

DATED *2nd December* 2020

DEED OF PLANNING OBLIGATION

Between

(1) PRIMETALENT LIMITED and MALCOLM DENNIS HOLDER

and

(2) PRIMETALENT LIMITED

and

(3) THE COUNCIL OF THE BOROUGH OF HARROGATE

and

(4) NORTH YORKSHIRE COUNTY COUNCIL

AGREEMENT

**PURSUANT TO SECTION 106
OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

relating to

Land at Hutton Bank Ripon

Re Planning Application 18/04504/OUTMAJ

Jennifer Norton

Head of Legal & Governance

Crescent Gardens

Harrogate

HG1 2SG

(PRA/36992)

THIS DEED is made on 2nd day of December 2020

BETWEEN

- (1) **MALCOLM DENNIS HOLDER** of Beckstade Grange, Northallerton Road, Knayton, York, YO7 4AL and **PRIMETALENT LIMITED** (Company No. 05154660) whose registered office is situate at 29-33 Westgate Thirsk YO7 1QR ("**the Owner**");
- (2) **PRIMETALENT LIMITED** (Company No. 05154660) whose registered office is situate at 29-33 Westgate Thirsk YO7 1QR ("**the Developer**"); and
- (3) **THE COUNCIL OF THE BOROUGH OF HARROGATE** of Civic Centre, St Lukes Mount, Harrogate, HG1 2AE ("**the Council**"); and
- (4) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD ("**the County Council**").

WHEREAS: -

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Property is situated and is the authority by whom the planning obligations contained in this Deed in its favour are enforceable.
- (B) The County Council is the Education Authority for the area within which the Property is situated and is the authority by whom the planning obligations contained in this Deed in its favour are enforceable.
- (C) The Owner is the freehold owner of the Property free from encumbrances save only as mentioned in the registered title(s) to the Property.
- (D) The Developer has submitted the Application to the Council for planning permission to carry out and complete the Development.
- (E) The Council has resolved that subject to the completion of this Deed the Permission should be granted.

NOW THIS DEED WITNESSES as follows:-

1. **STATUTORY PROVISIONS**

This Deed is made pursuant to the provisions of Section 106 of the Act and to the extent that the covenants in this Deed are not made under Section 106 of the 1990 Act they are made under Sections 111 and 139 of the Local Government Act 1972 the Localism Act 2011 and all other powers so enabling with the intention to bind the Owner's interest and the Developer's interest in the Property and the obligations in this Deed on the part of the Owner are planning obligations for the purposes of the Act enforceable by the Council and where specified by the County Council.

2. **INTERPRETATION**

2.1 In this Deed in addition to the parties hereinbefore referred to the following words and expressions shall where the context so requires or admits have the following meanings:-

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

"Affordable Housing" means housing provided to households whose needs are not met by the market in accordance with the definition in Annex 2 of the NPPF

"Affordable Housing for Rent Unit" means 4 (four) of the Affordable Housing Units consisting of 1 (one) no. 1 (one) bed houses to be erected on plots 26; 2 (two) no. 2 (two) bed houses to be erected on plots 34 and 35; and 1 (one) no. 3 (three) bed houses to be erected on plot 37 or in such other locations that may be agreed in writing by

the Council such units to be constructed in accordance with the Permission and made available for rent for those whose needs are not met by the market in accordance with paragraph (a) of Annex 2 of the NPPF unless otherwise approved by the DC.

“Affordable Housing for Sale Unit”

means 2 (two) of the Affordable Housing Units consisting of 2 (two) No 2 (two) bed houses on plots 27 and 28 to be leased on a Shared Ownership Lease or such other housing as approved in writing by the DC that provides a subsidised route to home ownership and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within Annex 2 of the NPPF

“Affordable Housing Units”

means the 6 Dwellings of Affordable Housing to be provided as part of the Development in accordance with the provisions set out at paragraphs 1.1 to 1.12 of the First schedule consisting of 4 (four) Affordable Housing for Rent Units and 2 (two) Affordable Housing for Sale Unitsto provide in perpetuity (to the extent permissible by law) and subject to the Right to Acquire and Staircasing housing affordable to householders who cannot afford to rent or buy a suitable home on the open market in accordance with the definition in the NPPF

Annex 2 all to be constructed in accordance with the provisions set out at paragraphs 1.1 to 1.12 of the First Schedule and reference to Affordable Housing Units shall include the term "**Affordable Housing Unit**"

"Affordable Price"

means £1,100.00 per square metre of the gross internal floor area for those Affordable Housing Units that are houses and £1,050.00 per square metre of the gross internal floor area excluding common areas for those Affordable Housing Units that are apartments

"Application"

means the outline application for planning permission submitted to the Council and bearing reference 18/04504/OUTMAJ

"Challenge Period"

means the period of 7 weeks from the date of the issue of the Permission unless the Owner Commences the Development either through itself or by instructing or procuring others before that period has expired in which case the Challenge Period shall be deemed to have expired on the date of Commencement of Development

"Close Family"

means parents, children, brothers or sisters

"Commencement of Development"

means the commencement of the Development by the carrying out of a

material operation on the Property within the meaning of Section 56 of the Act save that the following shall not for the purposes of this Deed be treated as commencing the Development:

- (a) demolition and site clearance works;
- (b) site investigation, archaeological or other surveys and decontamination and/or remediation works;
- (c) the erection of any site fencing and other site security;
- (d) the laying out or construction of any construction access or access to the Property;
- (e) the erection of any temporary marketing suite or sales facilities other than those that may be contained within or comprise residential or commercial units constructed pursuant to the Permission;
- (f) the laying or diversion of any services or other works in respect of or in relation to any statutory undertakers' equipment or concerns
- (g) the carrying out of any environmental or ecological works and reference to Commencement of Development shall include the

terms **"Commenced"** and
"Commences the Development"

"DC"	means the Director of Community for the time being of the Council
"Development"	means erection of 37 dwellings (details of access and layout submitted) together with the creation of serviced employment plots (B1c Use Class) pursuant to the Application
"Dwellings"	means those dwellings constructed on the Property pursuant to the Permission
"Employment Plots"	means six plots in area totalling 863 square metres in the location identified on drawing H3m 3081-0-00-1K for use as light industrial units (within use class B1(c) of the Town and Country Planning (Use Classes) Order 1987 as amended) to be fully serviced with electricity water, waste water and gas and provided with access via a road constructed to adoptable standards (on or before the letting or sale of the final employment plot)
"Employment Plots Marketing Strategy"	means a document to be submitted to the Council for its approval setting out the method of marketing the Employment Plots
"Education Contribution"	means the sum of £71,865.00 such sum to be deposited with the County Council for a

period of 10 years as set out in paragraph 1.1 of the Second Schedule for the purpose of providing educational facilities at Holy Trinity Church of England Infant School and/or Holy Trinity Church of England Junior School and/or towards new school provision within the locality served by this Development in the borough of Harrogate the need for which arises as a result of the Development

"Eligible Occupier"

means a person or household containing a person who is in housing need for a property of the type in question and who is unable to afford to purchase or rent dwellings of a similar kind generally available on the open market within the administrative area of the Council provided that a person within the household has a Local Connection with Ripon but in the event that no such person or household seeks to occupy the Affordable Housing Unit then the Registered Provider may widen the Local Connection catchment to the District of the Council with the written approval of the DC

"First Occupation"

means beneficial occupation for any use for which the Development was designed other than occupation for the purposes of construction or fitting out or marketing or in the context of the occupation of Dwellings the First Occupation of that Dwelling for residential purposes and reference to First

Occupation shall include the term

"Occupied"

"Homes England"

means Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008

"Index"

means the All Tender Price Index published by the Building Control Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

"Interest"

means 1% over the Bank of England Base Rate from the date the payment is due until the date of actual payment

"Local Connection"

means an Eligible Occupier has a Local Connection with an area if:

- (1) that person or a person within that household currently lives in that area and has lived there for at least two years; or
- (2) has Close Family ordinarily resident in the area (for a minimum period of five years previously); or
- (3) has previously lived in that area (for a continuous period of at least ten years); or
- (4) is either in employment or has an

offer of employment as their main place of work in the area and is under contract for a minimum 12 month period and for at least 16 hours a week

"Management Company"

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes of carrying out future maintenance of the Public Open Space and:

- (1) which is incorporated in England, Wales or Scotland;
- (2) which has its registered office in England, Wales or Scotland; and
- (3) whose primary objects permit it to maintain and manage and where applicable renew the Public Open Space

"NPPF"

means the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it).

"Open Market Dwelling"

means those Dwellings that are not Affordable Housing Units and reference to Open Market Dwelling shall include the term

"Open Market Dwellings"

"Open Market Value"

means a value calculated in accordance with the following procedure:

- (A) the Owners shall apply to an independent chartered surveyor ("**the Valuer**") appointed by agreement between the Owner and the RP to determine the open market value of the property as at the date of service by the Owner of a notice on the Council and the RP detailing the failure of the RP to take the Transfer as required by paragraph 1.6 of the First Schedule and within 14 days of receipt of the said notice the RP shall notify the Owner of the amount of the Valuer's determination in writing within seven days of receipt of the said determination;
- (B) in the absence of agreement between the RP and the Owner pursuant to A above the Valuer shall be appointed on application of either the RP or the Owner by or on behalf of the President of the Royal Institution of Chartered Surveyors;
- (C) the Valuer shall act as an expert and his decision shall be final and binding and the costs of any

determination by the Valuer pursuant to the provisions of this definition shall be paid by the Owner.

"Open Space Contribution"

means the sum of £61,995.00 to be expended on the provision or upgrading of off-site open space at the sites identified in the Open Space Commuted Sums Calculation dated 1st August 2019 appended at the Sixth Schedule that will serve the Development comprising [amenity green space, cemeteries, natural urban greenspace, outdoor sports facilities and provision for children and young people] which meet the criteria of policy C1 of the Harrogate District Core Strategy the need for which only arises as a result of the Development

"Open Space Management Plan"

means the management plan that sets out the maintenance requirements for the Public Open Space and which will provide for management by a Management Company pursuant to paragraph 3.3 of the First Schedule of this Deed

"Open Space Works"

means the works to be carried out for the laying out of the Public Open Space in accordance with the conditions annexed to the Permission

"Permission"

means the planning permission for the Development given under reference number 18/04504/OUTMAJ in respect of the Development to be granted by the Council pursuant to the Application which shall be substantially in the form set out in Schedule 1

"Plan "

means the plan attached to this Deed at Schedule 2 *2/12* *Fy/la.*

"Property"

Land at Hutton Bank Ripon and being registered at HM Land Registry under title number NYK302995 shown edged red on the Plan

"Public Open Space"

means those parts of the Property shown on Drawing No. 3081-0-00-K to be laid out as open space in accordance with the conditions annexed to the Permission

"Reasonable Endeavours"

means that the Owner will be bound to attempt to fulfil the relevant obligation or commitment 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 may reasonably be expected of a private company acting reasonably properly and

commercially in the context of its fiduciary responsibilities to its shareholders

"Registered Provider" or "RP"

means the Council or another registered provider (as defined by the Housing and Regeneration Act 2008 or any amendment replacement or re-enactment of such Act) nominated or approved in writing by the DC in accordance with paragraph 1.4 of the Third Schedule of this Agreement

"Right to Acquire"

means the statutory right of an occupier of an Affordable Housing Unit to acquire the freehold or leasehold (as appropriate) of the relevant Affordable Housing Unit

"Shared Ownership Lease"

means the form of Lease as approved from time to time by Homes England or such successor body or agency

"Staircasing"

means the ability (where applicable in law) of an occupier of an Affordable Housing Unit held under a shared ownership arrangement to acquire the remaining equity in the relevant Affordable Housing Unit

"Transfer"

means a transfer of the freehold of the Affordable Housing Units that have been delivered to the Registered Provider and unconditionally released for completion by the Owner and reference to Transfer shall include the term "**Transferred**"

"Working Days"

means any day except a Saturday, Sunday or any public holiday in England and Wales

2.2 In this Deed where the context so requires:

- 2.2.1 the singular includes the plural and vice versa;
- 2.2.2 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules in this Deed except where otherwise specified;
- 2.2.3 title headings to the clauses schedules and paragraphs are for convenience only and shall not affect the interpretation of this Deed;
- 2.2.4 the Schedules hereto shall be deemed to be incorporated herein and to have the same force and effect as if the provisions thereof were set out in extenso in the body of this Deed;
- 2.2.5 references to any statute or statutory instrument shall except where otherwise specifically provided include reference to any statutory modification or re-enactment thereof for the time being in force;
- 2.2.6 the expressions the "Owner" and the "Developer" shall include persons successors in title to the Owner and the Developer and their assigns and all

persons deriving title to all or part of the Property under or through it or them and the expression the "Council" and the "County Council" shall include its respective successor authority.

3. **CONDITIONALITY**

3.1 The provisions of this Deed shall apart from clauses 1 to 3, which shall have effect from the date of this Deed not take effect until all the following conditions have been satisfied:

3.1.1 the Permission shall have been granted and issued;

3.1.2 the Challenge Period shall have expired;

3.1.3 the Development shall have been Commenced.

4. **MISCELLANEOUS**

4.1 This Deed shall be registered as a local land charge for the purposes of the Local Land Charges Act 1975 by the Council.

4.2 This Deed shall be enforceable against the Owner to the extent specified in Section 106(3) of the Act and against any person for the time being deriving title from the Owner as provided in Section 106 of the Act but **PROVIDED THAT** the Owner has first provided to the Council and the County Council all relevant information (in accordance with Section 106(4) of the Act (if any)) the Owner shall not have any further liability under this Deed when they no longer have an interest in the Property (but without prejudice to the rights of either party in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be such other person) no longer has an interest in the Property.

4.3 Nothing herein contained or implied shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

4.4 If the Permission is quashed revoked or otherwise withdrawn or expires within the meaning of Sections 91 92 and 93 of the Act or is revoked or modified in accordance with Sections 97 to 100 inclusive of the Act without the consent of the Owner this Deed

shall cease to have effect (but without prejudice to the rights of either party against the other in respect of any antecedent breach).

4.5 No waiver (whether express or implied) by the Council and/or the County Council of any breach or default by the Owner in performing or observing any of the obligations terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and/or the County Council from enforcing any of the said obligations terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Owner during any relevant enforcement period.

4.6 The Developer agrees that it will on or before the date of this Deed pay:

4.6.1 £1280.00 towards the Council's; and

4.6.2 £750.00 (Seven Hundred and Fifty Pounds) towards the County Council's reasonable legal costs in connection with the preparation and completion of this Deed.

4.7 The affordable housing provisions in this Deed shall not be binding on a mortgagee or chargee (or any receiver appointed by such mortgagee or chargee) of the whole or any part of the Affordable Housing Units or any successors in title to such mortgagee or chargee or receiver **PROVIDED THAT** such mortgagee or chargee (or any receiver appointed thereby) acting pursuant to any event of default shall first give written notice to the Council of its intention to dispose and shall have used reasonable endeavours over a period of 12 weeks from the date of the written notice to dispose of the Affordable Housing Units to the Registered Provider or another Registered Provider approved by the Council or to the Council for a consideration of not less than the amount due and outstanding to the mortgagee or chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the mortgagee or chargee in respect of the mortgage or charge. If such disposal has not taken place within the 12 week period, the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the affordable housing provisions in this Deed which shall determine absolutely.

4.8 The provisions of the Deed shall not be binding on individual purchasers and occupiers of the Dwellings save for the obligation contained paragraph 3.4 of the First Schedule of this Deed, nor their successors in title mortgagees in possession nor their successors in

title nor on statutory undertakers or providers of water, gas, electricity or telecommunications to the Property.

- 4.9 The Open Space Contribution and the Education Contribution shall be increased or decreased by an amount equivalent to the increase or decrease in the Index from the date hereof until the date on which such sum is payable.
- 4.10 This Deed is governed by and interpreted in accordance with the laws of England and Wales and each party hereby submits to the exclusive jurisdiction of the English courts.
- 4.11 In the event that the Affordable Housing Contribution is paid in accordance with paragraph 1.6 First Schedule the Council acknowledges that the relevant Affordable Housing Unit shall be released from the affordable housing provisions contained in this Deed.
- 4.12 Wherever this Deed requires the approval agreement determination or consent of the Council or the County Council or the Owner or the Developer such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 4.13 Nothing in this Deed shall prohibit or limit the right to develop any part of the Property in accordance with a planning permission or otherwise (other than the Permission or specified in a subsequent section 73 permission to which clause 4.16 below applies) granted after the date of this Deed.
- 4.14 Any dispute over the provisions of this Deed including the interpretation of any provision may with the agreement of the parties to the dispute be settled by an expert appointed by the parties to this Deed or in default of agreement as to the identity of that expert by the President of the Royal Institution of Chartered Surveyors and such expert's determination including any determination of the costs incurred in settling that dispute shall (save for a manifest error in law or facts) be final and binding on the parties to this Deed.
- 4.15 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 4.16 In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of

the application, and the Council using its sole discretion confirms in writing that it is satisfied that no revised planning obligations are required as a result of such amendment, references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and bind the Owner and remain in full force in respect of that new planning permission without the need for a further agreement or deed of variation to be entered into pursuant to Section 106 or 106A of the Act.

5. NOTICES

- 5.1 All approvals or authorities demands invoices information or notices and other documents or acts authorised or required by or under this Deed by the Owner shall be in writing.
- 5.2 Where any document is required to be delivered to the Council it shall be addressed to the Director of Economy & Development of the Council.
- 5.3 Where any document is required to be delivered to the DC it shall be addressed to the Director of Community and bear the reference JK/S106 – 18/04504/OUTMAJ
- 5.4 Where any document is required to be delivered to the County Council it shall be addressed to the Corporate Director of Business and Environmental Services of the County Council or such other officer of the County Council as the County Council may from time to time notify the Owner at the address given in this Deed or such other address as may be notified to it by the County Council from time to time.
- 5.5 Where any document is required to be delivered to the:
- 5.5.1 Owner it shall be sent to Beckstade Grange, Northallerton Road, Knayton, York, YO7 4AL quoting reference Hutton Bank or to such other person or address as the Owner may from time to time direct;
- 5.5.2 Developer it shall be sent to 29-33 Westgate, Thirsk, YO7 1QR quoting reference Hutton Bank or to such other person or address as the Developer may from time to time direct.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is hereby agreed and declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

7. CIL

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

7.1.1 necessary to make the Development acceptable in planning terms;

7.1.2 directly and fairly related to the Development; and

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

8 INTEREST

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

FIRST SCHEDULE

PLANNING OBLIGATIONS TO THE COUNCIL

1 Unless otherwise agreed in writing by the Council the Owner hereby agrees with the Council in its capacity as local planning authority as follows:

Affordable Housing

1 The Owner shall:

1.1 construct and Transfer to the Registered Provider at the Affordable Price the freehold of the Affordable Housing Units; or

1.2 Transfer the freehold of the parts of the Property upon which the Affordable Housing Units are to be constructed to the Registered Provider at the Affordable Price and then construct the Affordable Housing Units in accordance with a build contract as agreed between the Owner and the Registered Provider and made between the Owner and the Registered Provider in accordance with the details approved pursuant to the Permission

1.3 Two of the Affordable Housing Units shall be Transferred to the Registered Provider prior to or on the First Occupation of the 12th Open Market Dwelling and for the avoidance of doubt no more than eleven Open Market Dwellings shall be Occupied until the said transfer in this clause is completed and a copy of the same has been sent to the DC;

1.4 All of the Affordable Housing Units shall be Transferred to the Registered Provider prior to or on the First Occupation of the 24th Open Market Dwelling and for the avoidance of doubt no more than twenty three Open Market Dwellings shall be Occupied until the said transfer is completed and a copy of the same has been sent to the DC;

1.5 In the event that the Registered Provider (RP) does not exchange contracts for a Transfer of all or any number of the Affordable Housing Units in accordance with paragraph 1.1 within twelve weeks of receipt of a draft contract for sale (including a draft transfer) being provided by the Owner on reasonable terms for a transaction of this nature the Owner shall serve a notice on the Council detailing the failure to reach such an agreement with a RP to Transfer the relevant Affordable Housing Units and **PROVIDED THAT** the Council shall be reasonably satisfied that the Owner has used Reasonable Endeavours to reach such an agreement to Transfer the relevant Affordable Housing

Units then in lieu of the provision of the Affordable Housing Units the Owner shall pay to the Council an Affordable Housing Contribution towards the provision of Affordable Housing in the administrative district of the Council calculated in accordance with paragraph 1.8 and such Affordable Housing Units that are not transferred to an RP in accordance with the terms of this clause shall upon such reasonable evidence thereof as required by and being given to the DC no longer be subject to the terms of this Deed and upon receipt by the Council of the Affordable Housing Contribution shall be free to be disposed of as Open Market Dwellings at any tenure and at any price to a person or persons originating from any location.

1.7 Provide the Council with a copy of the draft contract for sale (including draft transfer) referred to in paragraph 1.6 within 2 weeks of submitting the draft contract to the Registered Provider.

1.8 The Affordable Housing Contribution shall be calculated as follows by reference to the number of Affordable Housing Units to which the term applies for the purpose of this paragraph 1.8 or paragraph 1.9 below requires:

$$A - (B + C)$$

Where: A = Open Market Value

 B = the Affordable Price

 C = the Owner's reasonable marketing costs incurred in selling each Affordable Housing Unit on the open market.

1.9 In the event that an Affordable Housing Contribution that is the subject of paragraph 1.6 shall be payable in respect of the Affordable Housing Units the Affordable Housing Contribution shall be paid by the Owner to the Council no later than the First Occupation of the 24th Open Market Dwelling

1.10 The external specifications of the Affordable Housing Units shall be the same as an equivalent Open Market Dwelling and the internal specifications of the Affordable Housing Units are to be agreed between the Owner and the Registered Provider and the Council and the Owner shall provide in relation to the Affordable Housing Units an NHBC warranty or LABC Warranty or Premier Warranty or warranty of another provider approved by the RP.

- 1.11 That (subject to the terms of Clause 4.7) the Affordable Housing Units shall not (save for where consent in writing to do so is given by the DC) be Occupied otherwise than by Eligible Occupiers pursuant to an agreement for rental housing or intermediate housing as defined in Annexe 2 NPPF or any replacement thereof.
- 1.12 The Affordable Housing Units shall comprise 4 (four) Affordable Housing for Rent Units on plots 26, 34, 35 and 37 and 2 (two) Affordable Housing for Sale Units on plots , 27 and 28 unless otherwise agreed in writing by DC in accordance with such other tenure that is defined in Annex 2 of the NPPF.

2 Open Space Contribution

- 2.1 To pay to the Council £30,997.00 of the Open Space Contribution prior to the First Occupation of the 1st Open Market Dwelling and not to permit the First Occupation of any of the Open Market Dwellings until that sum has been paid.
- 1.2 To pay to the Council the whole £61,995.00 of the Open Space Contribution prior to the First Occupation of the 12th Open Market Dwelling and not to permit the First Occupation of more than eleven of the Open Market Dwellings until the whole of the Open Space Contribution has been paid.

3 Public Open Space

- 3.1 To submit to the Council the Open Space Management Plan prior to the Commencement of Development who shall in the event that the Open Space Management Plan requires amendment as soon as reasonably practicable write to the Owner and request such amendment and the Owner shall re-submit the Open Space Management Plan addressing the Council's concerns such procedure to be repeated until the Open Space Management Plan is approved.
- 3.2 Following the completion of the Open Space Works or an individual element of the Open Space Works (as the case may be) to notify the Council by serving a notice in writing upon the Council ("**Owner's Notice**") who shall within 14 days or as soon as reasonably practicable arrange for the inspection of the Open Space Works or the particular element of Public Open Space that has been completed and if the Open Space Works shall have been carried out to the satisfaction of the Council the Council shall issue a certificate of completion ("**Certificate of Completion**") of the Open Space Works or the particular

element of Public Open Space that has been completed such certificate to bear the date of the inspection ("**Completion Date**") **PROVIDED THAT** it is agreed that in the event that the Council does not inspect the Open Space Works or the particular element of Public Open Space that has been completed within 28 days of the date it receives the Owner's Notice then the date ending 35 days after the date it receives the Owner's Notice shall be deemed to be the relevant Completion Date.

- 3.3 If the Open Space Works relating or the particular element of Public Open Space that has been completed have not been carried out to the satisfaction of the Council then following notification in writing by the Council of any defect in writing the Owner shall rectify the defect specified and invite further inspection by the Council in accordance with the procedures set out in paragraph 3.2 such procedures to be repeated as necessary until the Council issues a Certificate of Completion of the Open Space Works or the particular element of Public Open Space that has been completed.
- 3.4 Following service of a Certificate of Completion in accordance with paragraphs 3.2 or 3.3 to transfer the freehold of the Public Open Space, or the particular element of Public Open Space that has been completed, to a Management Company prior to the sale of the penultimate Dwelling on terms agreed between the Owner and the Management Company in consultation with the Council and all further management and maintenance shall thereafter be carried out by the Management Company **PROVIDED THAT** it is agreed that it shall be a term of the transfer to the Management Company that the Management Company will:
- (a) Maintain and manage in perpetuity the Public Open Space in accordance with the Open Space Management Plan incorporating principles of good horticultural and estate management. To ensure that all equipped play areas (if any) within the Public Open Space are inspected on a quarterly basis by a competent person and a record of inspections are recorded; and
 - (b) only allow the use of the Public Open Space for public access and recreation and for no other purpose

AND FURTHER PROVIDED THAT it is agreed that the Owner will comply with the provisions set out in paragraphs 3.3 (a) and (b) from receipt of a Certificate of Completion until such

time as a Management Company has been engaged to undertake the future management and maintenance of the Public Open Space, or the particular element of Public Open Space

- 3.5 The Owner shall procure that the buyer of each Dwelling has entered into (or will enter as appropriate) covenants substantially in the following form direct with the Management Company under which the buyer shall: -

- (a) covenant to pay to the Management Company a pro rata proportion of the reasonable costs and expenses properly incurred by the Management Company in respect of its administration and of insuring and maintaining the Public Open Space; and
- (b) covenant that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.4 (a) and (b).
- (c) For the purposes of paragraph (a) the Management Company contribution applicable to all Dwellings shall be calculated as follows:

$$\frac{A}{B} \times C = \text{Management Company Contribution applicable to each individual Dwelling}$$

Where

- A = Gross internal floorspace area of individual unit in m²
- B = Total gross internal floorspace of all dwellings in m²
- C = Total management fee

- 3.6 It is agreed that in the event that the Management Company ceases operating and / or maintaining the Public Open Space the Owner will maintain or will procure the maintenance of the Public Open Space in accordance with the approved Open Space Management Plan and the provisions set out in paragraphs 3.3 (a) and (b) above until such time as a new Management Company has been engaged to undertake the future management and maintenance of the Public Open Space, or the particular element of Public Open Space

- 3.7 The Owner shall not wind up the Management Company nor alter the constitution of the Management Company without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless otherwise first agreed in writing by the Council.
- 3.8 The Owner shall not permit the First Occupation of any Dwelling which has a direct frontage onto the Public Open Space until the Public Open Space has been completed and a Certificate of Completion has been issued in accordance with paragraphs 3.2 or 3.3 above
- 3.9 The Owner hereby declares so far as they are aware that pursuant to Section 31(6) Highways Act 1980 that the Public Open Space has not been dedicated to the public nor is any use by the public of any part of the Public Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 3.10 The Owner will procure in either case that public access is allowed to the Public Open Space but subject to the following provisions:
- 3.9.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior written approval;
- 3.9.2 the Owner may erect notices on the Public Open Space and access to them will be denied by the Owner if they chose to do so for one day each year in order to prevent public rights of way or common rights coming into being; and
- 3.9.3 access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the Public Open Space or for and during the construction of any building or land abutting it subject to the Council's prior approval.
- 3.11 The Owner may close the Public Open Space or any part thereof for reasonable periods by reason of: -
- 3.11.1 emergency,
- 3.11.2 cleansing, maintenance and repair;
- 3.11.3 at the direction of the emergency services or other lawful authority; and /

3.11.4 construction activities whilst the Development is being built.

4 Employment Plots

- 4.1 The Owner shall offer the Employment Plots for sale or to let prior to the Occupation of the first Dwelling
- 4.2 The Owner shall submit the Employment Plots Marketing Strategy to the Council for its approval (which shall not be unreasonably withheld or delayed and within 14 days) and shall actively market the Employment Plots for a period to be agreed in writing with the Council.
- 4.3 The Owner and the Council shall review the Employment Plots Marketing Strategy on the anniversary of commencement of marketing of the Employment Plots and annually thereafter until either :
 - 4.3.1 the Employment Plots have been successfully disposed of to occupiers; or
 - 4.3.2 the Council have given their consent (which shall not be unreasonably refused) to bring to an end the Employment Plots Marketing Strategy

SECOND SCHEDULE

PLANNING OBLIGATIONS TO THE COUNTY COUNCIL

- 1 Unless otherwise agreed in writing by the County Council the Owner hereby agrees with the County Council in its capacity as the local education authority as follows:-

Education Contribution

- 1.1 To deposit with the County Council prior to the First Occupation of the 1st Open Market Dwelling £35,932.00 of the Education Contribution and not to permit the First Occupation of any of the Open Market Dwellings until that sum has been paid.
- 1.2 To deposit with the County Council prior to the First Occupation of the 12th Open Market Dwelling the balance of £35,933.00 of the Education Contribution and not to permit the First Occupation of more than eleven of the Open Market Dwellings until the whole of the Education Contribution has been paid.

THIRD SCHEDULE

THE COUNCIL AND COUNTY COUNCIL COVENANTS

- 1 The Council and the County Council agree that:
 - 1.1 The Contributions paid to the County Council, and to the Council pursuant to this Deed are deposited with the Council or the County Council (as appropriate) for the purposes set out in the respective definitions in Clause 2.1 for a period of ten years and the Council or the County Council (as appropriate) agree to use those contributions solely for those purposes.
 - 1.2 The Council or the County Council (as appropriate) will repay any sums plus accrued interest that have not been properly and reasonably expended on those purposes for the benefit of the Development following the expiration of the period referred to in paragraph 1.1 above from the date the contribution is paid to the Council or the County Council such expenditure being evidenced by the Council or the County Council (as appropriate) accounting to the Owner for that expenditure if requested in writing by the Owner for a period of two years following the expiration of the relevant period.
 - 1.3 The Council and the County Council shall respond to any request to account for the sums expended within 28 Working Days of that request being made provided that request was made within two years from the expiration of the relevant period mentioned in paragraph 1.1 above and repay any unexpended sums to the person who made the payment (or to that persons nominee) within 28 Working Days of such response.
 - 1.4 The Council shall prior to or within 1 calendar month of Commencement of Development (which the Owner shall promptly notify to the DC in writing) nominate a Registered Provider to whom the Council desires the Affordable Housing Units be transferred to and such nomination shall be made by way of the Council serving on the Owner a written notice Provided Always that such nomination shall be made strictly in accordance with the Council's planning guidance on Negotiating Affordable Housing Contributions dated November 2015 **PROVIDED THAT** it is agreed that if the Council does not nominate a Registered Provider within 1 (one) calendar month (or such other reasonable period of time that may be agreed in writing between the Owner and the Council) of Commencement of Development then the

Owner shall with the prior written approval of the DC be entitled to offer the Affordable Housing Units for Transfer to a RP.

- 1.5 As soon as the Open Space Management Plan has been approved to provide such approval in writing to the Owner PROVIDED THAT it is agreed that in the event that the Council does not respond in writing within 30 Working Days of the date it receives the Open Space Management Plan then the Open Space Management Plan shall be deemed to be approved.
- 1.6 As soon as the Employment Plots Marketing Strategy has been approved to provide such approval in writing to the Owner PROVIDED THAT it is agreed that in the event that the Council does not respond in writing within 30 Working Days of the date it receives the Employment Plots Marketing Strategy then the Employment Plots Marketing Strategy shall be deemed to be approved.

FOURTH SCHEDULE

Draft Permission

DRAFT

Prime Talent Ltd
c/o Addison Planning Consultants Ltd
Mr Jay Everett
Floor 3 Calls Landing
36-38 The Calls
Leeds
LS2 7EW

Our ref: 18/04504/OUTMAJ
Your ref: PP-07365767
Date:

NOTICE OF DECISION ON PLANNING APPLICATION

TOWN AND COUNTRY PLANNING ACT 1990

PROPOSAL: OUTLINE PLANNING APPLICATION FOR ERECTION OF 37 DWELLINGS (DETAILS OF ACCESS AND LAYOUT SUBMITTED) TOGETHER WITH THE CREATION OF SERVICED EMPLOYMENT PLOTS (B1c Use Class)
LOCATION: 2 Hutton Bank Ripon HG4 1TZ
APPLICANT: Prime Talent Ltd

Harrogate Borough Council being the Local Planning Authority for the purposes of the application received on 29 October 2018 for Full Planning Permission, as described above, have resolved to

GRANT PLANNING PERMISSION SUBJECT TO CONDITIONS.

The conditions to which the permission is subject are as follows:

- 1 No development shall take place without the prior written approval of the Local Planning Authority of all details of the following reserved matters -
 - (a) appearance;
 - (b) landscaping;
 - (c) scale.

Thereafter the development shall not be carried out otherwise than in strict accordance with the approved details.

(ii) an assessment of the potential risks to:

- * human health,
- * property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- * adjoining land,
- * groundwaters and surface waters
- * ecological systems
- * archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

B. SUBMISSION OF REMEDIATION SCHEME

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

C. IMPLEMENTATION OF APPROVED REMEDIATION SCHEME

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise approved in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

D. REPORTING OF UNEXPECTED CONTAMINATION

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirement of section A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of section B, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with section C.

- 9 Before the development is first brought into use all works which form part of the sound attenuation scheme as specified in the Noise Report dated May 2019 Reference DC3010-R1v3 May 2019 produced by Dragonfly :-

machinery) until the root protection area (RPA) works required by the approved tree protection scheme and ground protection detail (no dig) are in place.

b) The level of the land within the fenced areas shall not be altered without the prior written consent of the Local Planning Authority.

- 16 No phase of the development shall take place until detailed drawings have been submitted to, and approved by the Local Planning Authority showing how surface water will be managed during the construction phases.
- 17 Prior to the commencement of any soil stripping or foundation works to any of the buildings, drawings shall be submitted to, and be agreed by the Local Planning Authority in consultation with the Lead Local Flood Authority and Yorkshire Water, showing details of the proposed surface water drainage strategy. No piped discharge of surface water from the application site shall take place until the approved works to provide a satisfactory outfall has been completed. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and will include:
- (a) peak flow rates of discharge to the public sewer network, rate to be agreed with Yorkshire Water.
 - (b) a drainage system designed with sufficient on site attenuation so that flooding does not occur on any part of the site for a 1 in 30 year rainfall event, nor any flooding for a 1 in 100 year rainfall event in any part of a building (including a basement) or in any utility plant susceptible to water (e.g. pumping station or electricity substation) within the development, except within an area that is designed to hold and/or convey water. The design shall also ensure that storm water resulting from a 1 in 100 year rainfall event, plus an allowance of 40% to account for climate change & urban creep can be stored on the site without risk to people or property and without increasing the restricted flows off site.
 - (c) full hydraulic calculations to confirm attenuation storage requirements
 - (d) proposed control measures to manage pollution from vehicle parking and hard standing areas if required.
 - (e) an exceedance flood routing plan which shall demonstrate where flooding could potentially occur if the designed drainage systems were to be exceeded or fail for any reason including rainfall in excess of the 1 in 100 year event. The routing map should indicate direction of flood flows, highlighting areas that could flood and to what depth. The plan must demonstrate that exceedance flows will not cause risk or flooding to property/people on or off site.
 - (f) details with regard to the maintenance and management of the approved scheme to include; drawings showing any surface water assets to be vested with the statutory undertaker/highway authority and subsequently maintained at their expense, and/or any other arrangements to secure the operation of the approved drainage scheme/sustainable urban drainage systems throughout the lifetime of the development including:
 - (i) details to demonstrate how the maintenance of any privately managed surface water drainage systems will be funded for the lifetime of the development,
 - (ii) details of the organisation appointed to undertake future management and maintenance of the private surface water drainage systems on behalf of the residents, including full contact details and to whom will be responsible for appointing a new maintenance contractor if the existing company fails in its duties for any reason, or ceases to exist,
 - (iii) drawings showing any surface water assets that will not be maintained at public expense,

(8) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings and details.

- 20 No dwelling or commercial unit to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation.

The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the Local Planning Authority in consultation with the Highway Authority before the first building of the development is occupied.

- 21 a) There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

b) The works shall be implemented in accordance with the approved details and programme.

- 22 There will be no excavation or other groundworks, except for investigative works, or the depositing of material on the site in connection with the construction of the access road or building(s) or other works until:
- (i) The details of the required highway improvement works, listed below, have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.
 - (ii) An independent Stage 2 Safety Audit has been carried out in accordance with HD19/03 - Road Safety Audit or any superseding regulations.
 - (iii) A programme for the completion of the proposed works has been submitted.
- The required highway improvements shall include:
- a. Improvements to the Hutton Bank roundabout as per drawing number 001 Rev B Proposed Site Access and Highway Improvements by Cora

- 23 Unless otherwise approved in writing by the Local Planning Authority in consultation with the Highway Authority, the development shall not be brought into use until the following highway works have been constructed in accordance with the details approved in writing by the Local Planning Authority under condition number 22:
- a. Improvements to the Hutton Bank roundabout as per drawing number 001 Rev B Proposed Site Access and Highway Improvement by Cora

- 24 a) No dwelling shall be occupied and no commercial unit brought into use until the related parking facilities have been constructed in accordance with the approved drawing site plan.

- 9 In the interests of residential amenity for the future occupiers of the development.
- 10 To ensure appropriate mitigation for bats (which are European Protected Species) can be incorporated into the final scheme, and conditioned if required, prior to the determination of reserved matters.
- 11 To ensure that harm to protected species and to retained vegetation and habitats is avoided during construction and site preparation and clearance.
- 12 To provide ecological mitigation and improvements in accordance with NPPF.
- 13 In the interests of residential amenity on the site and neighbouring properties and to protect disturbance to the bat roost on North Bridge.
- 14 To ensure protection of trees on site during construction.
- 15 To ensure protection of trees on site during construction.
- 16 To ensure surface water is properly managed through the construction phases of the development.
- 17 To ensure the site is properly drained for the lifetime of the development.
- 18 In the interest of satisfactory and sustainable drainage.
- 19 In the interests of highway safety
- 20 To ensure safe and appropriate access and egress to the buildings, in the interests of highway safety and the convenience of prospective residents/users.
- 21 In the interests of highway safety.
- 22 To ensure that the details are satisfactory in the interests of the safety and convenience of highway users.
- 23 The interests of the safety and convenience of highway users.
- 24 To provide for adequate and satisfactory provision of off-street accommodation for vehicles in the interest of safety and the general amenity of the development.
- 25 To ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.
- 26 In the interests of highway safety and the general amenity of the area.
- 27 To protect the amenity of existing, neighbouring residential properties.
- 28 To reflect the approved layout and for the avoidance of doubt.

NOTE: No consent, permission or approval hereby given absolves the applicant from the necessity of obtaining the approval, under the Building Regulations, of the District Council in whose area the proposed development is situated, or of obtaining approval under any other bye-laws, local acts, orders, regulations and statutory provisions in force, and no part of the proposed development should be commenced until such further approval has been obtained.

Discharging Conditions – A fee is payable for the discharge of conditions attached to planning and other applications. Applications must be made in writing clearly identifying the application number and the conditions. The standard application form can be used but is not mandatory. The scale of fees can be found on the planning website www.harrogate.gov.uk/planning. Please note a fee is payable for each separate request and applications should be determined within 8 weeks of a valid request being received.

NOTE TO APPLICANT/AGENT: The Borough Council posted a site notice publicising this application. If it is still on display, please remove it.

IT IS IMPORTANT THAT YOU SHOULD READ THE NOTES SET OUT OVERLEAF.

FIFTH SCHEDULE

Plan

Schedule of Accommodation

to be read in conjunction with drawing no 3081-0-001-1

Reference	No. of Beds	Type	No. of Units	Percentage	Sq. Ft. (GIA)	Total Sq. Ft. (GIA)
HTA	1/2	Semi-detached	3	6.98	650.00	1950.00
HTB	2	Semi/Terrace	14	32.56	808.00	11312.00
HTC	3	Semi-detached	8	18.60	915.00	7320.00
HTD	1/3	Detached	4	9.30	1000.00	4000.00
HTD2	3	Semi-detached	1	2.33	1000.00	1000.00
HTD3	3	Semi-detached	1	2.33	1000.00	1000.00
HTE	4	Detached	6	13.95	1500.00	9000.00
	n/a	Commercial/Industrial	4	9.30	1500.00	6000.00
3	n/a	Commercial/Industrial	2	4.65	1650.00	3300.00
Totals			43	100.00		44882.00

policy compliant' 40% affordable subject to VBC and Viability



Hutton Bank, **RIPON**

W. Cooley

22908

PLANNING

[illegible]

SIXTH SCHEDULE

List of Options

- The purchase and improvement of existing open market dwellings (including empty properties)
- The purchase of new build affordable homes on mixed tenure sites
- The purchase and conversion of existing buildings to residential use
- Support for the provision of affordable housing to meet a specific need e.g. accommodation for people with learning disabilities
- Support for specific initiatives to regenerate the existing housing stock, e.g. empty property grants/loans which give the council tenancy nomination rights
- Funding new affordable homes built on council owned sites
- Funding viability shortfalls on development sites or securing more affordable homes than are required under planning policy (where the developer is willing)
- Provision of additional subsidy to secure the delivery of a scheme funded through Homes England grant
- Funding a first time buyer and/or mortgage rescue equity loan scheme
- Improving affordability by changing affordable tenure, e.g. (shared ownership to rent)
- Assisting in the provision of affordable housing through contributions to the council's administrative and technical costs, which may include staff salaries

EXECUTED as a deed in the manner hereinafter but not delivered until the day and year first written

EXECUTED AS A DEED by)

PRIMETALENT LIMITED)

acting by a Director in the presence of: -)

W Calvert

L. H. M.
L12 ATKINSON
29.33 Westgate 457 12R
Atkinson

SIGNED and DELIVERED as a **DEED**)

by **MALCOLM DENNIS HOLDER**)

in the presence of: -)

M. Dennis Holder

Witness Signature:

L. H. M.

Witness Name:

L12 ATKINSON

Witness Address:

29.33 Westgate 457 12R

Witness Occupation:

Atkinson

The Common Seal of **THE COUNCIL OF THE**)

BOROUGH OF HARROGATE was hereunto)

affixed under the authentication of:)



[Signature]

Head of Legal & Governance

[Signature]

Chief Solicitor

The Common Seal of **NORTH YORKSHIRE**)
COUNTY COUNCIL was hereunto affixed in)
the presence of:)



W. Corden
Authorised Signatory