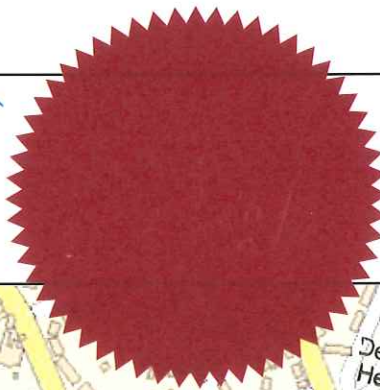
# Proposed Path

*24/8/20*

*Alu*



CITY OF  
**YORK**  
COUNCIL



**Date:** 14 Mar 2019

**Author:** City of York Council

**Scale:** 1:7,000



0 0.1 0.2 0.3 0.4 0.5  
Km