

DATED _____ 2017

TOWN AND COUNTRY PLANNING ACT 1990

AGREEMENT

BETWEEN

(1) CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL

- AND -

(2)STUART HOWARD BROOK and KATHLEEN JOYCE SIMPSON

SECTION 106 AGREEMENT
Relating to land at Redwood Close, Long
Lee Keighley West Yorkshire

City Solicitor
City of Bradford MDC

THIS AGREEMENT is made the day of Two thousand
and seventeen

BETWEEN: -

- (1) **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall,
Bradford, West Yorkshire, BD1 1HY ("**Council**") of the first part; and
- (2) **STUART HOWARD BROOK and KATHLEEN JOYCE SIMPSON** both of
Fieldhead, Newsholme, Oakworth, Keighley BD22 0GL ("**Owner**") of the
second part;

1. **DEFINITIONS**

- 1.1 In this Agreement the following expressions shall unless the context otherwise
requires have the following meaning: -

"Affordable Dwellings"	means nine of the Dwellings constructed on the Site being such mix of Dwellings as may be agreed in writing between the Owner the Registered Provider and the Council from time to time and to be sold to a Registered Provider and reference to " Affordable Dwelling " shall mean any of the Affordable Dwellings;
-----------------------------------	--

"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework;
---------------------------------	--

"Application"	means the application dated 2 nd May 2017 and registered by the Council under reference number 17/02809/MAO for outline permission to construct the Development on the Site;
Commencement of Development"	means the date upon which the Development shall be commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation specified in Section 56(4) of the 1990 Act Save That the term " <i>material operation</i> " shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation archaeological investigation site and soil surveys erection of contractors work compound erection of site office erection of any temporary means of enclosure the temporary display of site notices or advertisements and reference to " Commencement Date " shall be construed accordingly;
Commencement Notice"	means a notice to be served by the Owner on the Council 28 days prior to the Commencement of Development under paragraph 1.4 of the First Schedule;
"Development"	means residential development consisting the construction of 45 Dwellings with associated works;

"Dwellings"	means residential units that may be built on the Site as part of the Development and reference to "Dwelling" shall mean any of the Dwellings;
"Homes and Communities Agency"	means the Homes and Communities Agency or any bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);
"Housing Allocations Policy"	means .the Bradford District Housing Allocations Policy 2014-17 dated 14 th January 2014
"Legal Fees"	means the sum of £1,200.00 (one thousand and two hundred pounds) in respect of the Council's legal and administrative fees;
"Monitoring Fee"	means the sum of £350.00 ;
"National Planning Policy Framework"	means the Nationa4l Planning Policy Framework (or any future guidance or initiative that replaces or supplements it);

"Occupation" and "Occupied" and "Occupy"	means first occupation for residential purposes as permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
"Open Market Dwellings"	means the Dwellings to be constructed on the Site pursuant to the Planning Permission excluding the Affordable Dwellings and reference to "Open Market Dwellings" shall mean any of the Open Market Dwellings
"Plan 1"	means the plan attached to this Agreement and marked "Plan 1";
"Planning Permission"	means a planning permission to be granted for the Development pursuant to the Application;
"Planning Obligations"	means the obligations, conditions and stipulations set out in the First Schedule and reference to "Planning Obligation" shall be construed accordingly;
"Planning Obligations Monitoring Officer"	means the Officer employed by the Council who is designated from time to time with the monitoring functions in relation to planning obligations under Section 106 of the 1990 Act;

Stuart H Brook
K. Simpson



This Plan includes the following Licensed Data: OS MasterMap Colour PDF Location Plan by the Ordnance Survey National Geographic Database and incorporating surveyed terrain attributes in their production. The Ordnance Survey is a registered trademark of the Ordnance Survey. The representation of a road, track or path is no evidence of a right of way. The representation of features, as lines is no evidence of a property boundary. © Crown copyright and database rights, 2018. Ordnance Survey 0100031673

Scale: 1:1250, paper size: A4

2002

Location Plan	
Outline Planning Application	
Proposed Housing	
Land off Redwood Close	
Long Lee	
A3	1:1250

**"Registered
Provider"**

Means the Registered Provider as defined in Part 1 of the Housing Act 1996 (or as redefined by any amendment, replacement or re-enactment of such Act) who is registered with the Homes and Communities Agency pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act or any company or other body approved by the Homes and Community Agency for receipt of social housing grant

"Site"

means all that piece or parcel of land situated at Ashfield Mills, Ashfield Road Bradford shown edged in red for identification purposes only on the Plan 1

"1990 Act"

means the Town and Country Planning Act 1990 (as amended) or as redefined by any amendment, replacement or re-enactment of such Act

- 1.2 Words importing the singular number only include the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate.
- 1.3 Any reference to a statute or provision thereof or a statutory instrument or code of practice shall include any modification extension or enactment thereof for the time being in force.
- 1.4 Clause headings are for reference only and shall not affect the construction of this Agreement.
- 1.5 Where more than one person is included in the expressions "the Council" and "the Owner" agreements and obligations expressed to be made or assumed by

such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.

- 1.6 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing; and subject always to clause 4.2 any covenants expressed to be given by the Owner shall impose a joint and several liability.
- 1.7 Covenants and obligations made or assumed by any party shall be binding and enforceable against his her or its successors in title heirs and assigns.
- 1.8 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it.
- 1.9 A reference to a clause or paragraph or schedule is a reference to a clause or paragraph or schedule contained in this Agreement.

2. WHEREAS

- 2.1 The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 The Owner is the freehold owner of the Site registered at HM Land Registry under Title Number YY51681.
- 2.3 The Owner has applied to the Council for outline planning permission for the Development and the Council has resolved to grant planning permission for the Development subject to the Owner entering into the obligations contained in this Agreement.
- 2.4 The parties hereby enter into this Agreement to be bound by and observe the

covenants agreements conditions and stipulations hereinafter contained.

- 2.5 This Agreement is a planning obligation for the purposes of Section 106 of the 1990 Act and is enforceable by the Council.

3. NOW THIS DEED WITNESSETH AS FOLLOWS:-

- 3.1 This Agreement is made in pursuance of Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers with the intent that it is enforceable by the Council against the Owner and successors in title and assigns of the Owner to the Site.

- 3.2 This Agreement shall take effect upon the date hereof but the covenants in this Agreement (with the exception of clauses 4.6, 4.8, 4.12, 4.13 and 4.14 and paragraph 3 of the First Schedule) are subject to and conditional upon:

3.2.1 The grant of the Planning Permission; and

3.2.2 the Commencement of Development.

- 3.3 The Owner covenants jointly and severally with the Council to observe and perform the covenants and provisions in this Agreement and in the First Schedule.

- 3.4 The Council covenants with the Owner to observe and perform the covenants and provisions in this Agreement and in the First Schedule (as applicable) and the Second Schedule.

4. GENERAL

- 4.1 In this Agreement the expressions "the Council" shall include any successor to the Council as local planning authority and "the Owner" shall where the context so admits be deemed to include their respective successors in title to and assigns of the Site.

- 4.2 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement: -
- 4.2.1 to the extent that such breach relates to any part of the Site in which that person has no interest;
 - 4.2.2 occurring after he or it has parted with his or its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest); or
 - 4.2.3 if he shall be an owner, occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling or any person deriving title from them, or their mortgagee, or their chargee or any person deriving title from them; or
 - 4.2.4 if he or it shall be the purchaser or lessee of sites for statutory infrastructure purposes in relation to the Development.
- 4.3 If the terms of any conveyance transfer or other disposal (including any contract thereof) cannot be agreed by the Owner and the Council as the case may be and / or any dispute, disagreement or difference arises between the parties as to their respective rights duties or obligations under this Agreement or as to the failure of the Council to give or confirm its consent agreement or approval where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter it shall be dealt with as follows: -
- 4.3.1 in the case of any design requirement or matter regarding the Affordable Dwellings including the identification or other acceptance of any Registered Provider as provided for in the First Schedule the same shall be referred to an independent chartered surveyor of at least fifteen years

standing who shall be nominated in default of agreement between the Owner and the Council by the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to be decided as provided below;

4.3.2 ;

4.3.3 any matter referred to an independent chartered surveyor in accordance with the foregoing provisions shall be decided by such person as an expert not as an arbitrator and such independent person ("**Expert**") shall consider the written submissions of the parties and his determination shall be made in writing and in each case be final and binding on such parties and the costs of such determination shall be paid as the expert shall direct.

4.4 Any notice or other written communication to be served or given by one party upon or to any other or any payment by the Owner to the Council under the terms of this Agreement shall be deemed to be validly served or given if received by facsimile (but not in the case of payment) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is marked as follows to each recipient: -

4.4.1 for the Owner it shall be sent to the address first before appearing; and

4.4.2 for the Council it should be marked for the attention of John Eyles, Major Development Manager at Planning Service, Britannia House, Bradford BD1 1HX or email john.eyles@bradford.gov.uk or such other contact person whose details may be notified by the Council to the Owner and the Developer in writing from time to time bearing the reference 17/02809/MAO.

- 4.5 Unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed and may only be given in writing but not by email unless the use of email for the purpose concerned has been specifically agreed in writing between the parties concerned and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement to the consent permission expression or satisfaction or other approval shall at all times act reasonably and where only payment of costs or other payments are to be made by the Owner to the Council such costs and other payments shall be deemed to be reasonable and proper.
- 4.6 The Owner and the Council hereby make application to the appropriate Registrar of Local Land Charges for registration of this Agreement pursuant to the provisions of the Local Land Charges Act 1975.
- 4.7 It is further hereby agreed and declared that nothing in this Agreement shall fetter or restrict the discretion of the Council in the exercise of its powers under any statutory enactment or other enabling power for the time being in force.
- 4.8 No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 4.9 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 4.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

- 4.11 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 4.12 This Agreement is governed by and interpreted in accordance with the law of England and Wales.
- 4.13 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.
- 4.14 The Owner further covenants with the Council that it shall by no later than the date of completion of this Agreement pay to the Council the Legal Fee.

FIRST SCHEDULE

(Owner's Planning Obligations / Covenants)

The Owner covenants with the Council as follows:-

1. AFFORDABLE HOUSING

- 1.1 Not to allow or permit the Commencement of Development until the Owner has submitted to the Council and the Council have approved in writing a scheme ("**Affordable Housing Scheme**") relating to the provision of the Affordable Dwellings on the Site such scheme to provide details of the following: -
 - 1.1.1 the location of the Affordable Dwellings on the Site by reference to a plan;
 - 1.1.2 the house types, mix and specification of each Affordable Dwelling;
 - 1.1.3 the tenure of the Affordable Dwellings (in accordance with the definition of Affordable Housing published by the government within the National Planning Policy Framework or any successor document which is in place at the time that the Affordable Housing Scheme is submitted);
 - 1.1.4 the layout of each Affordable Dwelling by reference to tenure and including the number of habitable rooms proposed for each Affordable Dwelling, together with the gross internal floorspace of each of the Affordable Dwellings;
 - 1.1.5 how the Affordable Dwellings will be transferred to a Registered Provider(s) for subsequent allocation in accordance with paragraph 1.5 of this First Schedule or otherwise disposed of as Affordable Dwellings;
 - 1.1.6 the build sequence and implementation programme relating to the linkages between the Occupation of the Open Market Dwellings and the

delivery of the Affordable Dwellings to be provided on the Site or within each Phase as the case may be;

- 1.1.7 the method of calculating the sale or rental price of each Affordable Dwelling (both upon an initial sale or rental and upon subsequent sales or rentals);
- 1.1.8 how the Owner will ensure that the Affordable Dwellings will initially be occupied as Affordable Housing (in accordance with the definition of Affordable Housing published by the government within the National Planning Policy Framework or any successor document which is in place at the time that the Affordable Housing Scheme is submitted) and any provisions which will be made to ensure that the Affordable Dwellings will continue to be treated as Affordable Housing for the benefit of any future owners occupiers or tenants; and
- 1.1.9 an appropriate method for addressing the position in the event that there is lack of interest from Registered Provider(s) in taking any Affordable Dwellings which are proposed to be disposed of the a Registered Provider.

- 1.2 Within 30 working days (or within such other time period that the Council may reasonably require and which may be agreed in writing between the Council and the Owner within the initial 30 working day period) of the Council receiving from the Owner an Affordable Housing Scheme the Council will notify the Owner in writing of its approval to the Affordable Housing Scheme proposed by the Owner or will acting reasonably provide in writing its proposed amendments to the Affordable Housing Scheme pursuant to which the Owner acting reasonably shall submit an Affordable Housing Scheme incorporating those amendments as are reasonable and accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the Affordable Housing Scheme within 30 working days (or such other period of

time that may be agreed) it shall be deemed that the Council has approved the Affordable Housing Scheme submitted by the Owner **AND FURTHER PROVIDED THAT** if agreement (including deemed agreement) cannot be reached between the Council and the Owner within 40 working days of the date of the submission of the Affordable Housing Scheme to the Council (or such other period of time that may be agreed) then the provisions of Clause 4.3 of this Agreement relating to expert determination can be invoked by any Party in relation to only those matters that are in dispute.

- 1.3 Upon receipt of the Council's approval or deemed approval to an Affordable Housing Scheme pursuant to paragraph 1.2 of this Schedule (or upon receipt of expert determination in relation to an Affordable Housing Scheme if applicable) to construct the Affordable Dwellings in accordance with the Planning Permission, Reserved Matters Approval(s), approved plans and approved Affordable Housing Scheme and with the benefit of a recognised new build insurance or guarantee certificate compliant with the Council of Mortgage Lenders handbook current at the time of the Commencement Date and to deliver those Affordable Dwellings in accordance with the approved Affordable Housing Scheme and the provisions of this Agreement.
- 1.4 To serve on the Council a Commencement Notice 28 days prior to the Commencement of Development.

Occupation and General Provisions

- 1.5 Save with the consent in writing of the Council each of the Affordable Dwellings shall be Occupied in the following manner: -
- 1.6 Unless the Council permits otherwise in writing (such permission not to be unreasonably withheld or delayed) each of the Affordable Dwellings shall be allowed by the Owner to be occupied by persons who satisfy the Council's Housing Allocations Policy and the parent partner grandparent child or

grandchild of a person who complies with this requirement may occupy the Affordable Dwellings together with that person

PROVIDED THAT this clause shall not be binding upon:-

- 1.6.1 any mortgagee or chargee of any Registered Provider who acquires the Affordable Dwellings or its successors in title exercising its power of sale who shall be free to sell free from this clause or any receiver appointed by any such mortgagee or chargee; or
- 1.6.2 any purchaser or occupier (or person claiming title from such person) of any of the Affordable Dwellings in the event of such person having acquired or having an interest in 100% of the equity in any of the Affordable Dwellings whether acquired pursuant to the rights granted by the lease of the Affordable Dwellings or pursuant to the provisions of the Housing Act 1985 or the Housing Act 1996 (or any legislation amending or replacing the same with like or similar effect) or under any future equivalent legislation conferring such a right which is binding on any Registered Provider or any mortgagee chargee or receiver of such of the Affordable Dwellings.

Affordable Dwelling – Car Parking Spaces

- 1.7 The Owner shall provide a vehicle parking space or spaces for use by the occupants of the Affordable Dwelling in accordance with the Planning Permission, Reserved Matters Approval(s) and approved plans PROVIDED THAT it is agreed that the Affordable Dwellings will each be provided with at least one vehicle parking space per Affordable Dwelling at no further consideration.

2 MONITORING FEE

- 2.1 Pay to the Council the Monitoring Fee within 28 days of the completion of this Agreement in respect of the monitoring by the Planning Obligations Monitoring Officer of compliance with the terms of this Agreement **PROVIDED THAT** in the event that the Planning Permission is quashed before the Commencement of Development (but not otherwise) then the Council shall repay to the Owner the Monitoring Fees within 28 days of the Agreement ceasing to have effect.

SECOND SCHEDULE

(Council's Covenants)

The Council hereby covenants with the Owner: -

General Provisions

1. To remove from the Local Land Charges Register any entries relating to this Agreement as soon as possible after the obligation or obligations to which the entry or entries relates have been discharged.
2. The Council covenants that it will issue the Planning Permission within seven working days following the completion of this Agreement.

(IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first above written.

EXECUTED AS A DEED by affixing
THE COMMON SEAL of **CITY OF**
BRADFORD METROPOLITAN
DISTRICT COUNCIL in the
presence of:

Authorised by the City Solicitor

EXECUTED as a **DEED**
by **STUART HOWARD BROOK**
in the presence of:

Stuart H. Brook

Witness Signature
Witness Name
Witness Address
Witness Occupation



JAMES DUNN
SOLICITOR SRA ID 372999
AWB CHARLESWORTH
SOLICITORS LIMITED
23 OTLEY STREET
SKIPTON BD23 1DY

EXECUTED as a **DEED**
by **KATHLEEN JOYCE SIMPSON**
in the presence of

K. Simpson

Witness Signature
Witness Name
Witness Address
Witness Occupation



JAMES DUNN
SOLICITOR SRA ID 372999
AWB CHARLESWORTH
SOLICITORS LIMITED
23 OTLEY STREET
SKIPTON BD23 1DY