

THIS AGREEMENT is made the _____ day of Two Thousand and Sixteen **BETWEEN SUSAN DOREEN HEPWORTH** of Balaqueeney House, Four Roads, Port St. Mary, Isle of Man, IM9 34LG (hereinafter called "the **Owner**") of the first part **AND JONES HOMES (YORKSHIRE) LIMITED** (Company Number 3186376) whose registered office is at Emerson House Heyes Lane Alderley Edge Cheshire SK9 7LF (hereinafter called "the **Developer**") of the second part **AND THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Huddersfield, West Yorkshire, (hereinafter called "the **Council**") of the third part

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the Kirklees district within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner is the freehold owner of the Site registered under title number WYK822336.
3. The Developer has an interest in the Site by way of an option agreement dated 23 September 2016 and made between the Owner and the Developer.
4. On 29 September 2014 the Council granted outline planning permission for the erection of residential development on the Site under a decision granted by the Council under reference 2014/60/91533/W ("the Planning Permission").
5. The parties have agreed to enter into this Section 106 Agreement in order to secure the discharge of the following conditions attached to the Planning Permission:
 - Condition 5 which secures the provision of on-site Affordable Housing.
 - Condition 6 which secures arrangements for the provision of Public Open Space to serve the Development.

6. 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.

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

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

“Additional Affordable Housing” means any provision of affordable housing as defined by Annex 2 of the NPPF provided over and above the requirements of this Agreement and which may be a commercial arrangement between the Owner and/or Developer and Registered Provider or other provider approved by the Council for the provision of Affordable Housing.

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

“the Affordable Dwellings” means the Dwellings to be provided as Affordable Housing on plot numbers 1, 2, 3, 4, 5 and 6 which 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 or such other plots and house types as may be varied by agreement with the Council.

“Affordable Housing” means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to in in 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 and the recipient Registered Provider which shall enable the recipient Registered Provider to provide Additional Affordable Housing.

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

“Development” means the development of the Site in accordance with the Planning Permission and Reserved Matters Approval.

“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 or where it has been demonstrated to the satisfaction of the Council that such calculation would render the Development unviable, the following calculation will be applied: the Open Market Value of the relevant Affordable Dwellings if those Affordable Dwellings were sold on the open market at Open Market Value minus the Affordable Price.

“Financial Viability Appraisal” means a document submitted by the Owner to demonstrate that the Development is not financially viable if the Financial Contribution is calculated in accordance with SPD2.

“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; save that the term “material operation” shall not include operations in

connection with any works associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of fencing to site boundary and **“Implement”** and **“Implemented”** shall be construed accordingly.

“Intermediate Dwelling” has the same meaning as the term “intermediate housing” contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the NPPF

“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.

“Occupation and Occupied” means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **“Occupy”** shall be construed accordingly.

“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.

“Plan” means the plan annexed hereto.

“Planning Permission” means the outline planning permission that was granted by the Council on 29 September 2014 for the erection of residential development on the Site.

“Public Open Space Contribution” means the sum of [SUM TO BE CONFIRMED] to be paid by the Developer to the Council.

“Registered Provider” means a social landlord registered with Homes and Communities Agency or any such housing provider approved by the Council at its absolute discretion which can deliver Affordable Housing as defined herein and in Annex 2 of the NPPF.

“Reserved Matters Approval” means approval by the Council of one or more matters reserved for approval by the Planning Permission.

“Site” means the land at St Mary’s Avenue, Netherthong, Holmfirth, HD9 3XN, shown edged red on the Plan.

“Social Rented Dwelling” has the same meaning as the term "social rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the NPPF

“SPD2” means the Council’s Supplementary Planning Document number 2 – Affordable Housing adopted by Kirklees Council on 18 November 2008 a copy of which is attached to this Agreement at Appendix 1.

2. GENERAL

- 2.1. The Owner and the Developer 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", "the Owner" and "the Developer" 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 charge or administrative receiver of the Affordable Dwellings or any person acquiring the same under a statutory right to acquire the same or any lessee under a shared ownership lease who has acquired 100% equity in the Dwelling, or any successor in title to any of the parties mentioned in this clause.
- 2.6. This Deed shall come into effect upon the date of Implementation.
- 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 Developer shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed.

3. AFFORDABLE HOUSING

The Developer covenants with the Council:-

- 3.1. Not to permit or allow in excess of fifty percent of the Market Dwellings to be Occupied 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 Developer 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. To deliver the Affordable Dwellings based on 3 units for social rent and 3 intermediate units as defined by Annex 2 of the NPPF as may be modified or superseded together with such Additional Affordable Housing (if any) as may be agreed with the Council, the Registered Provider (or Alternative Registered Provider) and the Developer (each acting reasonably).

- 3.4. If the Registered Provider shall not confirm in writing to the Developer its willingness subject to contract to accept the Affordable Dwellings at the Affordable Price within six (6) calendar months of Implementation then the Council upon receipt of notice in writing from the Developer to that effect shall as soon as reasonably practicable nominate an Alternative Registered Provider and this provision may be repeated as often as is necessary (subject to Clause 3.5 below) until such time as one of the nominated Registered Providers shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings
- 3.5. If neither the Registered Provider nor an Alternative Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings at the Affordable Price within a period of twelve (12) calendar months from Implementation or such other period agreed between the Developer and the Council and the Developer shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made all reasonable but commercially prudent endeavours to secure acceptance of the Affordable Dwellings by an Alternative Registered Provider then the Developer will be free to offer such Dwellings for sale on the open market but the provisions of Clause 3.6 and 3.7 shall apply
- 3.6. 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 or such other period as agreed between the Developer and the Council (such agreement not to be unreasonably withheld or delayed) then:-
- i. if a period of twelve (12) 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

- ii. in any other circumstances the provisions of Clause 3.5 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 3.5 hereof the Owner shall within 28 (twenty eight) days thereof pay to the Council:-
 - i. the Financial Contribution; and
 - ii. the Administration Charge
- 3.8. The Open Market Value of the Affordable Dwellings shall be determined in the first instance between the Developer 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 Developer and the other by the Council and the parties shall each bear their own costs in respect of such valuations
- 3.9. In the event that the Financial Contribution is due in accordance with this Clause 3 the Developer will pay the Financial Contribution calculated in accordance with SPD2 to the Council unless the following Clause 3.10 applies
- 3.10. In the event that the Financial Contribution is due in accordance with this Clause 3 and the Developer is of opinion that the Development is not financially viable if the Financial Contribution is calculated in accordance with SPD2 then the Developer will provide, at his own cost, the Financial Viability Appraisal and submit the Financial Viability Appraisal to the Council
- 3.11. In the event that the Council cannot agree the Financial Viability Appraisal within a period of 28 days or such longer period as agreed by the Developer then the Developer and the Council will appoint an independent third party consultant agreed between the Council and the Developer for the purposes of reviewing and verifying the Financial Viability Appraisal. The appointment of the independent third party consultant will require the consultant to issue

its report within 28 days of its appointment and the consultant's report will be binding on the Council and the Developer.

- 3.12. The Developer covenants to underwrite and indemnify the costs incurred by the Council in the appointment of an independent third party consultant to review and verify the Financial Viability Appraisal to a maximum sum of £2,500.

4. PUBLIC OPEN SPACE CONTRIBUTION

- 4.1. The Developer covenants not to cause or permit Occupation of more than [NUMBER TO BE CONFIRMED] the Market Dwellings until the Public Open Space Contribution has been paid to the Council.

5. COUNCIL'S OBLIGATIONS

- 5.1. The Council hereby covenants to apply the Public Open Space Contribution towards the provision of public open space within the locality of the Site provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 5.2. The Council hereby covenants to apply (if applicable) the Financial Contribution towards the provision of Affordable Housing in the administrative district of the Council provided that if the whole or any part of the sum has not been spent on such purpose within five years of the date of the final payment of the relevant sum then the whole sum or any unspent part plus interest will be repaid to the person who paid the sums or its nominee.
- 5.3. The Council shall provide to the Developer such evidence as the Developer shall reasonably require in order to confirm the expenditure of the sums paid by the Developer under this Agreement.

- 5.4. At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

6. WAIVER

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

7. VAT

- 7.1. All consideration given in accordance with the terms of this Agreement shall be inclusive of any value added tax properly payable.

8. JURISDICTION

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

9. DELIVERY

- 9.1. The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

N 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:-)

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

EXECUTED AS A DEED by **SUSAN**)
DOREEN HEPWORTH in the presence of:-)

.....
Witness signature

.....
Witness name

.....
Witness address

.....
Witness occupation

EXECUTED AS A DEED by **JONES HOMES**)
(YORKSHIRE) LIMITED in the presence)
of:-)

.....
Director

.....
Secretary

APPENDIX 1

SPD2 – Affordable Housing

DATED _____ **2016**

**THE COUNCIL OF THE BOROUGH OF
KIRKLEES**

and

SUSAN DOREEN HEPWORTH

and

JONES HOMES (YORKSHIRE) LIMITED

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to at Land at St
Mary's Avenue, Netherhong, Holmfirth, HD9
3XN**

[OFFICER AT KIRKLEES TO BE CONFIRMED]
Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND