

**LOCAL LIST s106 April 2013**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and [ ] **BETWEEN** [ ] of [ ] (hereinafter called "the **Owner**") of the first part **AND THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire (hereinafter called "the **Council**") of the second part

**WHEREAS**

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 [and the local highway authority for the purposes of the Highways Act 1980] for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable
2. The Owner is the freehold owner of the Site registered under title number [ ]
3. By the provisions of Section 106 of the Town and Country Planning Act 1990 ("the **Act**") any person interested in land in the area of a local planning authority may by deed or otherwise enter into a planning obligation in respect of the land
4. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to:-
  - (i) secure the provision of affordable housing as part of the Site in accordance with the policies of the Kirklees Unitary Development Plan SPD2 and NPPF;  
and
  - (ii) secure the provision of a financial contribution towards [ ]  
and
  - (iii) regulate the provision and future maintenance of public open space to serve the Development in accordance with Policy H18 of the Kirklees Unitary Development Plan

**NOW IT IS HEREBY AGREED** as follows:-

## **1. INTERPRETATION**

1.1 In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

**“Administration Charge”** means 1% (one percent) of the Financial Contribution

**“the Affordable Dwellings”** includes social rented, affordable rented and intermediate housing provided to eligible households whose needs are not met by the market as defined by Annex 2 of the NPPF

**“the Affordable Price”** means the sum to be paid by the Registered Provider (or Alternative Registered Provider) to the Owner which shall reflect the range of prices prevailing in SPD2 or such other sum as may be reasonably agreed between the Owner and the Council

**“the Alternative Registered Provider”** means such other Registered Provider as shall be nominated by the Council under Clause 3 of this Deed

**“Approved Scheme”** means the landscaping scheme comprised in Drawing Number [ ] together with such amendments as the Council may reasonably require

**“Default Works”** means such works as the Council shall reasonably determine to be necessary to remedy the failure by the Owner to comply with any of its obligations in the circumstances described in Clause 6 of this Agreement

**“Dwellings”** means the Affordable Dwellings and the Market Dwellings

**“Financial Contribution”** means the payment to be made in lieu of the provision of on-site Affordable Dwellings (or a full complement thereof) calculated as described in paragraph 11.4 of SPD2

**“Homes and Communities Agency”** means the national housing and regeneration delivery agency for England

**“Registered Provider”** means a social landlord registered with Homes and Communities Agency

**“Homes and Communities Agency”** means the national housing and regeneration delivery agency for England

**“Implementation”** means the implementation of the Planning Permission by the carrying out of any material operation as defined by Section 56(4) of the Act and **Implement** and **Implemented** shall be construed accordingly

**“Inspection and Certification Charge”** means [£] towards the administrative cost to the Council in inspecting the Open Space Area Works and certifying that they are in accordance with the Approved Scheme

**“Market Dwellings”** means those Dwellings within the Development excluding the Affordable Dwellings

**“NPPF”** means the National Planning Policy Framework published by the Department for Communities and Local Government

**“Open Market Value”** means the open market value agreed between the Council and the Owner as being the open market value of an Affordable Dwelling or if not agreed shall mean an average price based on the opinions of two (2) independent surveyors of the price at which the sale of an interest in the property would have been completed unconditionally for cash consideration on the date of valuation assuming:

- (a) a willing seller;
- (b) that any restrictions imposed on the Dwelling by reason of this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Affordable Dwelling or to whom a transfer or lease may be granted or assigned; and
- (d) that both parties to the transaction had acted knowledgeably prudently and without compulsion.

**“Open Space Area”** means that area of land within the Development shown edged green on the Plan or such other area as may be agreed between the Council and the Owner

**“Open Space Area Commuted Sum”** means the sum of [ ] which sum represents the capitalised cost of the future maintenance of the Open Space Area together with the cost of inspection including salary costs and overheads and which sum shall increase upon every anniversary in accordance with the Building Cost Information All in Tender Price Index provide that such sum shall not in any event exceed [£ ]

**“Open Space Area Works”** means those works within the Approved Scheme to be carried out on Open Space Area

**“Plan”** means the plan annexed hereto

**“Planning Permission”** means the planning permission to be granted under Ref No. [ ]

**“Site”** means the land at [ ]

**“SPD2”** means the Council’s Supplementary Planning Document number 2 – Affordable Housing adopted by Kirklees Council on 18 November 2008

## **2. GENERAL**

- 2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.2 The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owner and each and every part of the Site
- 2.3 The expressions "the Council" and "the Owner" shall include their successors in title and assigns
- 2.4 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 2.5 This Deed shall not be binding upon the owner/occupiers of the Dwellings nor upon the Registered Provider or any Alternative Registered Provider nor against a mortgagee or chargee of the Affordable Dwellings or any person acquiring the same under a statutory right to acquire the same
- 2.6 This Deed shall come into effect upon the date hereof
- 2.7 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date
- 2.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed
- 2.9 This Deed is a local land charge and shall be registered as such

- 2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.11 The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed

### **3. AFFORDABLE HOUSING**

The Owner covenants with the Council:-

- 3.1 Not to permit in excess of [ ] Market Dwellings to be substantially completed until the Affordable Dwellings have been constructed in accordance with Clause 3.2 hereof and made available for sale to the Registered Provider or Alternative Registered Provider
- 3.2 To construct the Affordable Dwellings to Homes and Communities Agency design and quality standards or Housing Corporation scheme development standards (or such other standards as may be agreed between the Owner and the Registered Provider or Alternative Registered Provider in accordance with the Planning Permission and approved plans unless otherwise agreed with the Registered Provider or the Alternative Registered Provider
- 3.3 If the Registered Provider or the Alternative Registered Provider shall not confirm in writing to the Owner its willingness subject to contract to accept the Affordable Dwellings at the Affordable Price within twelve (12) calendar months of Implementation then the Council upon receipt of notice in writing from the Owner to that effect shall as soon as reasonably practicable nominate another Registered Provider and this provision may be repeated as often as is necessary (subject to Clause 3.4 below) until such time as one of the nominated Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings
- 3.4 If neither the Registered Provider or Alternative Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings

at the Affordable Price within a period of twenty four (24) calendar months from Implementation and the Owner shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made all reasonable endeavours to secure acceptance of the Affordable Dwellings by an Alternative Registered Provider then the Owner will be free to offer such Dwellings for sale on the open market but the provisions of Clause 3.7 and 3.8 shall apply

3.5 If the Registered Provider or Alternative Registered Provider after confirming its willingness to purchase the Affordable Dwellings does not then contract to buy the Affordable Dwellings within two (2) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor or the Solicitor of the Alternative Registered Provider then:-

3.5.1 if a period of 24 (twenty four) calendar months from the Implementation has expired the Owner will be free to offer the Affordable Dwellings for sale on the open market but the provisions of Clauses 3.7 and 3.8 below shall apply

3.5.2 in any other circumstances the provisions of Clause 3.3 shall continue to apply

3.7 In the event that the Owner is free to offer the Affordable Dwellings for sale on the open market pursuant to Clause 3.4 or 3.5.1 hereof the Owner shall within 28 (twenty eight) days thereof pay to the Council:-

3.7.1 the Financial Contribution; and

3.7.3 the Administration Charge

3.8 The Open Market Value of the Affordable Dwellings shall be determined in the first instance between the Owner and the Council and in default of such deed shall be the average of two (2) valuations provided by two (2) valuers one of which shall be

selected by the Owner and the other by the Council and the parties shall each bear their own costs in respect of such valuations

#### **4. BONDING ARRANGEMENTS**

The Owner hereby covenants with the Council that it will not cause or permit the Development or any part of it to be implemented until there has been deposited with the Council a bond in a form and for a term reasonably satisfactory to the Council in the sum of [ ] which Bond shall include provision for increase in such sum upon every anniversary of the date of deposit in accordance with the Building Cost Information All in Tender Price Index provided that such sum shall not in any event exceed £[ ] for the performance of the obligations of the Owner under Clause 5.1 of this Agreement

#### **5. OPEN SPACE AREA WORKS**

- 5.1 The Owner will implement the Open Space Area Works in conjunction with and as part of the Development and shall in any event complete the same to the satisfaction of the Council no later than [ ]
- 5.2 As soon as is reasonably practicable after the completion of [the] [each phase of the works] specified in Clause 5.1 above the Owner shall notify the Council in writing that such works have been completed
- 5.3 Not later than one calendar month following receipt of the relevant notice referred to in Clause 5.2 above the Council shall inspect the Open Space Area and if the Open Space Area Works have been carried out to the satisfaction the Council it shall notify the Owner in writing thereof
- 5.4 If upon notification by the Owner pursuant to Clause 5.3 above the Open Space Area Works have not been carried out to the satisfaction of the Council it shall notify the Owner specifying the measures necessary to satisfactorily complete the Open Space Area Works and the Owner shall within such period as specified by the Council carry out those works and shall notify the Council pursuant to Clause 5.2 hereof (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof )



- 5.5 Following written confirmation by the Council of the satisfactory completion of the Open Space Area Works under clause 5.3 above, the Owner shall thereafter maintain the Open Space Area in accordance with the rules of good horticulture and husbandry keeping it properly maintained and shall replace trees shrubs and plants which shall die or become diseased or are damaged or removed and shall trim prune mow and feed the Open Space Area and shall repair replace and maintain any hard surfaces fences walls drains or play equipment which are damaged or removed for one calendar year beginning on the date of the written confirmation that the Open Space Works have been completed to the Council's satisfaction under clause 5.3
- 5.6 The Owner shall pay the Open Space Commuted Sum to the Council no later than the execution of the transfer under clause 6.1. hereof
- 5.7 The Owner shall pay the Inspection and Certification Charge on the date hereof

## **6. LAND TRANSFER**

- 6.1 On the expiry of one calendar year from the date of the notice given under clause 6.3, the Owner will sell and the Council will purchase the Open Space Area for the sum of £1 provided that the Owner has paid to the Council the Commuted Sum
- 6.2 The Owner shall pay to the Council its reasonable legal costs in respect of the transfer referred to in Clause 6.1 above

## **7. DEFAULT WORKS**

- 7.1 In the event of failure by the Owner to comply in whole or in part with its obligations under Clause 5 of this Agreement or in the event of the winding up of the Owner (other than for the purposes only of amalgamation or reconstruction) or the appointment of a Receiver of any of the Owners assets or (if the Owner shall be an individual or individuals) the making of an Order in Bankruptcy against the Owner (or if more than one any of them) then:-

7.1.1 the Council may serve written notice upon the Owner specifying the nature of the Default Works and stating that it intends to enter upon the Site and undertake the Default Works unless the Owner shall within one calendar month of the service of such notice commence and thereafter complete with all due diligence such Default Works to the reasonable satisfaction of the Council

7.1.2 the Owner hereby grants to the Council a Licence to enter upon the Site with all persons machinery vehicles or other equipment required for the purpose of carrying out the Default Works

7.1.3 upon completion of the Default Works the Council shall render an account to the Owner in respect of the reasonable cost of the Default Works together with the reasonable cost of any necessary design preparation supervision and inspection including reasonable salary costs and overheads and within twenty eight days of delivery of such account the Owner shall pay such sum to the Council

7.2 The exercise by the Council of its powers under Clause 6.1 of this Agreement shall not preclude the further exercise of those powers whether relating to the same or any other matter

**IN WITNESS WHEREOF** the parties hereto have caused this Deed to be executed as a Deed

**THE CORPORATE COMMON SEAL** of )  
**THE COUNCIL OF THE BOROUGH** )  
**OF KIRKLEES** was hereunto affixed )  
but not delivered until the date hereof )  
In the presence of:- )

Acting Assistant Director - Legal, Governance  
& Monitoring /Authorised Signatory

**EXECUTED AS A DEED** by

[ ]

in the presence of:-

)  
)  
)

Director

Secretary

**DATED** \_\_\_\_\_ **20**

**THE COUNCIL OF THE BOROUGH OF KIRKLEES**

and

**[ ]**

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**DEED**

**Under Section 106 of the Town & Country Planning  
Act 1990 relating to land at [ ]**

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Vanessa Redfern  
Acting Assistant Director: Legal, Governance &  
Monitoring  
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