

Dated: \_\_\_\_\_ 2018

**Z HINCHLIFFE & SONS LTD.**

**AND**

**THE COUNCIL OF THE BOROUGH OF KIRKLEES**

**AGREEMENT UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990  
(AS AMENDED)**

**Land at / adjacent to:**

**Dobroyd Mills, Hepworth Road, Jackson Bridge (HD9 1AF)**

**THIS AGREEMENT** is made on the \_\_\_ day of \_\_\_ Two Thousand and Eighteen **BETWEEN Z Hinchliffe & Sons Ltd.** (Company Registration Number: 00078708) whose registered office is situated at Hartcliffe Mills, Denby Dale, Huddersfield, Yorks, HD8 8QL (hereinafter called “the **Owner**”) of the first part **AND Kirklees Council** whose address is Civic Centre III, Market Street, Huddersfield HD1 2TY (hereinafter called “the Council”) of the second part

**WHEREAS:**

- 1) The Council is the local planning authority and education authority and local highway authority for the purposes of the Highways Act 1980 for the area in which the Site is situated, and by whom the planning obligations within this Agreement are enforceable.
- 2) The Owner owns the freehold interest of the Site registered under title number WYK157301.
- 3) The Council resolved on 8 March 2018 to grant Planning Permission subject to completion of this Agreement.
- 4) The Council would not have been willing to grant planning permission but for this Deed because of the need to:
  - i) secure the provision of Affordable Housing (or equivalent financial contribution) as part of the Development in accordance with the policies in the Kirklees Unitary Development Plan;
  - ii) secure the provision of a financial contribution towards educational facilities to mitigate the impact of the Development;
  - iii) secure the provision of a financial contribution for the provision of a real-time bus information display on the nearest bus stop to the Site (Hepworth Road) to mitigate the impact of the Development
  - iv) secure the provision of a financial contribution towards a scheme for the New Mill Junction Improvements to mitigate the impact of the Development

**THE AGREEMENT WITNESSES** as follows:

**1) INTERPRETATION**

1.1 The definitions in the Clause have the meanings respectively assigned to them in this Deed:

**“Affordable Housing”**

means subsidised housing that provided to eligible households whose needs are not met by the market in accordance with the definition set out in Annex 2 of the NPPF at the date hereof (or any future guidance or initiative that replaces or supplements it)

**“Affordable Housing Contribution”**

A financial contribution towards the provision of Affordable Housing in the Holme Valley Housing Market Area calculated in accordance with Kirklees Interim Affordable Housing Policy 2016 (taking into account the Vacant Building Credit to be applied to the Site) as follows:

- 1)  $X - Y = A$
- 2)  $A / X$  multiplied by 100 = B
- 3)  $C = D \times 20\%$
- 4) **Affordable Housing Contribution in pounds sterling =  $B \times (C \times E) \times F$ <sup>1</sup>**

X = Proposed total GEA floorspace of dwelling units proposed at the reserved matters stage in sq.m

Y = Vacant floorspace in sq.m (Vacant Building Credit)

A = Floorspace in sq.m

B = Percentage of total floorspace eligible for affordable housing after Vacant Building Credit has been subtracted

C = number of units theoretically eligible for Affordable Housing

D = number of dwelling units proposed at the reserved matters stage

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<sup>1</sup> Should X exceed Y, no Affordable Housing Contribution will be payable

E = average individual GEA floorspace per dwelling unit proposed at the reserved matters stage

F = Median Build Cost per sq.m

**“Contributions”**

The Affordable Housing Contribution and Education Contribution and Real Time Bus Information Contribution and New Mill Junction Improvements Contribution

**“Council”**

The Council Borough of Kirklees

**“Development”**

The development of the Site described in the Planning Application

**“Dwellings”**

Those dwellings to be constructed under the Planning Permission on the Site

**“Education Contribution”**

The sum of £271,237 (two hundred and seventy one thousand two hundred and thirty seven pounds) as a financial contribution to provide additional educational facilities for Hepworth J & I School and Holmfirth High School

**“Holme Valley Housing Market Area”**

The area identified in SHMA document

**“GEA”**

Gross External Area excluding detached garages or other outbuildings

**“Implementation”**

The carrying out of any material operation comprised in the Development as defined by Section 56(4) of the Town & Country Planning Act 1990 (as amended) pursuant to the Planning Permission PROVIDED THAT the following shall not be regarded as material operations for this purpose:

- a) demolition of any existing structures on the Site;

- b) the erection of boundary structures, fencing and / or hoardings or other site security measures;
- c) diversion and laying of services and drainage;
- d) site and ground investigations and / or surveys;
- e) site clearance preparation and levelling including ground earthworks;
- f) archaeological investigations or works;
- g) landscaping
- h) remedial treatment of any areas of contaminated land;
- i) any operations undertaken by the Council

and **“Implement”** and **“Implemented”** shall be construed accordingly

**“Interest”**

Interest at four (4) per cent above the base lending rate of the Bank of England from time to time

**“Interim Affordable Housing Policy”**

The Council’s supplementary planning document (and which may be subsequently amended) and which deals specifically with the negotiation and provision of affordable housing or equivalent financial contributions

**“Median Build Cost per sq.m**

RICS Building Cost Information Service for the Kirklees area

**“New Mill Junction Improvements”**

The signalisation or similar improvement scheme of the junction between Holmfirth Road and Huddersfield Road and Penistone Road and Sheffield Road

**“New Mill Junction Improvements Contribution”**

The sum of £67,630 (Sixty Seven Thousand Six Hundred and Thirty Pounds) to be paid toward the cost of the New Mill Junction Improvements

<b>“NPPF”</b>	National Planning Policy Framework published by the Department of Communities and Local Government as at the date hereof
<b>“Obligations”</b>	The covenants and obligations on the part of the Owner contained in Clause 3 hereto
<b>“Occupation”</b>	For residential purposes provided that this shall not include occupation for fitting out purposes or occupation of any show house for the purpose of marketing as the case may be, and <b>“Occupiers”</b> and <b>“Occupied”</b> shall be construed accordingly
<b>“Plan”</b>	The site layout plan annexed hereto
<b>“Planning Permission”</b>	The hybrid planning permission to be granted under Kirklees Council ref: 2017/90620 for demolition of existing buildings and erection of 2no workshop and ancillary office buildings (B1c/B8 use class) comprising a floor area of 880m <sup>2</sup> including mezzanine space, parking, access details and ancillary works. Outline planning application for the erection of up to 75 no dwellings (Amended Description)
<b>“Real Time Bus Information Contribution”</b>	The sum of £10,000 (Ten Thousand Pounds) to be paid toward the cost of installing a Real Time Bus Information display at Bus Stop number 21989
<b>“SHMA”</b>	The Kirklees Strategic Housing Market Assessment 2016 as may be updated from time to time

**“Site”** The land including and adjacent to Dobroyd Mills, Hepworth Road, Jackson Bridge which is more particularly shown on edged red on the Plan

**“Vacant Building Credit”** 12,104 sq.m of vacant floorspace at the Site applicable at the time Planning Permission is granted

## **2) GENERAL**

- 2.1 The expressions “the Council” and “the Owner” shall include their successors in title and assigns.
- 2.2 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.3 The Council covenants with the Owner that it will carry out and comply with its obligations contained in this Deed
- 2.4 No person shall be liable for breach of any covenant contained in this Agreement after he or she shall have parted with all interest in the Site, or the part in respect of which such breach occurs.
- 2.5 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.6 This Deed shall not be binding upon the owner / occupiers of individual Dwellings nor against any statutory undertaker or authority who acquires any part of the Site or interest in it for the purposes of its statutory undertakings or functions
- 2.7 This Agreement constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.8 The Agreement shall come into effect upon the date of Implementation.

- 2.9 If the Planning Permission expires or is revoked, quashed or otherwise withdrawn or modified without the consent of the Owner, this Agreement shall cease to have effect from the date of the said expiration, quashing, 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.
- 2.10 Nothing in this Agreement 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 Agreement.
- 2.11 Where under this Agreement any approval, consent, certificate, direction, authority, action, expression of satisfaction, or response is required to be given or reached or taken by any party or any response is requested, any such approval, consent, certificate, direction, authority, action, expression of satisfaction, or response shall not be unreasonable or unreasonably withheld or delayed.
- 2.12 Where any approval, consent, certificate, direction, authority, action, expression of satisfaction, or response is not given within 21 (twenty-one) days of being required or a request being made, it shall be deemed to have been given.
- 2.13 This Agreement shall constitute a local land charge and shall be registrable as such at the Local Land Charges Registry upon satisfaction of the obligations in Clause 3, when at the request of the Owner, the Council will cancel all entries relating to this Agreement on the Local Land Charges Registry.
- 2.14 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- 2.16 If any payment due under this Agreement is paid late then Interest will be payable for the date the payment is due to the date of payment

### **3) COVENANTS WITH THE COUNCIL**

The Owner covenants with the Council:

- a) Upon the Occupation of the 1<sup>st</sup> (First) Dwelling to pay the Affordable Housing Contribution (if applicable taking into account the deduction of Vacant Building Credit) to the Council
- b) Upon the Occupation of the 10<sup>th</sup> (Tenth) Dwelling to pay the Real Time Bus Information Contribution to the Council
- c) Upon the Occupation of the 35<sup>th</sup> (Thirty Fifth) Dwelling to pay the New Mill Junction Improvements Contribution to the Council
- d) Upon the Occupation of the 60<sup>th</sup> (Sixtieth) Dwelling to pay the Education Contribution to the Council

#### **4) COVENANTS WITH THE OWNER**

The Council covenant with the Owner:

- a) To release the Owner from all and any liability under this Agreement following receipt of the Contributions
- b) To issue a receipt on request for any sums paid to the Council under this Agreement
- c) If the Council shall not have expended or committed to expend any or all of the Contributions within the period of five (5) years beginning on the date the Contributions were paid to them (of which expenditure the Council shall provide written evidence to the Owner if requested in writing) then so much of the Contributions that remain unspent shall be refunded by the Council to the Owner upon written request together with Interest from time to time of the Bank of England from the date of the payment(s) to the Council to the date of reimbursement to the Owner.

**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:

Solicitor to the Council / Authorised Signatory

**EXECUTED AS A DEED BY**  
**Z HINCHLIFFE & SONS LIMITED:**  
acting by two Directors or  
a Director and Secretary

Director

Director / Secretary

DRAFT

DRAFT

**Annex – Site Layout Plan**