

THIS AGREEMENT is made the [11th] day of [September] 2020

BETWEEN JOHN MICHAEL FRYER trustee of Margaret Rose Deceased Will Trust
care of Ramsdens Solicitors LLP of Oakley Houses 1 Hungerford Road
Huddersfield HD3 3AL (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 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 under title number YY44679
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 Agreement because of the need to:-
 - 4.1. secure the provision of Affordable Housing as part of the Site
 - 4.2. secure the payment of an Education Contribution
 - 4.3. secure the payment of a Public Open Space Contribution
 - 4.4. secure the payment of an Off-Site Highways Contribution
5. The Site forms part of a housing allocation within the Local Plan. Policy LP5 of the Local Plan relates to master planning sites where coordination of delivery of infrastructure, and other policy mitigation measures are needed, and overarching place shaping principles are imperative where there exists multi plot development and multiple owners.

6. The Site is contiguous with other development sites where there is multi plot development and multiple owners such that the Council can apply to the Site the requirements of Policy LP5 of the Kirklees Local Plan
7. The Council therefore requires contributions for the Site which are proportionate to the number of units on the Site as approved at Reserved Matters stage

NOW IT IS HEREBY AGREED as follows:-

1. INTERPRETATION

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

“1990 Act” means the Town and Country Planning Act 1990

“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 Annex 2 of the NPPF.

“the Application” means the application known by reference number 2018/90776 for the erection of up to 10 Dwellings on the Site

“Contiguous Sites” means sites on land shown edged yellow on Plan 2 annexed hereto

“Contribution(s)” means the Education Contribution Highways Contribution and the Public Open Space Contribution

“Development” means the development of the Site in accordance with the Planning Permission.

“Education Contribution” means the sum of £24,711.00 (Twenty Four Thousand Seven Hundred and Eleven Pounds) to be paid by the Owner to the

Council towards the provision of educational facilities or school places, the need for which directly arises from the Development.

"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 1990 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.

"Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

"Index Linked" means such increases to the Contribution on an annual basis from the date hereto to the date of payment of the relevant Contribution based upon changes to the Index between those dates as shall be notified by the Council to the Owner.

"Interest" means interest at 4 per cent above the base lending rate of Barclays Bank plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"Maximum Housing Density" means the maximum density of housing on sites calculated on the basis of the density target within Policy LP7 of the Kirklees Local Plan which is 35 dwellings per hectare

"NPPF" means the National Planning Policy Framework published by the Department for Communities and Local Government in July 2018.

"Off-Site Highways Contribution" means the sum of £7900.00 (Seven Thousand Nine Hundred Pounds) to be paid to the Council by the Owner and

applied by the Council towards improvements at the Halifax Road/East Street (Cavalry Arms) junction, the need for which directly arises as a result of the Development.

"Plan 1" means the plan so marked and annexed hereto.

"Plan 2" means the plan so marked and annexed hereto

"Planning Permission" means the planning permission to be granted pursuant to the Application.

"Policy LP5" means the policy relating to master planning in the Kirklees Local Plan.

"Public Open Space Contribution" means the sum of £18,847.00 (Eighteen Thousand Eight Hundred and Forty Seven Pounds) to be paid by the Owner to the Council towards the enhancement of existing play facilities in the vicinity of the Development, the need for which directly arises as a result of the Development.

"Reserved Matters Approval" means an the approval of details in relation to the Planning Permission

"Site" means the land at shown edged red on Plan 1.

2. GENERAL

- 2.1. The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Agreement.
- 2.2. The provisions of this Agreement are planning obligations made pursuant to Section 106 of the 1990 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 Agreement after he shall have parted with his or its 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 Agreement 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 receiver (including an 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 Agreement 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 Agreement 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 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.

2.9. This Agreement 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 Agreement.

2.11. The Owner shall pay to the Council its legal fees reasonably incurred in the preparation of this Agreement.

3. DEVELOPERS OBLIGATIONS

3.1. The Owner covenants with the Council to:-

3.1.1. pay on the date hereof to the Council its legal fees reasonably incurred in the preparation of this Agreement.

3.1.2. provide in accordance with the policies of the Kirklees Local Plan and NPPF and dependent upon the number of dwellings agreed under 'layout' at Reserved Matters the following:

3.1.2.1. On-Site Affordable Housing being 20% of the total number of units on the Site

3.1.2.2. the Public Open Space Contribution as Index Linked

3.1.2.3. a financial contribution towards off-site highway improvement works at the Halifax Road/East Street (Cavalry Arms) junction being £790 x 10 dwellings on Site (calculated at Maximum Housing Density)

3.1.2.4. the Education Contribution as Index Linked

3.2. The Owner covenants not to Implement or permit Implementation of the Planning Permission until the Contributions have been paid to the Council, such sum being calculated by reference to the number of units on the Site at Reserved Matters and which shall be increased by an amount equivalent to the Increase in the Index from the date hereof until the date on which relevant Contribution is payable and decreased to reflect the actual number of units on the Site at Reserved Matters

4. AFFORDABLE HOUSING

4.1. The Owner covenants not to Implement or permit Implementation until it submitted for approval and the Council has agreed an Affordable Housing scheme showing the number type tenure and location on the Site of the Affordable Housing

5. COUNCIL'S OBLIGATIONS

5.1. The Council hereby covenants to apply the Education Contribution towards the provision or improvement of educational facilities within the vicinity of the Development to accommodate pupil growth which directly arises from the Development **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 the Off Site Highways Contribution the need for which directly arises from the Development **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 hereby covenants to apply the Public Open Space Contribution for the upgrade of the existing play facility in the vicinity 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.

5.4. The Council shall provide to the Developer such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Agreement.

5.5. At the written request of the Owner 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 Owner 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 Owner 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.

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:-)



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

EXECUTED AS A DEED by)

JOHN MICHAEL FRYER

as trustee of Margaret Rose Deceased Will Trust

In the presence of:)

Witness Signature

Witness Name.

Address

.....

.....

Occupation...

.....

NORTH



Plan 1

General Notes

THIS DRAWING HAS BEEN PREPARED FROM SURVEY INFORMATION SUPPLIED BY OTHERS AND IS FOR INFORMATION PURPOSES ONLY. DO NOT SCALE FROM DRAWING. USE FIGURED DIMENSIONS ONLY. ALL DIMENSIONS MUST BE CHECKED AND VERIFIED ON SITE PRIOR TO COMMENCEMENT OF WORK AND ARCHITECT TO BE NOTIFIED OF ANY DISCREPANCIES.

© WAKE ARCHITECTS LIMITED 2018

Rev	Description	Drawn/Checked	Date
Drawing Status: PLANNING			

Project No:	1472	Project:	PROPOSED DEVELOPMENT, BURN ROAD, BIRCHENCLIFFE.
Drawing No:	(PL) 03	Drawing:	LOCATION PLAN.
Scale @ A3:	1:1250	Date:	FEB 18
Drawn by:	APM	Client:	RAMSDENS SOLICITORS.
Checked by:	---		

wake
architects
limited.

tel: +44(0)1484 681755
fax: +44(0)1484 691765

The Contiguous Sites



Plan 2

DATED 11th SEPTEMBER 2020

**THE COUNCIL OF THE BOROUGH OF
KIRKLEES**

and

**JOHN MICHAEL FRYER trustee of
Margaret Rose Deceased Will Trust**

DEED

**Under Section 106 of the Town &
Country Planning Act 1990 relating to
at Land at Burn Road and Yew Tree
Road Huddersfield**

Kirklees Council
Second Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND