

**DATED**

21<sup>st</sup> February 2024

**THE NORTH YORKSHIRE COUNCIL**

**and**

**CRAIG FARQUHAR EADIE**

**and**

**HIGHACRE BUILDERS LIMITED**

**AGREEMENT**

**under section 106 of the Town and Country Planning Act 1990**

**relating to Land at Station Road, Scorton, North Yorkshire**

**Barry Khan  
Assistant Chief Executive (Legal and Democratic Services)  
The North Yorkshire Council  
County Hall  
Racecourse Lane  
NORTHALLERTON  
DL7 8AD**

**THIS AGREEMENT** is made the 21<sup>st</sup> day of February **2024**

**BETWEEN:**

- (1) **THE NORTH YORKSHIRE COUNCIL** of County Hall, Racecourse Lane, Northallerton, North Yorkshire DL7 8AD ('the Council');
- (2) **CRAIG FARQUHAR EADIE** of care of Forsters LLP, 31 Hill Street, Mayfair, London W1J 5LS ('the Owner'); and
- (3) **HIGHACRE BUILDERS LIMITED** (Company Registration Number 02593780) the registered office of which is situate at Estate Office, North Stainley, Ripon, North Yorkshire HG4 3JN ('the Developer')

**WHEREAS:**

- (1) The Council is the education authority and local planning authority for the area in which the Application Site is situated and for the purposes of Section 106 of the Act by whom the provisions hereof are enforceable
- (2) The Owner is the freehold estate owner of the Land which is registered at HM Land Registry under Title Number NYK323226 and which is free from financial incumbrances
- (3) The Council is the freehold estate owner of the remainder of the Application Site
- (4) The Developer submitted the Application to Richmondshire District Council ('the District Council'). At the date of the Application the District Council was the local planning authority for the area in which the Application Site is situated. By The North Yorkshire (Structural Changes) Order 2022 the District Council was abolished on the 1<sup>st</sup> April 2023 and the Council became the sole local planning authority for the area in which the Application Site is situated

- (5) By a delegated authority the Council has agreed in principle to grant permission for the application subject to the Owner entering into an Agreement pursuant to section 106 of the Act
- (6) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by Council against the Owner and their successors in title to the Land

**NOW THIS DEED WITNESSETH** as follows:

### **1. DEFINITIONS**

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

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

(2) "Additional First Homes Contribution" means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 4.16, 4.17 or 4.22 of Schedule Three, the lower of the following two amounts:

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

(b) the proceeds of sale less the amount due and outstanding to any

Mortgagee of the relevant First Home under relevant security

documentation which for this purpose shall include all accrued principal

monies, interest and reasonable costs and expenses that are payable by

the First Homes Owner to the Mortgagee under the terms of any mortgage

but for the avoidance of doubt shall not include other costs or expenses

incurred by the First Homes Owner in connection with the sale of the First

Home

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

- (3) "the Application" means the application for outline planning permission for ten unit residential development (with all matters reserved except for access) including new vehicular and pedestrian access, site drainage, hard and soft landscaping and associated works at Land at Station Road, Scorton, North Yorkshire submitted to the District Council by the Developer and validated by the District Council on the 21<sup>st</sup> March 2022 and which was given the reference 22/00148/OUT by the District Council
- (4) "the Application Site" means the land subject of the Application and which is shown edged red on the plan attached at Schedule One
- (5) "Area One" means the areas contained within those Parishes in North Yorkshire listed in Schedule Five
- (6) "Area Two" means within the area of the Council
- (7) "Armed Services Member" means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
- (8) "Close Family Connections" means a parent or sibling
- (9) "Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purposes) operations consisting of site clearance,

- demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements laying of any access road or service media and reference to "Commence" shall be construed accordingly
- (10) "Compliance Certificate" means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.10 of Schedule Three applies the Eligibility Criteria (Local)
- (11) "the Development" means the development at Land at Station Road, Scorton, North Yorkshire authorised by the Planning Permission
- (12) "Discount Market Price" means a sum which is the Market Value discounted by at least 30%
- (13) "Disposal" means a transfer of the freehold of a First Home other than:
- (a) a letting or sub-letting in accordance with paragraph 4.21 of Schedule Three
  - (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
  - (c) an Exempt Disposal
- and "Disposed" shall be construed accordingly
- (14) "Dwellings" means the dwellings to be constructed pursuant to the Planning Permission
- (15) "the Education Contribution" means the sum of £40,147.50 (forty thousand one hundred and forty seven pounds and fifty pence) to be paid to the Council

by the Owner and to be used towards enhancing facilities at schools in the local area

(16) "Eligibility Criteria (National)" means criteria which are met in respect of a purchase of a First Home if:

(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National)

(17) "Eligibility Criteria (Local)" means criteria which are met in respect of a purchase of a First Home if:

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

(b) the purchaser or a member of the household has a Local Connection; and

(c) their social and economic circumstances are such that they have difficulty securing accommodation on the open market, that is that they can demonstrate an in principle mortgage offer which is not sufficient to buy the First Home at the Market Value but is sufficient to buy at the Discount Market Price

FOR THE AVOIDANCE OF DOUBT if the Council has set an Income Cap (Local) and it is different to the Income Cap (National) then for the purposes of paragraph 4.9 of Schedule Three the Income Cap (Local) shall be the one applied to the purchaser(s)

(18) "Exempt Disposal" means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 4.22 of Schedule Three shall apply to such sale)

PROVIDED THAT in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 4.21 of Schedule Three

- (19) "First Home" means a Dwelling which may be disposed of as a freehold to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap
- (20) "First Homes Owner" means the person or persons having the freehold interest in a First Home other than:
  - (a) the Developer; or
  - (b) another developer or other entity to which the freehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or

(c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 4.21 of Schedule Three

(21) "First Time Buyer" means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

(22) "Income Cap National" means the sum of £80,000 (eighty thousand pounds) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

(23) "Income Cap (Local)" means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this Agreement the Council has not set an Income Cap (Local)

(24) "Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation PROVIDED ALWAYS that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the president for the time being of the Law Society on the application of any party) shall be used

(25) "Interest" means interest at 3% (three per cent) above the base lending rate of the Bank of England from time to time

(26) "the Land" means that part of the Application Site shown edged red on the plan attached at Schedule Two

(27) "the Layout Plan" means a plan indicating the layout of the Development and the position of each Dwelling



- (28) "Local Connection" means that the purchaser of the First Home or a member of the household are:
- (a) currently resident in Area Two; or
  - (b) in Permanent Employment or taking up Permanent Employment in Area Two; or
  - (c) have Close Family Connections resident in Area Two
- (29) "Management Company" means a management company or equivalent body to be established by the Owner to manage and maintain the Public Open Space PROVIDED THAT the objects of the Management Company shall include recovering the costs of doing so either by way of an estate charge levied against occupiers of the Dwellings or otherwise PROVIDED FURTHER THAT the Owner shall be entitled (at their discretion) to establish more than one management company or equivalent body
- (30) "Market Dwelling" means any Dwelling which is not a First Home
- (31) "Market Value" means the open market value as assessed by a Valuer of a Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation
- (32) "Mortgagee" means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
- (33) "Occupation" and "Occupied" means occupation for the purposes permitted by the Planning Permission but not including occupation by

personnel engaged in construction fitting out or decoration or in relation to security operations

- (34) "Permanent Employment" means in permanent full time contracted employment which is not seasonal
- (35) "the Planning Permission" means the planning permission for the Development granted pursuant to the Application
- (36) "Practical Completion" means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
- (37) "Price Cap" means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed £250,000 (Two Hundred and Fifty Thousand Pounds) or such other amount as may be published from time to time by the Secretary of State
- (38) "Public Open Space" means all those parts of the Land which are to be provided and used solely as informal grassed or other amenity or incidental areas for public use the location, nature and extent of which are approved pursuant to the Planning Permission
- (39) "Public Open Space Management Scheme" means a scheme for the management and maintenance of the Public Open Space agreed in writing between the Owner and the Council pursuant to paragraph 3 of Schedule Three and which may be amended from time to time by agreement in writing between the Owner and the Council and which shall include:
- (a) a programme for its implementation and delivery;
  - (b) a landscape and planting specification;
  - (c) a maintenance and monitoring strategy
  - (d) furniture and play equipment specifications;;

- (e) a timetable for establishing, and specification for the Management Company; and
- (f) a programme for the future disposal of the Public Open Space to the Management Company
- (40) "Reasonable Endeavours" means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court, public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable
- (41) "Regulations" means such reasonable written regulations approved in writing by the Council as the Owner or the Management Company may issue from time to time in order to regulate the use of the Public Open Space in the interests of the health safety and wellbeing of all persons there present from time to time for lawful recreational purposes and good estate management
- (42) "SDLT" means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
- (43) "Secretary of State" means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
- (44) "Section 73 Application" means an application made to the Council pursuant to Section 73 of the Act and relating to the Planning Permission

- (45) "Valuer" means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

## 2. CONSTRUCTION OF THIS AGREEMENT AND MISCELLANEOUS

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

(7) The headings in this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement

(8) Any covenant by the parties not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing

(9) 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

(10) 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 expires prior to the Commencement of Development or (without the consent of the Owner) it is modified by any statutory procedure

(11) Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement

### 3. CONDITIONALITY

(1) This Agreement is conditional and shall only have effect upon the grant of the Planning Permission and the Commencement of Development save for Clauses 2, 3, 4, 5, 8, 10, 11, 14, 18, 19, 20, 21 and 23 which shall come into effect upon completion of this Agreement

(2) For the avoidance of doubt it is hereby agreed and declared that in the event of the Planning Permission being quashed as a result of legal proceedings

then this Agreement shall absolutely determine and become null and void but without prejudice to the rights of any party against the others

#### 4. LEGAL BASIS

(1) This Agreement is made pursuant to Section 106 of the Act Sections 120 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling

(2) The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

#### 5. CIL REGULATIONS

The parties to this Agreement have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) and agree that the planning obligations this Agreement contains are:

- (a) necessary to make the Development acceptable in planning terms;
- (b) directly related to the Development; and
- (c) fairly and reasonably related in scale and kind to the Development.

#### 6. OWNER'S COVENANTS

The Owner covenants with the Council (so as to bind the Land) to fully observe and perform their obligations in this Agreement including those obligations of the Owner set out in Schedule Three to this Agreement and the Owner hereby agrees that the Land shall be subject to the obligations, restrictions and

covenants herein, such obligations being planning obligations for the purposes of Section 106 of the Act

## **7. COUNCIL'S COVENANTS**

The Council covenants with the Owner as set out in Schedule Four to this Agreement

## **8. COSTS**

The Owner shall pay the Council's legal costs in connection with the preparation of this Agreement in the total sum of £2,500 (two thousand five hundred pounds) on the completion of this Agreement

## **9. EXERCISE OF POWERS OF THE COUNCIL**

Nothing herein contained or implied shall prejudice or affect the rights discretions powers duties and obligations of the Council under any statutes, bye-laws, statutory instruments, orders and regulations in the exercise of their functions as a local authority

## **10. RESOLUTION OF DISPUTES**

(1) In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly

relevant in England to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

(2) In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to sub-clause (1) hereof or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to sub-clause (1) hereof then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

## **11.VAT**

All consideration (financial or otherwise) given in accordance with the terms of this Agreement shall be deemed to be exclusive of any Value Added Tax properly payable



## **12. INDEXATION**

Any sum referred to in Schedule Three to this Agreement shall be increased or decreased on an annual basis or pro rata per diem by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which such sum is paid

## **13. INTEREST**

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

## **14. REGISTRATION OF THIS AGREEMENT**

- (1) This Agreement shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council
- (2) Following the performance and satisfaction of all the obligations in this Agreement the Council shall at the request of the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement

## **15. ACKNOWLEDGEMENT AND CONSENT**

This Agreement and any and all obligations contained in it which are capable of binding the Land do bind that land and the Owner hereby consents to the whole of its interest in the Land being so bound

## **16. LIABILITIES**

No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after that person shall have parted with their

interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest and which has been notified in writing prior to the date upon which such parting of interest occurs and for these purposes 'parting of interest' occurs upon the date upon which the relevant deed giving effect to a disposition (s.205 Law of Property Act 1925) is dated

## **17. NOTICES**

Any notice or document issued or served pursuant to this Agreement shall be in writing and shall be served by the recorded delivery service:

- (1) on the Council by sending it to the Corporate Director of Environment at the address at the beginning of this Agreement or such person or address as may from time to time be notified to the Owner
- (2) on the Owner by sending it to the address at the beginning of this Agreement or such person or address as may from time to time be notified to the Council

## **18. CHANGE IN OWNERSHIP**

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of their interest in the Land occurring before all the obligations under this Agreement 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 Land purchased by reference to a plan

## **19. WAIVER**

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

## **20. JURISDICTION**

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

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## **21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

## **22. SECTION 73 APPLICATION**

If a Section 73 Application is made to the Council then in the event that the Council is minded to approve the Section 73 Application:

- (1) if the Council considers that the planning obligations contained in this Agreement are both sufficient and necessary to make the development proposed by such Section 73 Application acceptable in planning terms then references to Planning Permission in this Agreement shall be deemed to also be references to that new planning permission and the parties agree that this Agreement shall apply to and remain in full force in respect of both that new

planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the Act;

- (2) nothing in this Clause 22 shall fetter the Council's ability to require the completion of a further Agreement made pursuant to section 106 of the Act as it considers necessary and in such case Clause 22(1) shall be disregarded

**23. DELIVERY**

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

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



**SCHEDULE ONE**  
**THE APPLICATION SITE**

Red line indicates the land to which the application relates & is based on information provided by the Applicant. All legal boundaries are subject to confirmation by land owner(s).



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NYS83

1 SITE LOCATION PLAN

1:1250 @ A2



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Rev.	Description	Date	Drw.	Chk.
01	Red line updated to include new junction.	18.02.22	AR	AB

Client  
**LIGHTWATER HOLDINGS**

Project  
**RESIDENTIAL DEVELOPMENT at SCORTON, RICHMONDSHIRE**

Drawing Title  
**SITE LOCATION PLAN**

Drawing Status  
**PLANNING**

**Corstorphine & Wright**

Leeds Studio  
The Studio, Candle House, 1 Wharf Approach, Leeds, LS1 4GH  
0113 213 5656  
corstorphine-wright.com

Drawing No.	Revision			
21357-CW-ZZ-XX-DR-A-0701	01			
Drawn	Checked	Paper Size	Scale	Date
AR	AB	A2	1:1250	04.02.22

## **SCHEDULE TWO**

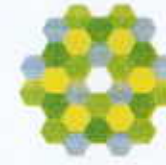
### **THE LAND**



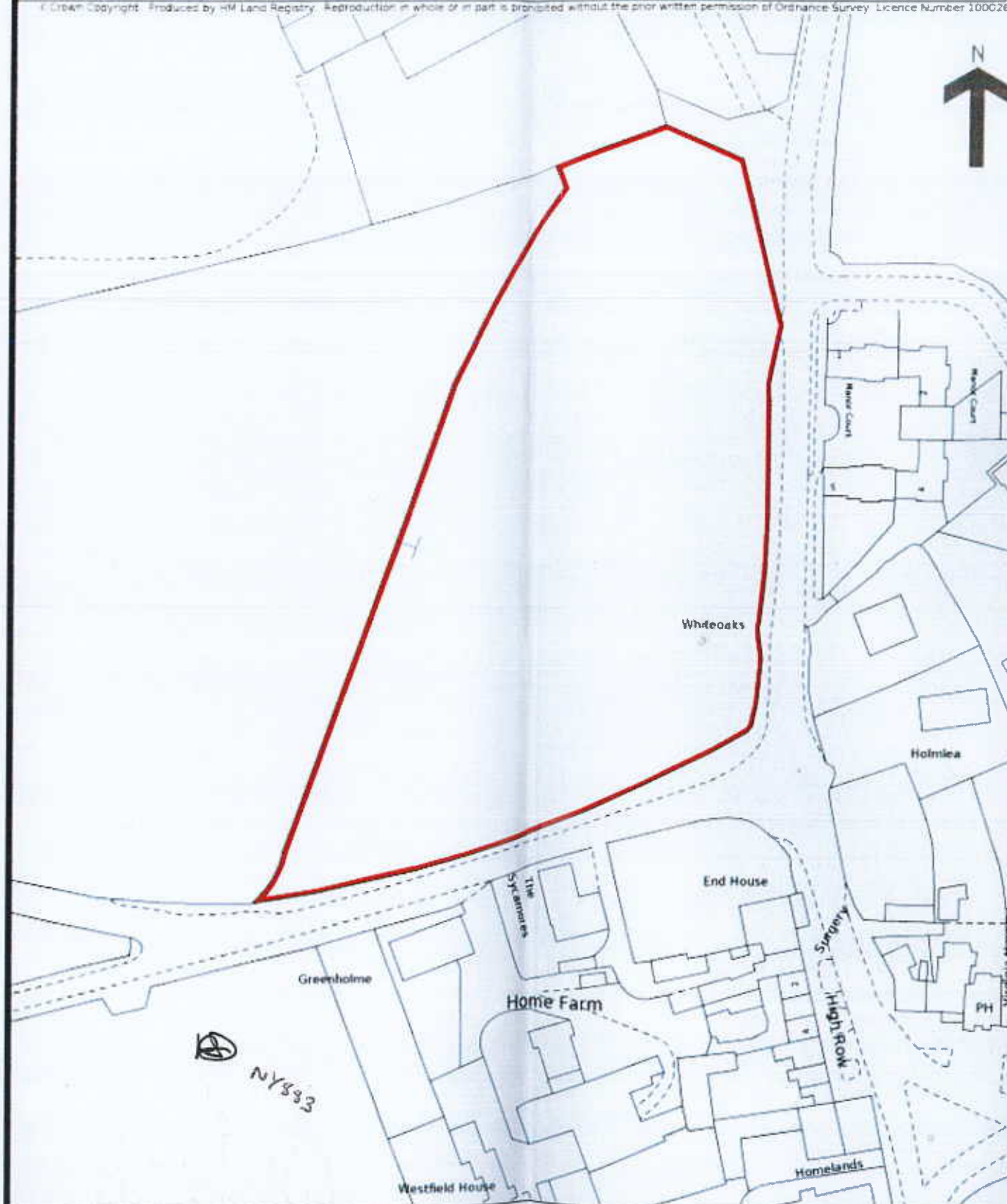


HM Land Registry  
Official copy of  
title plan

Title number **NYK323226**  
Ordnance Survey map reference **NZ2400SE**  
Scale **1:1250 enlarged from 1:2500**  
Administrative area **North Yorkshire**



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**SCHEDULE THREE**  
**OWNER'S COVENANTS**

The Owner covenants with the Council:

**1. COMMENCEMENT OF DEVELOPMENT**

To notify the Council of Commencement of Development immediately upon it occurring

**2. EDUCATION CONTRIBUTION**

To pay to the Council the Education Contribution prior to Occupation of the fifth Dwelling to be Occupied and not to allow or permit Occupation of more than four Dwellings unless and until the Education Contribution has been so paid

**3. PUBLIC OPEN SPACE**

3.1 To submit the Public Open Space Management Scheme to the Council prior to the Commencement of Development and not to Commence Development unless and until the Public Open Space Management Scheme has first been approved in writing by the Council

3.2 Not to amend or permit amendment of the Public Open Space Management Scheme without the further written approval of the Council

3.3 Not to carry out the Development otherwise than in accordance with the approved Public Open Space Management Scheme (as amended from time to time in accordance with this Agreement) without the prior written approval of the Council

3.4 To establish the Management Company in accordance with the approved Public Open Space Management Scheme

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3.5 No later than 14 (fourteen) days after the establishment of the Management Company to provide the Council with the following details:

- (1) the name(s) and address(es) of the Management Company;
- (2) a description of the Public Open Space for which the Management Company is responsible; and
- (3) the mechanism pursuant to which the Management Company will finance either by way of recovery of an estate charge from occupiers of the Market Dwellings or otherwise the management and maintenance of the Public Open Space

3.6 To lay out, landscape and plant the Public Open Space in accordance with the approved Public Open Space Management Scheme and to permit the public to have access thereto for the purpose of lawful outdoor recreation subject to the Regulations and such further reasonable measures as the Owner shall implement (if any) to prevent the creation of new public rights of way or town / village green space by prescription

3.7 Not to dispose of the Public Open Space otherwise than to the Management Company in accordance with the approved Public Open Space Management Scheme and on the following terms:

- (1) at nil consideration;
- (2) vacant possession shall be given on completion;
- (3) for an estate in fee simple in possession;
- (4) subject to the matters specified in the title of the Public Open Space (other than entries securing monies) and the terms of this Agreement insofar as they relate to and affect the Public Open Space PROVIDED THAT the transferor shall retain the benefit of any such matters to the extent that they benefit the remainder of the Land and PROVIDED

FURTHER THAT from the date of completion of the transfer the Management Company will perform the covenants and conditions contained or referred to in the property and charges register in the title of the Public Open Space (insofar as they remain to be complied with and are capable of being complied with);

(5) not to:

- (i) use and retain the Public Open Space otherwise than for use by the public as public open space; and
- (ii) manage and maintain the Public Open Space otherwise than in accordance with the approved Public Open Space Management Scheme

PROVIDED THAT the Owner (for the avoidance of doubt on behalf of themselves and the Management Company) covenant with the Council pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to maintain and manage in perpetuity the Public Open Space in accordance with the Regulations and the principles of good horticultural and estate management and ensure that any equipped play areas within the Public Open Space are inspected on a quarterly basis by a competent person and a record of inspections is recorded and only allow the use of the Public Open Space for public access and recreation and for no other purpose

#### **4. FIRST HOMES**

- 4.1 To submit for approval the Layout Plan to the Council prior to Commencement of Development and to mark on the Layout Plan which of the Dwellings are to be First Homes and to construct the First Homes accordingly and not to Commence Development unless and until the

Council have approved the Layout Plan PROVIDED THAT the Council and the Owner may agree to amend the Layout Plan in writing

4.2 That the First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance

4.3 That the internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

4.4 To construct the First Homes to no less than the standard applied to the Market Dwellings

4.5 To provide 4 (four) First Homes

4.6 To provide the First Homes as follows:

(a) 50% of the First Homes (meaning 2 (two) First Homes) shall be constructed and available for Occupation prior to Occupation of the fourth Market Dwelling and no more than 3 (three) Market Dwellings shall be Occupied unless and until 50% of the First Homes are so constructed and available for Occupation

(b) The remaining 50% of the First Homes (meaning 2 (two) First Homes) shall be constructed and available for Occupation prior to Occupation of the sixth Market Dwelling and no more than 5 (five) Market Dwellings shall be Occupied unless and until all of the First Homes are so constructed and available for Occupation

4.7 To give written notice to the Council not later than 14 (fourteen) days after all of the First Homes have been constructed

4.8 That the First Homes shall remain First Homes in perpetuity save only as provided for by any lawful authority including (without limitation) pursuant to legislation (Acts of Parliament, Regulations and bye-laws)

4.9 That the First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

- (a) the Eligibility Criteria (National); and
- (b) the Eligibility Criteria (Local)

4.10 If after a First Home has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) paragraph 4.9(b) shall cease to apply

4.11 That subject to paragraphs 4.14 to 4.18 no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

4.12 That no First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

(1) The Council has been provided with evidence that:

- (a) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.10 applies meets the Eligibility Criteria (Local)
- (b) the Dwelling is being Disposed of as a First Home at the Discount Market Price and
- (c) the transfer of the First Home includes:

- (i) a definition of the "Council" which shall be "The North Yorkshire Council"
- (ii) a definition of "First Homes Provisions" in the following terms:  
"means the provisions set out in paragraph 4 of Schedule Three to the S106 Agreement a copy of which is attached hereto as the Annexure"
- (iii) a definition of "S106 Agreement" in the following terms:  
"means the Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [insert date hereof] made between (1) the Council (2) Craig Farquhar Eadie and (3) Highacre Builders Limited"
- (iv) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions
- (v) a copy of the First Homes Provisions in an Annexure

(2) The Council has issued the Compliance Certificate

4.13 That on the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is



to be registered without a certificate signed by The North Yorkshire Council of County Hall, Racecourse Lane, Northallerton, North Yorkshire DL7 8AD or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition”

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

- (1) the Dwelling has been actively marketed as a First Home for 6 (six) months in accordance with Clauses 4.9 and 4.10 (and in the case of a first Disposal the 6 (six) months shall be calculated from a date no earlier than 6 (six) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 4.11 and 4.12(1); or
- (2) requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 4.12(2) before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

4.15 That upon receipt of an application served in accordance with paragraph 4.14 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

4.16 That if the Council is satisfied that either of the grounds in paragraph 4.14 above have been made out it shall confirm in writing within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 4.14 that the relevant Dwelling may be Disposed of:

- (1) to the Council at the Discount Market Price; or
- (2) (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 4.18 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home

4.17 That if Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 4.14 above have been made out then it shall within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 4.14 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 4.14 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

4.18 That where a Dwelling is Disposed of other than as a First Home of to the Council at the Discount Market Price in accordance with paragraph<sup>s</sup>

4.16 or 4.17 above the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution FOR THE AVOIDANCE OF DOUBT for the purposes of this paragraph the owner means the person(s) who Disposed of the Dwelling and received the proceeds of sale who shall be obliged to pay the Additional First Homes Contribution even though he is no longer the Owner

4.19 That upon receipt of the Additional First Homes Contribution the Council shall:

- (1) within 28 (twenty eight) days of such receipt provide a completed application to enable the removal of the restriction on the title set out in paragraph 4.13 where such restriction has previously been registered against the relevant title
- (2) apply all monies received towards the provision of Affordable Housing

4.20 That any person who purchases a First Home free of the restrictions in paragraph 4 of Schedule Three pursuant to the provisions in paragraphs 4.17 and 4.18 shall not be liable to pay the Additional First Homes Contribution to the Council

4.21 That each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement PROVIDED THAT letting or sub-letting shall be permitted in accordance with the following:

- (1) A First Homes Owner may let or sub-let their First Home for a fixed term of no more than 2 (two) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied

by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed 2 (two) years

(2) A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - (e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy;
- and

(f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person

(3) A letting or sub-letting permitted pursuant to paragraph 4.21(1) or 4.21(2) must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting

(4) Nothing in this paragraph 4.21 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Homes Owner's main residence

4.22 The obligations in paragraphs 4.9 to 4.21 above in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

(1) such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and

(2) once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 4.22(3)

(3) following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and

outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses within 21 (twenty one) days of completion pay to the Council the Additional First Homes Contribution

Th

(4) following receipt of notification of the Disposal of the relevant First

Home the Council shall:

(a) forthwith issue a completed application to the purchaser of that

Dwelling to enable the removal of the restriction on the title set out in paragraph 4.13; and

(b) apply all such monies received towards the provision of Affordable Housing

**SCHEDULE FOUR**  
**THE COUNCIL'S COVENANTS**

The Council covenants with the Owner:

1. to issue the Compliance Certificate within 28 (twenty eight) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 4.11 and 4.12(1) of Schedule Three have been met
2. to use the Education Contribution for the purposes specified in this Agreement for which it is to be paid and for no other purpose whatsoever
3. that if the Education Contribution has not been expended or committed in accordance with the provisions of this Agreement within 10 (ten) years of the date of receipt by the Council, the Council shall return such funds to the party which made the payment (or that person's nominee) together with any accrued interest for the period from the date of payment to the date of refund.
4. that it shall upon written request provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the Education Contribution





Marrick Parish Council  
Marske and New Forest Parish Council  
Melbecks Parish Council  
Melmerby Parish Meeting  
Melsonby Parish Council  
Middleham Town Council  
Middleton Tyas Parish Council  
Moulton Parish Meeting  
Muker Parish Council  
Newsham Parish Council  
Newton Morrell Parish Meeting  
Newton-le-Willows Parish Council  
North Cowton Parish Council  
Patrick Brompton Parish Council  
Preston under Scar Parish Council  
Ravensworth Parish Council  
Redmire Parish Council  
Reeth, Fremington and Healaugh Parish Council  
Richmond Town Council  
Scorton Parish Council  
Scotton Parish Council  
Skeeby Parish Council  
Spennithorne Parish Meeting  
St Martins Parish Council  
Stanwick St John Parish Council  
Stapleton and Cleasby Parish Council  
Thornton Steward Parish Meeting  
Tunstall Parish Council  
Uckerby Parish Meeting  
Wensley Parish Meeting  
West Scrafton Parish Meeting  
West Witton Parish Council  
Whashton Parish Meeting

Executed as a Deed  
by affixing the Common Seal of  
THE NORTH YORKSHIRE  
COUNCIL in the presence of:  
of:



*Dawson*

Authorised Signatory

Executed as a Deed by the said  
CRAIG FARQUHAR EADIE  
in the presence of:

*Craig Farquhar Eadie*

*[Signature]*

STEVE DAVIES  
3 HOME FARM CLOSE,  
ABBOTS RIFTON, PE28 2PT.

Executed as a Deed by  
HIGHACRE BUILDERS LIMITED  
acting by:

*[Signature]*

Director

in the presence of:

JUDITH ANNE JAMES  
*J. James*

Harrowells Limited  
Solicitors  
Moorgate House  
Clifton Moorgate  
York YO30 4WY