

DATED

7<sup>th</sup>

August

2017

**THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE**

**AND**

**SOUTH TYNESIDE HOUSING VENTURES TRUST LIMITED**

**AGREEMENT**

Under section 106 of the Town and Country Planning Act 1990

Land at Salcome Avenue, Jarrow

Mike Harding  
Head of Legal Services  
South Tyneside Council  
Town Hall and Civic Offices  
Westoe Road  
South Shields  
Tyne and Wear  
Ref: BB/L/14947

THIS AGREEMENT is made on

7<sup>th</sup>

August

2017

**BETWEEN:**

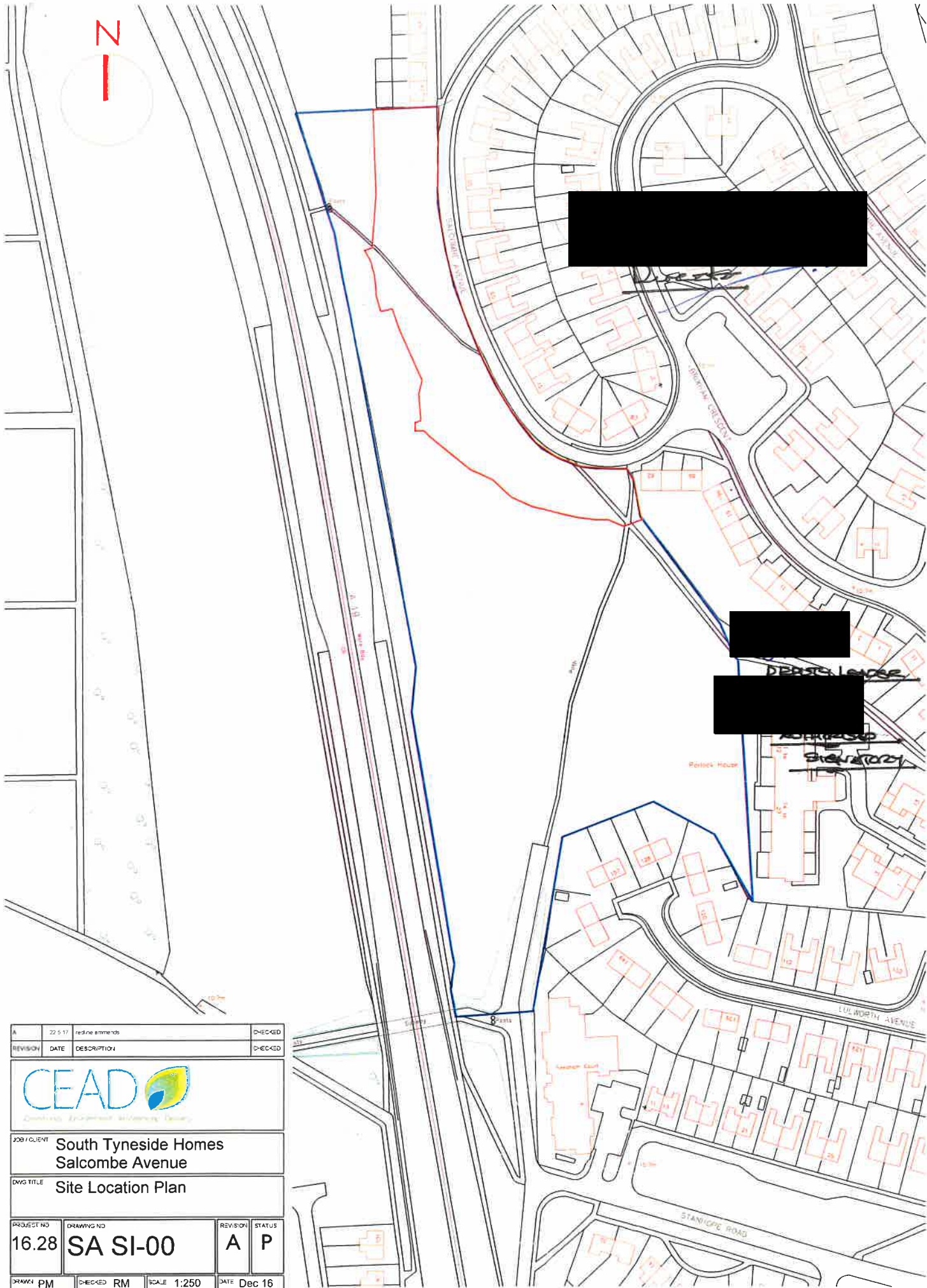
- (1) **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall & Civic Offices, Westoe Road, South Shields, Tyne & Wear, NE33 2RL ("the Council"); and
- (2) **SOUTH TYNESIDE HOUSING VENTURES TRUST LIMITED** (Registered Company Number 08626890) of Strathmore, 11 Rolling Mill Road, Jarrow, Tyne and Wear NE32 3DP ("the Developer").

**BACKGROUND**

- A. For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- B. The Developer has by way of contract dated [7<sup>th</sup> August 2017] 2017 between the Council and the Developer agreed to acquire the Site free from encumbrances that would prevent the Developer entering into the Agreement.
- C. South Tyneside Homes Limited has submitted the Planning Application to the Council and the parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement will run with the land and bind successors in title.
- D. The Council having regard to all material considerations resolved at its meeting on 19 June 2017 that it was minded to grant Planning Permission subject to completion of this Agreement.
- E. The Parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Developer and its successors in title to the Site.

**OPERATIVE PROVISIONS**

1. **INTERPRETATION**



A	22.5.17	redline amends	CHECKED
REVISION	DATE	DESCRIPTION	CHECKED



JOB / CLIENT South Tyneside Homes  
Salcombe Avenue

DWG TITLE Site Location Plan

PROJECT NO	DRAWING NO	REVISION	STATUS
16.28	SA SI-00	A	P

DRAWN	PM	CHECKED	RM	SCALE	1:250	DATE	Dec 16
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STATUS: 0=Draft #=Review P=Planning T=Tender C=Construction S=As Built

1.1. In this Agreement, the following words and expressions have the following meanings:

**"1990 Act"**

The Town and Country Planning Act 1990

**"Affordable Housing"**

subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market within the definition of affordable housing contained in Annex 2 of the National Planning Policy Framework or any subsequent replacement or modification thereof (including any successor policy or legislation in respect of affordable housing)

**"Affordable Housing Provider"**

a body whose functions or aims include the provision or management of Affordable Housing (including affordable housing of the type and amount proposed within the Development) including a Housing Association, Housing Company or Trust registered as a Registered Provider (pursuant to the Housing Act 1996, the Housing and Regeneration Act 2008 or any relevant successor legislation)

**"Affordable Housing Units"**

5 of the Dwellings comprised within the Development as may be designated by the Developer that are to be provided as Affordable Housing in perpetuity subject to the terms of this Agreement

**"Chargee"**

a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including

	a housing administrator (each a Receiver))
<b>“Commencement Date”</b>	the date specified in <b>clause 3.1</b>
<b>“Commencement of Development”</b>	the commencement of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act other than operations specified in clause 3.2 and the words “Commence the Development” or “Commenced” shall be construed in the same way
<b>“Development”</b>	the development of the Site as described in the Planning Application for the erection of 20 dwellings comprising 6 apartments, 10 bungalows and 4 houses including associated parking, landscaping and highways improvements
<b>“Dwelling”</b>	each of the residential dwellings to be constructed on the Site pursuant to the Planning Permission and ‘Dwellings’ shall be construed accordingly
<b>“Nomination Agreement”</b>	the agreement between the Parties for nominating occupiers of the Affordable Housing as set out in Schedule 3
<b>“Occupation”</b>	occupation of any Dwelling comprised within the Development for the purpose authorised by the Planning Permission and for the avoidance of doubt shall not include occupation for the purpose of constructing, fitting out or marketing of the Development or occupation in relation to security operations and occupiers shall be construed accordingly

<b>“the Plan”</b>	the plan attached to this agreement
<b>“Planning Application”</b>	the application for full planning permission for the carrying out of the Development and carrying the reference ST/1258/16/LAA
<b>“Planning Permission”</b>	the planning permission that may be granted for the Development set out substantially in the form of that contained in Schedule 1
<b>“Protected Tenant”</b>	a former tenant of an Affordable Housing Unit who purchases that Affordable Housing Unit under the provisions of the Right to Acquire created by s.16 of the Housing Act 1996 or the Preserved Right to Buy created by Part V of the Housing Act 1985 or any other statutory right in force from time to time
<b>“Site”</b>	The freehold land known as land to the west of Salcombe Avenue, Jarrow and shown edged red on the Plan

1.2. In this Agreement:

- 1.2.1. the clauses do not affect its interpretation;
- 1.2.2. unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3. references to any statute or statutory provision include references to:
  - 1.2.3.1. all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

- 1.2.3.2. any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
  - 1.2.4. references to the Site include any part of it;
  - 1.2.5. references to any party in this Agreement include the successors in title of that party and references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
  - 1.2.6. "including" means "including, without limitation";
  - 1.2.7. any covenant by the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
  - 1.2.8. where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
  - 1.2.9. if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.
  - 1.2.10 Any covenant on the part of the Developer shall not be enforceable against the Developer until the date of the transfer to it of the freehold interest in the Site.
- 1.3. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## 2. **EFFECT OF THIS AGREEMENT**

- 2.1. This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2. To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into

pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.

- 2.3. Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4. This Agreement will be registered as a local land charge by the Council.
- 2.5. Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.

### 3. **COMMENCEMENT DATE**

- 3.1. Subject to clause 3.2, following the grant of the Planning Permission the obligations contained in this Agreement will come into effect on the date the development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act.
- 3.2. The Commencement Date will not be triggered by any of the following operations:
  - 3.2.1 site clearance and demolition work;
  - 3.2.2 site investigations or surveys;
  - 3.2.3 site decontamination;
  - 3.2.4 the re-grading of the Site;
  - 3.2.5 works connected with infilling;
  - 3.2.6 works for the provision of drainage or mains services to prepare the Site for development including service diversions;
  - 3.2.7 works for construction of boundary fencing or hoarding or for the temporary display of site notices or advertisements; or
  - 3.2.8 Archaeological investigations.



**4. OBLIGATIONS OF THE DEVELOPER**

4.1. The Developer covenants with the Council to comply with the obligations set out in Schedule 2 in relation to the Development.

4.2. No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights nor the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 4.2.

**5. TERMINATION OF THIS AGREEMENT**

5.1 This Agreement will come to an end if:

5.1.1 subject to clause 5.2, the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.3 the Planning Permission expires before the Commencement Date without having been implemented.

5.2 Clause 5.1 will not apply in respect of any non-material change(s) to the Planning Permission approved by the Council pursuant to an application submitted by the Developer under section 96A of the 1990 Act.

5.3 Where the Agreement comes to an end under clause 5.1 the Council at its own costs is, on the written request of the Developer, to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

**6. NOTICES**

6.1. Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.

6.2. Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.

6.3. Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.3.1. if delivered by hand, at the time of delivery;

6.3.2. if sent by post, on the second working day after posting; or

6.3.3. if sent by recorded delivery, at the time delivery was signed for.

6.4. If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

6.5. For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **7. COSTS OF THIS AGREEMENT**

7.1. Upon completion of this Agreement the Developer is to pay to the Council £800 in connection with the preparation, negotiation and completion of this Agreement.

## **8. DETERMINATION OF DISPUTES**

8.1. Subject to clause 8.7, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.2. For the purposes of this clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.3. Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.

8.4. Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or the next most senior available officer of the Law Society.

8.5. The Specialist is to act as an independent expert and:

8.5.1. each party may make written representations within ten working days of his appointment and will copy the written representations to the other party;

8.5.2. each party is to have a further ten working days to make written comments on the other's representations and will copy the written comments to the other party;

8.5.3. the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4. the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

8.5.5. the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.5.6. the Specialist is to use all reasonable endeavours to publish his decision within 30 working days of his appointment.

8.6. Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.7. This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

## 9. **JURISDICTION**

9.1. This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

9.2. The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Council who retain the right to sue the Landowner and the Developer and enforce any judgment against the Landowner and the Developer in the courts of any competent jurisdiction.

## 10. **EXECUTION**

10.1. The parties have executed this Agreement as a deed and it is delivered on the date set out above.

**SCHEDULE 1**  
**Planning Permission**



## South Tyneside Council

### DRAFT NOTICE OF GRANT OF PLANNING PERMISSION

Town and Country Planning Act 1990

Town and Country Planning (Development Management Procedure)  
(England) Order 2015

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**Contact Name and Address:**

CEAD Architects  
FAO Mr Roger Maier  
Toffee Factory  
Lower Steenberg's Yard  
Quayside  
Newcastle upon Tyne  
NE1 2DF

**Application No:** ST/1258/16/LAA

**Date of Issue:** xxxxxxxx

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In pursuance of their powers under the above mentioned Acts, South Tyneside Council as Local Planning Authority hereby **GRANT** planning permission for the following:

**PROPOSAL:** Erection of 20no. new dwellings comprising 6 apartments, 10 bungalows and 4 houses including associated parking, landscaping and highways improvements.

**LOCATION:** Land adjacent to Salcombe Avenue, Jarrow, NE32 3SN

In accordance with your application dated 23 December 2016

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**SUBJECT TO THE FOLLOWING CONDITION(S) AND REASON(S):**

1 Time Limit

The development to which this permission relates must be commenced not later than 3 years from the date of this permission.

As required by Section 91 of the Town and Country Planning Act 1990 and to ensure that the development is carried out within a reasonable time.

2 Approved Plans

The development shall be carried out in accordance with the approved plan(s) as detailed below

Drg. No. SA. SP.02 Rev H (Proposed Site Layout Plan) received 01 June 2017  
Drg. No. SA. SP.04 (Bungalow - Proposed Roof Plan) received 08 February 2017  
Drg. No. SA. EL.05 (Bungalow - Proposed Elevations) received 08 February 2017  
Drg. No. SA. PL.05 (Bungalow - Proposed Ground Floor Plan) received 08 February 2017  
Drg. No. SA. SC.10 (Bungalow - Proposed Section) received 23 December 2016  
Drg. No. SA. EL.06 Rev A (Terraced Houses - Proposed Elevations) received 08 February 2017

Drg. No. SA.PL.07 Rev A (Terraced Houses - Proposed Floor Plans) received 08 February 2017  
Drg. No. SA.PL.06 Rev A (Terraced Houses - Proposed Roof Plan) received 08 February 2017  
Drg. No. SA.SC.10 Rev A (Terraced Houses - Proposed Section) received 05 June 2017  
Drg. No. SA.EL. 03 (Apartment Plots 1-4 Front and Rear Elevations) received 08 February 2017  
Drg. No. SA.EL. 05 Rev A (Apartment Plots 1-4 Gable Elevations) received 27 April 2017  
Drg. No. SA.PL.02 (Apartment Plots 1-4 Roof Plan) received 08 February 2017  
Drg. No. SA.PL. 09 Rev A (Apartment Plots 1-4 Proposed Floor Plans) received 27 April 2017  
Drg. No. SA.EL. 07 (Apartment Plots 19-20 - Proposed Elevations) received 05 June 2017  
Drg. No. SA.PL. 08 (Apartment Plots 19-20 - Proposed Roof Plan) received 08 February 2017  
Drg. No. SA.SC. 10 (Apartment Plots 19-20 - Proposed Section) received 23 December 2016  
Drg. No. PG.PL.09 Rev A (Apartment Plots 19-20 - Proposed Floor Plans) received 05 June 2017

Any minor material changes to the approved plans will require a formal planning application under S73 of the Town and Country Planning Act 1990 to vary this condition and substitute alternative plans.

In order to provide a procedure to seek approval of proposed minor material change which is not substantially different from that which has been approved.

### 3 External Materials

Notwithstanding the details already submitted, the development shall not be commenced until samples and details of all external materials for the dwellings and hard surface areas hereby approved have been submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved details.

To ensure a satisfactory standard of development in the interests of visual amenity in accordance with Development Management Policy DM1 of the South Tyneside Local Development Framework.

### 4 Contaminated Land

Notwithstanding the details already submitted, a Site Investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any construction works on site. The Site Investigation and risk assessment shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site, and it shall be undertaken by competent persons. The written report of the findings must include (i) a survey of the extent, scale and nature of contamination (including groundwater); (ii) an assessment of the potential risks to human health, property (existing or proposed) and (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'.

To ensure the site is suitable for the proposed end use in accordance with Core Strategy Policy EA5 and Development Management Policy DM1 of the South Tyneside Local Development Framework.

- 5 A Detailed Remediation Strategy for the proposed remedial works shall be submitted to, and approved in writing by the Local Planning Authority prior to commencing remedial works. 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. Where remediation of gas has been identified as necessary by the site investigation a gas verification plan shall be submitted for the proposed gas protection measures. 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.

To ensure the site is suitable for the proposed end use in accordance with Core Strategy Policy EA5 and Development Management Policy DM1 of the South Tyneside Local Development Framework.

- 6 Following completion of measures identified in the approved remediation strategy, 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 prior to the site being occupied.

To ensure the site is suitable for the proposed end use in accordance with Core Strategy Policy EA5 and Development Management Policy DM1 of the South Tyneside Local Development Framework.

- 7 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. Sufficient detail should be provided identifying how the unexpected contamination will be dealt with.

To ensure that the site is suitable for the proposed end use in accordance with Core Strategy Policy EA5 and Development Management Policy DM1 of the South Tyneside Local Development Framework.

## 8 Flood Risk

The development hereby approved shall be carried out in complete accordance with the detailed drainage proposals included within the 'Flood Risk Assessment and Drainage Strategy' (December 2016) Revision B received 31/03/2017. As such, foul flows must discharge to the combined sewer within Salcombe Avenue and surface water must discharge at a capacity rate not exceeding 5l/sec to the surface water sewer at manhole 6302. Any amendments to these approved drainage proposals shall be submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water.

To ensure that the development is designed to minimise and mitigate localised flood risk in accordance with Development Management Policy DM1 (K) of the South Tyneside Local Development Framework.



9. The Sustainable Urban Drainage Systems (SUDs) pond/bio-retention basin hereby approved shall be carried out and maintained in complete accordance with the detailed drainage proposals included within the 'Flood Risk Assessment and Drainage Strategy' (December 2016) Revision B received 31/03/2017 and retained thereafter. Any amendments to these approved drainage proposals shall be submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water.

To ensure that the development is designed to minimise and mitigate localised flood risk in accordance with Development Management Policy DM1 (K) of the South Tyneside Local Development Framework.

#### 10 Landscape

The development hereby approved shall not be commenced above ground level, with the exception of any contaminated land remediation works, until a soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include details of the type, height, species, densities, tree pits, root protection barriers, topsoil depths and location of all new trees and shrubs as well as any proposed seeding/ turfing. The approved landscape scheme shall be completed not later than 12 months after the first occupation of the development. Any trees or plants, which within a period of 5 years of planting, die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species not later than the next planting season after the loss or damage has occurred (unless otherwise agreed in writing by the Local Planning Authority).

In order to soften the visual appearance of the development in accordance with Policy DM1 (C) of the South Tyneside Local Development Framework.

#### 11 Residential Amenity

No dwelling hereby approved shall be occupied until the proposed glazing and ventilation specification as indicated within Table 1 and Figure 1 of the Noise Survey and Façade Acoustic Design Strategy Report Version B received 19 April 2017 have been installed to all habitable rooms. Once installed, this glazing and ventilation specification shall be retained henceforth.

To ensure a satisfactory standard of development in the interests of residential amenity in accordance with Development Management Policy DM1 of the South Tyneside Local Development Framework.

12 No dwelling hereby approved shall be occupied until the proposed 1.8 metre high close boarded timber fencing with a mass of no less than 10 kg/ m<sup>2</sup> continuous to the ground has been completed in full on site in accordance with Drawing Number SABB01 Revision B (Proposed Boundary Treatment/Acoustic Fencing) received 01 June 2017. Once completed this 1.8 metre high boundary treatment shall be retained thereafter.

To ensure a satisfactory standard of development in the interests of residential amenity in accordance with Development Management Policy DM1 of the South Tyneside Local Development Framework.

13. Prior to the first occupation of the apartments at plots 1/2 and 19/20 hereby approved, the first floor windows within the side elevations of the proposed apartments at plots 1/2 facing towards the existing dwelling at No. 74 Salcombe Avenue and at plots 19/20 facing towards the proposed dwelling at plot 18, shall be glazed with obscure glass to a level sufficient to protect the privacy of neighbouring occupiers. The form of windows and obscure glazing shall be retained thereafter.

To ensure the protection of privacy for neighbouring occupiers, and in the interests of residential amenity, in accordance with Development Management Policy DM1 of the South Tyneside Local Development Framework.

14 No construction or associated works or deliveries of materials shall take place outside the hours of 8am - 6pm Monday to Friday and 9am - 1pm on Saturdays and no such works or deliveries shall be carried out at any time on Sundays or Bank Holidays.

To safeguard the amenity of the nearby residents, in accordance with Development Management Policy DM1 (B) of the South Tyneside Local Development Framework.

#### 15 Levels

Notwithstanding the details already submitted, details of the existing and proposed site levels and the finished floor levels fixed to a datum point off-site, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be completed entirely in accordance with the approved details.

To safeguard the amenities of the occupiers of existing neighbouring dwellings in accordance with Development Management Policy DM1 of the South Tyneside Local Development Framework.

#### 16 Removal of Permitted Development Rights - Boundary Treatment

Notwithstanding the provisions of Article 3 and Class A of Part 2 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), no gate, fence, wall or other means of enclosure shall be erected within the curtilage of the dwellings hereby approved, or along any boundary of the property, without an application for planning permission having first been made to and approved in writing by the Local Planning Authority.

To prevent the loss of amenity which might be caused by developments which otherwise would be permitted, in accordance Development Management Policy DM1 of the South Tyneside Local Development Framework.

#### 17 Cycle Parking

Prior to the occupation of the dwellings hereby approved details of proposed covered cycle storage for each dwelling shall be submitted to and approved in writing by the Local Planning Authority and the approved cycle storage shall be carried out on site for each dwelling prior to the occupation of that dwelling and retained thereafter.

In the interests of sustainable development and in accordance with Core Strategy Policy ST2 of the South Tyneside Local Development Framework.

## NOTES TO APPLICANT:

- 1 This notice of grant of planning permission should be read in conjunction with the associated planning obligations (s106) agreement between (1) The Council of the Borough of South Tyneside and (2) South Tyneside Housing Ventures Trust Limited.
- 2 In dealing with this application the Council has implemented the requirements of the National Planning Policy Framework (paragraphs 186 & 187) to seek to approve applications for sustainable development where possible.
- 3 The Council requires the developer to provide to each unit before first occupation a 240l refuse bin and a 240l recycling bin to the Council's specification in order that the council can fulfil its obligation to collect and dispose of household waste. Details of the Council's specifications can be obtained from Waste Services at South Tyneside Council
- 4 The Council's Public Rights of Way Officer and the Council's Road Safety Team have advised that the developer will need to temporarily close and divert the footpaths while the development is being constructed. The Council have a 4-6 week lead in for this and there is a charge to the developer. Also as the development is crossing the footpaths, the footpaths will need to be formally diverted. This can be carried out through the Town and Country Planning Act S257 process. The new diverted footpaths should be the same construction (tarmac), width and street lit.  
  
The legal order must be made and confirmed before the development is significantly complete.
- 5 Northumbrian Water have advised that a public sewer crosses the site and may be affected by the proposed development. Northumbrian Water do not permit a building over or close to their apparatus and need to establish the exact location of their assets and ensure any necessary diversion, relocation or protection measures required prior to the commencement of the development.
- 6 The Northumbria Police Architectural Liaison Officer has advised that there is no reference to the proposed security of the proposed dwellings themselves and recommends that they are built in accordance with the specifications set out in SBD Homes 2016, details of which can be found at [www.securedbydesign.com](http://www.securedbydesign.com).
- 7 The Road Safet Team has advised that street lighting columns that require relocation will need to be carried out at the applicant's expense.
- 8 The Council's Landscape Section has advised that, in order to protect the existing tree belt to the west of the application site, the proposed development shall not be commenced, and there shall be no plant, machinery or building materials brought on to the site, until the tree belt to the west of the application site has been protected by fencing as specified in the document Arboricultural Impact Assessment Version 1.2 and the accompanying Tree Protection Plan received 01/06/2017. The protective fencing shall be maintained in position during the carrying out of the operational development. Works, including the excavation, removal or deposit of earth or other materials shall not be carried out within any area enclosed by protective fencing.

To ensure that the health of retained trees within the site is adequately protected during the period of construction in accordance with Policy DM1 of the South Tyneside Local Development Framework.

- 9 The Road Safety Team has advised that visitor parking spaces adjacent to residential bays should be in a contrasting colour and marked up with a painted Visitor Parking sign.
- 



George Mansbridge  
Head of Development Services

**Your attention is drawn to the attached schedule of notes which form part of this notice**

DRAFT

## NOTES

- 1 This certificate is issued under the Town and Country Planning Acts, Regulations and Orders and does not constitute a permission, approval or consent by South Tyneside Council for any other purpose whatsoever. Applications must therefore be made to the appropriate Departments of the Council for any other permission, approval or consent (including Building Regulations approval or approval of South Tyneside Council as ground landlord where appropriate) which may be necessary in connection with the proposed development or anything incidental thereto, or the use to be made of the premises which form the subject of such development.
- 2 You may also require permissions, approvals or consents under other legislation, or from bodies other than South Tyneside Council. This could include works affecting a public sewer, gas main, or electricity line, works within the adopted highway, works affecting a public right of way, property covenants, legislation relating to disabled persons, land drainage consent, waste management consent, scheduled monument consent or works affecting protected habitats or species.
3. Any non-material change to the approved plan(s) that form part of this permission would require the submission of an application for a non-material change under section 96A of the Town and Country Planning Act 1990. Whether changes to a proposed development are considered non-material is a matter for Planning Authority discretion.
- 4 The approved development should be implemented in strict compliance with all of the planning conditions, and in particular any which require details to be approved prior to the commencement of the development. Failure to do so may result in any commencement of development being unauthorised, which could be liable to enforcement action.
- 5 If you wish to change, or not comply with, any of the planning conditions attached to the permission, then you will need to submit a new application for planning permission under section 73 of the Town and Country Planning Act 1990. This does not affect your statutory rights of appeal against any of the planning conditions. This includes if you wish to not comply with a condition attached to a permission which details the approved plan(s), so as to make a minor material change to the approved plan(s). A minor material change is defined as one whose scale and nature results in a development that is not substantially different from that which has been approved.
- 6 Your attention is drawn to your responsibilities under the Chronically Sick and Disabled Persons Act 1970 and the Disability Discrimination Act 1995 relating to disabled persons, to ensure that adequate attention has been paid to their needs. If the proposed development involves new or existing buildings to which the public are to be admitted, or offices, shops, railway premises, factories or educational buildings, provision should be made for the means of access, parking and sanitary conveniences to meet the needs of disabled people. In addition, appropriate signposting of the facilities should be provided. In carrying out these statutory obligations your attention is drawn to the "Code of Practice for Access for the Disabled to Buildings" (BS5810:1979). You are advised to seek professional advice to ensure that you meet your legal obligations under the Disability Discrimination Act 1995, especially with regard to Part III thereof.

**7 Only the applicant possesses the right of appeal**

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice unless:

- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice [reference no. if applicable], if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice; or
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within 6 months of the date of this notice, whichever period expires earlier.

Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <https://acp.planninginspectorate.gov.uk>

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

## **PURCHASE NOTICES**

- 8 If permission to develop land is granted subject to conditions, whether by South Tyneside Council as local planning authority or by the Secretary of State for Communities and Local Government, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted. In these circumstances the owner may serve a purchase notice on the Council, requiring the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

## SCHEDULE 2

1. Subject to paragraph 2 of this Schedule the Developer covenants not to Occupy (or cause or permit Occupation of) any of the Affordable Housing Units at any time other than as Affordable Housing.
2. The covenant at paragraph 1 of this Schedule shall no longer apply after any Affordable Housing Unit has been subject to a disposal required by:
  - 1.1 any statutory provisions now or hereafter enforced;
  - 1.2 any Order of the Court;
  - 1.3 the Homes and Communities Agency or its successor body,

and none of the terms of this Schedule shall bind a Protected Tenant or any Chargee of the Protected Tenant or any person deriving title from the Protected Tenant or Chargee or any successor in title thereto and their respective mortgagees and chargees and successors in title or any Chargee of the Developer or their respective successors in title who shall be free to sell free from the provisions of this Agreement.

3. Within 21 days following the Commencement of Development, the Developer covenants to pay the Council £1,500 as a contribution towards the management and/or improvement of the reedbeds at Primrose Local Nature Reserve, Jarrow and the Council covenants with the Developer to not to use the said contribution other than for the purposes for which it was paid as specified in this paragraph..

## **SCHEDULE 3**

### **Nomination Agreement**

#### **1. BACKGROUND**

- 1.1 This Nomination Agreement comprises part of the requirements of a planning obligation under section 106 of the Town and Country Planning Act 1990 between (1) The Council of the Borough of South Tyneside and (2) South Tyneside Housing Ventures Trust Limited on the date hereof (the 's106 Agreement')
- 1.2 The Council may so far as reasonable and having regard to its overall housing objectives require the Affordable Housing Provider to enter into such revised Nomination Agreement as is agreed with the Affordable Housing Provider (both parties acting reasonably) in substitution for this Schedule 3.
- 1.3 The Council operates a choice based lettings allocation scheme 'Your Choice'. All nominations shall be made in accordance with this scheme or any replacement scheme.
- 1.4 For the avoidance of doubt is agreed that this Nomination Agreement shall only bind the Affordable Housing Units and no other Dwelling.

#### **2. TRUE VOIDS**

- 2.1 "True Voids" Comprise:
- 2.1.1 voids within new build / newly built rehabilitated schemes;
- 2.1.2 voids created where a tenant moves to another landlord where no reciprocal arrangements exist;
- 2.1.3 voids created by the death of a tenant where there is no statutory right to succeed;
- 2.1.4 voids created because of a transfer to another borough (unless the transfer is due to harassment or domestic violence);
- 2.1.5 voids created by a tenant buying their own property in the private sector;
- 2.1.6 voids created by eviction or abandonment of a property; and



2.1.7 voids created because of a permanent decant, unless the property is re-let to a tenant who is being decanted.

### **3. NON-TRUE VOIDS**

3.1 "Non True Voids" comprise:

3.1.1 voids created as the result of a tenant transfer where the tenant is moving within the borough in which the previous tenancy was situated;

3.1.2 voids created because of a tenant transfer where the tenant is moving to a void owned by the same Affordable Housing Provider within the district provided that the cross-borough transfer is being carried out because of racial or sexual harassment, domestic violence or extreme social need where the support of relatives is deemed essential; and

3.1.3 voids created by a decanted tenant who is returning.

### **4. NOMINATION RIGHTS**

4.1 The Council shall have nomination rights in respect of 100% of new build lets and 50% of any nomination rights to any subsequent True Void lets.

### **5. NEW BUILD LETS**

5.1 The Affordable Housing Provider shall notify the Council in writing of the proposed date of completion of the Development no later than 28 days prior to such proposed date.

5.2 Within 14 days of receipt of the notice referred to in clause 5.1 the Council will provide the Affordable Housing Provider with a list of nominations (up to 3 nominations per True Void) sufficient to fill all of the Affordable Housing Units.

5.3 In the event of rejections, by either the Affordable Housing Provider or any applicant, the Council will provide further nominations until such time as each of the Affordable Housing Units is first Occupied pursuant to a Council nomination.

### **6. SUBSEQUENT TRUE VOID LETS**

- 6.1 The Affordable Housing Provider shall serve notice on the Council of a vacant Affordable Housing Unit within 14 days of the Affordable Housing Unit becoming vacant or from when it is first known it will become vacant, whichever occurs first.
- 6.2 The Registered Provider shall request nominations from the Council using the appropriate request form.
- 6.3 The Council shall advertise the vacant Affordable Housing Unit and invite applications from people listed on the local housing register.
- 6.4 Within seven days of receipt of the notification in paragraph 6.1 the Council shall provide a shortlist of up to three applicants to the Affordable Housing Provider.
- 6.5 The Affordable Housing Provider shall decide on whether to approve or refuse the applications nominated by the Council.
- 6.6 The Affordable Housing Provider shall advise the Council of any offer of accommodation following a nomination. On acceptance of the offer the Registered Provider shall notify the Council and confirm the tenancy start date.
- 6.7 The Affordable Housing Provider shall inform the Council of any reasons for refusal should a refusal be made. A nominee who delays their agreement to take up a tenancy of the relevant Dwelling for more than [fourteen] days following receipt of the Affordable Housing Provider's offer shall be deemed to have rejected the offer of the tenancy.
- 6.8 Should the Council nomination fail then the Affordable Housing Provider may offer the property to a person from their own list. This will be classified as a Council nomination.
- 6.9 Should the percentage of successful Council nominations fall below 50% to any material extent at any time, the Council and Affordable Housing Provider shall use reasonable endeavours to adopt a procedure to Council nominations so as to ensure the percentage of successful nominations achieves 50%..

## **7. MONITORING**

- 7.1 The Affordable Housing Provider will record details of all lettings made to nominations in the Continuous Recording of Lettings (CORE) as required by the Homes and Communities Agency.

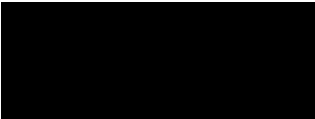
**8. INCUMBRANCES**

The Council hereby acknowledges that the provisions of this Agreement are personal to the Council (and any successor body of the Council) and the Affordable Housing Provider (and any successor body of the Affordable Housing Provider which is a Registered Provider as defined by the Housing and Regeneration Act 2008) and shall not bind any tenant, leaseholder or other owner or occupier of the Affordable Housing Units or a Chargee or its or their successors in title

EXECUTED as a DEED )  
by affixing the COMMON )  
SEAL of THE COUNCIL )  
OF THE BOROUGH OF )  
SOUTH TYNESIDE )  
in the presence of: )

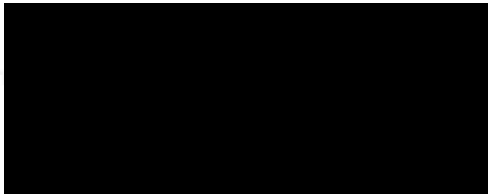


*DERBY LADD*  
Mayor / Authorised Signatory

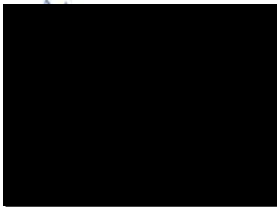


~~Head of Legal Services~~  
Authorised Signatory

EXECUTED as a DEED )  
By SOUTH TYNESIDE HOUSING )  
VENTURES TRUST LIMITED )  
*acting by a Director*  
~~by affixing~~ )  
~~its COMMON SEAL~~ in the )  
presence of: )



*Director*  
~~Authorised Signatory~~



*Pat Chair + Managing Director*

