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west side of South Road, Durham registered at the Land Registry under title number [ ] shown edged red on Plan 1;

"Relevant Date"	as defined in clause 5.8.2;
"Service Charge"	As defined and calculated in accordance with clause 5
"SUDS"	the sustainable urban drainage system serving the Property and more particularly defined in the SUDS Agreement;
"SUDS Agreement"	a deed dated [ ] between (1) [ ] (2) the Council and (3) Northumbrian Water Limited;
"Transferred"	the date the Council takes the freehold ownership of the SUDS and "Transfer" shall be construed accordingly

## 1.1. Interpretation

- 1.1.1. Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated and (in each case) vice versa.
- 1.1.2. References to a party include where the context admits references to his personal representatives and successors in title.
- 1.1.3. Unless otherwise stated a reference to a clause, sub-clause or Schedule is a reference to a clause, sub-clause or Schedule of this deed.
- 1.1.4. The headings in this deed are for ease of reference only and do not affect its interpretation.
- 1.1.5. Where a party consists of two or more persons every agreement by or with such persons shall be deemed to be made by or with them jointly and severally and service of a notice on any such person shall be deemed to be service on that party.

## 2. **Recitals**

- 2.1. Subject to the terms of the SUDS Agreement and the payment of Estate Rentcharge the Council has agreed to be responsible for the management, maintenance and ownership of the SUDS from the date the SUDS is Transferred to the Council.
- 2.2. The parties have agreed to enter into this Deed for:

- 2.2.1. the entering into of covenants by the Council for the benefit of the Property in relation to the management and maintenance of the SUDS; and
- 2.2.2. to reserve to the Council out of the Property an Estate Rentcharge to cover the costs incurred or to be incurred by the Council in relation to the performance of the covenants and obligations as hereinafter contained.

3. **Grant of Estate Rentcharge**

The Owner with full title guarantee hereby grants and reserves to the Council out of the Property a perpetual yearly estate rentcharge ("the Estate Rentcharge") to be forever charged on and issuing out of the Property for the amounts and to be paid on the dates as hereinafter provided without any deduction and together with the powers and remedies for securing and compelling payment thereof conferred by section 121 of the Law of Property Act 1925.

4. **Grant of Right of Access**

The Owner with full title guarantee hereby grants to the Council for the benefit of the Estate Rentcharge and the SUDS the right to enter upon any unbuilt upon part of the Property (with or without vehicles, machinery or other equipment) and (except in case of emergency) at all reasonable times so far as is reasonably necessary for the performance by the Council of the obligations contained herein.

5. **Covenants and Provisions relating to the payment of the yearly Estate Rentcharge**

5.1. The Owner covenants to pay to the Council the Estate Rentcharge which is to be equal to the Percentage of a yearly sum ("the Service Charge") such sum being the amount required to meet:

- 5.1.1. the reasonable and proper costs and expenses of complying with the covenants on the part of the Council set out in clause 6 hereof;
- 5.1.2. the reasonable and proper costs and expenses incurred by the Council for the management and operation of the SUDS for the benefit of the Property set out in clause 6 hereof;
- 5.1.3. such reasonable provision on account of expenses, outgoings and other expenditure not as an annually recurring nature (whether non-recurring by regular or irregular periods of more than one year) whenever to be dispersed or incurred or made to the Council and as the Council may in its reasonable discretion allocate to the year in question as being fair and reasonably foreseeable (acting reasonably in accordance with generally accepted principles of good estate management) so that so far as is reasonably practicable the Service Charge shall not fluctuate unduly from year to year;
- 5.1.4. all rates, community charge, taxes and outgoings in respect of the SUDS including any imposed or becoming payable after the date hereof and whether or not of a novel nature;

- 5.1.5. all value added tax (if any) payable in respect of the Service Charge and its constituent items (save where the same can be recovered as an input tax credit);
- 5.1.6. the reasonable and proper costs incurred by the Council in relation to such policies of insurance as it shall reasonably consider appropriate whether in relation to the SUDS or the Council its officers or otherwise;
- 5.1.7. all professional fees and expenses as shall be incurred from time to time by the Council in relation to the proper performance of its duties and obligations or in compliance with statutory requirements;
- 5.1.8. all such other reasonable and proper expenditure as may be incurred from time to time by the Council in relation to such further actions or arrangements it shall reasonably consider appropriate for the benefit of the SUDS.

Provided always that the Council may withhold, add to, extend, vary or make any alterations in relation to the services and obligations that it is obliged to supply under the provisions hereof as it may reasonably deem desirable or expedient to do so for the more efficient conduct and management of the SUDS or generally from improving the quality and standard thereof.

- 5.2. The Estate Rentcharge is payable annually in advance and in perpetuity and shall be equal to the Percentage of such Service Charge as the Council may consider reasonably necessary to meet anticipated expenditures in each 12 month period. The Council shall notify the Owner in writing of the anticipated Service Charge and Percentage payable on or about the first day of February in every year (or on such other dates in the relevant years the Council shall reasonably consider appropriate) following upon the date hereof.
- 5.3. Payment of the amount specified in the said notice shall be payable upon the first day of April in every year (provided that in the relevant year notice has been served by the Council prior to that date) or otherwise within the period of 14 days of the serving by the Council of the said notice or upon such other dates throughout the relevant year as the Council shall notify to the Owner.
- 5.4. In calculating the amount of the Service Charge from time to time the Council shall take into account any past efficiency and any future expenditure (whether annual or recurring or not) which may be likely to be incurred by the Council so as to enable the Council to meet such expenditure out of funds in the hands of the Council as and when such expenditure shall be incurred and shall also take into account and give due allowance for any surplus arising out of payments of the Estate Rentcharge previous collected but not in the event wholly expended and having regard to the provisions contained in the SUDS Agreement.
- 5.5. The Initial Payment of the Service Charge (or any apportionment) shall be payable on the date or dates that the Council shall consider appropriate and having regard at all times to the date of [the Transfer of the SUDS to the Council] and being such sum (if any) of the Council's anticipated reasonable estimates in relation to its initial expenditure.
- 5.6. The Council nominates the Owner to maintain the SUDS in accordance with the [Management Plan] until such time as the SUDS is Transferred to the Council

- 5.7. The Council shall keep proper audited accounts in relation to the affairs of the Council and the Owner shall be entitled from time to time to call at the office of the Council or of the agent (if agents are employed) upon first giving reasonable prior notice of intention and to inspect such accounts and to be provided with copies of the same and satisfy itself from the information supplied as to the due amount of the Service Charge.

Provided that:

- 5.7.1. the Owner shall not be entitled to withhold payment of Initial Payment or the Percentage as the case may be as is then due until it has made such inspection of accounts or satisfied itself of the aforesaid; and
- 5.7.2. the Council or such agents shall not (in any event or on inspection) so far as it has acted reasonably and in accordance with generally accepted principles of estate management or Council administration be required to provide or justify any amount charged in the Service Charge to meet anticipated expenditure of aforesaid.
- 5.8. It is hereby provided that (in addition to the statutory and other powers and remedies aforesaid) if at any time hereafter the Estate Rentcharge hereby reserved is in arrears and unpaid in whole or in part for six calendar months next after any of the days hereby appointed for payments thereof then notwithstanding the waiver of any previous default it shall be lawful for the Council or its successors in title, owner or owners of the Estate Rentcharge at any time thereafter to enter into upon the Property or any part thereof in the name of the whole and henceforth to have hold enjoy the same and the rents profits thereof as the owner thereof in fee simple and the same shall be held in trust for or vested in it or them accordingly provided always that if:

- 5.8.1. at any time or an event occurs which gives rise to the right of re-entry in accordance with the above provision ("Event of Default") and
- 5.8.2. at the date of occurrence of the Event of Default ("Relevant Date") there is subsisting any mortgage or charge over or affecting the whole or any part of the Property ("the Charge") and on or behalf the Relevant Date the Council or its solicitors have received written notification (expressly given for the purposes of this provision) of the name of the persons entitled to the benefit of the Charge ("the Chargee") and if the address for service of the Chargee for the purposes of this proviso ("Address for Service")

then unless the Council has first given to the Chargee at its Address for Service not less than 90 days notice of its intention to do so the Council transferor shall not be entitled to exercise any of its rights of re-entry in respect of the Event of Default nor shall the Council exercise such right until the date of expiry of such notice during which period the Owner from time to time of the Property (or relevant part thereof) or the Chargee shall be at liberty to remedy any alleged Event of Default.

6. **The Council's Covenants**

The Council covenants with the Owner and its successors in title to each and every part of the Property that from the date the SUDS is Transferred to the Council:

- 6.1. to manage the operation of the SUDS for the benefit of the and the Property
- 6.2. to maintain the SUDS in accordance with and to no less a standard as required by the SUDS Agreement.

7. **Legal Apportionment of Estate Rentcharge**

- 7.1. Subject to complying with the provisions of clause 0 the Council hereby consents to the Owner effecting a formal apportionment of the Estate Rentcharge in respect of each and any individual residential unit constructed on the Property pursuant to the Development such formal apportionment in respect of each residential unit to be calculated on the basis of  $1/X \times Y$  where:

"X" = the number of residential units to be constructed on the Property [or the total plot area for each dwelling; and

"Y" = the Percentage A certified copy of the completed Deed of Apportionment referred to in clause 7.1 shall be provided to the Council as soon as reasonably practicable following the date of completion of the sale of the relevant residential unit.

- 7.2. On the date of completion of the sale of the 60<sup>th</sup> residential unit constructed on the Property and the Transfer of the Developer's Land pursuant to the SUDS Agreement the liability of [ ] in respect of the covenants and obligations on the part of the Owner in this Deed shall cease except that liability will not so cease in respect of any claims begun before the Transfer and accrued and identified rights of action in respect of which the Council has given notice to the Owner of or intention to make a claim before the Transfer .

8. **Agreements and Declarations**

It is hereby agreed and declared by and between the parties:

- 8.1. the Council shall be entitled to employ and pay either directly or indirectly such persons, firms, or Council whether whole or part time as may be reasonably necessary to carry out any duties which may be required in the performance of its obligations contained herein or for the general conduct and management of the SUDS or otherwise in relation to the affairs (including the employment of managing agents, solicitors, accountants or such other professional persons as the Council shall from time to time deem appropriate);
- 8.2. the Council shall be entitled to enter into any arrangements which it reasonably deems necessary or appropriate for the efficient and proper management organisation and maintenance the SUDS by the Council;

9. **Execution**

- 9.1. The parties have executed this Deed as a deed and it is delivered on the date set out on Page 1.

**EXECUTED** as a **DEED** (but not delivered until the date of it) by the affixing of **THE COMMON SEAL OF THE COUNTY COUNCIL OF DURHAM** in the presence of:

Authorised Sealing Officer  
(A permanent Officer of the County Council)

**EXECUTED AS A DEED** by  
[     ] by [     ] and [     ]  
and in exercise of the powers conferred on them by a Power of Attorney dated [     ] who has set the name of [     ] signed by in the presence of:-

Signed by witness .....  
(signature of witness)

Name: .....

Address: .....

.....

Occupation: .....

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