

THIS AGREEMENT is made the 17th day of December Two Thousand and Nineteen **BETWEEN ROBERT MARTIN** of Park Wells Nesfield Ilkley LS29 0BU ("the Owner") **JPI (HOLDINGS) LIMITED** (Company Registration Number (09243818) whose registered office is situate at Unit C Nepshaw Lane South Gildersome Morley Leeds LS27 7JQ ("the Developer") 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 Deed are enforceable
2. The Owner is the freehold owner of part of the Site registered under title number WYK879617
3. The Owner is the owner of that part of the Site not registered under title number WYK879617 which is unregistered land
4. The Developer has by contract dated 31 August 2018 agreed to purchase the Site from the Owner and intends to carry out the Development
5. 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
6. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to:-
 - (i) Secure 20% of the total number of dwellings as affordable, with all to be Discounted Market Sales Housing
 - (ii) Secure the provision of off-site commuted sum for West Yorkshire Combined Authority Metro improvements

- (iii) Secure the provision and maintenance of surface water/ drainage/attenuation features
- (iv) Secure a financial sum for the improvement of off-site existing public open space and future maintenance and management responsibilities of open space within the Site

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:-

“the Affordable Housing” means the Dwellings to be provided by way of a Discounted Market Value Unit to a Qualifying Buyer whose needs are not met by the market as defined by Annex 2 of the NPPF

“the Culvert and the Public Open Space Area” means the culvert and the public open space area both shown shaded blue on Plan 2

“the Development” means the development of the Site in pursuance of the Planning Permission

“Discounted Market Value Unit Commuted Sum” means in the event that clause 5.12 of this Agreement is applicable, a sum to be paid by the Developer to the Council in lieu of the provision of the Discounted Market Value Units on the Site and which shall be calculated at 20% of the Open Market Value of the relevant Discounted Market Value Units as at the date this Discounted Market Value Unit Commuted Sum may be due under clause 5.12 of this Agreement.

The Discounted Market Value Unit Commuted Sum shall, if payable, be applied by the Council for the provision of, or improvements to, existing Affordable Housing elsewhere in the Council's area.

"Discounted Market Value Unit" means the Dwelling(s) to be constructed on the Site as Affordable Housing as set out below (unless otherwise agreed in writing by the Council) and to be provided in accordance with the provisions of clause 5 of this Deed:

- Plots 15,16 and 17- 2 bedroomed terraced units (Stafford)
- Plot 19 - 3 bedroomed terraced unit (Dorchester)

"Discounted Sale Price" means the sale price for the Discounted Market Value Unit which shall not exceed eighty per cent (80%) of the Open Market Value of that Discounted Market Value Unit and in any event shall not exceed £250,000.00 (two hundred and fifty thousand pounds)

"Disposal" means a transfer of a freehold interest or the grant of a leasehold interest of more than 25 years and the expression Disposal shall have the same meaning in relation to all or any part of the Site

"Dwellings or Dwelling" means those Dwelling(s) within the Development

"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 PROVIDED THAT the following shall not be regarded as material operations:

- (a) demolition of existing structures on the Site;
- (b) the erection of boundary structures, fencing and/or hoardings or other site security measures or safety measures;
- (c) diversion and laying of services;
- (d) site and ground investigations and/or surveys;
- (e) site clearance, preparation and levelling including ground earthworks;
- (f) archaeological investigations or works;
- (g) ecological, landscaping and/or noise attenuation mitigation measures;
- (h) remedial treatment of areas of contaminated land;

- (i) levelling and/or regrading of land in preparation for use or development;
and
- (j) any operations undertaken by the Council

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 and any reference to "Index Linked" shall be construed accordingly

"Index Linked" means increased in accordance with the following formula:

Amount payable = the payment specified in this Deed x (A/B) where:

- A = the figure for the Index that applied immediately preceding the date the payment is due.
- B = the figure for the Index that applied when the index was last published prior to the date of this Deed.

"Management Company" means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Developer and where the Developer holds the majority shareholding in that company for the purpose of carrying out future maintenance of the Culvert and Public Open Space Area

"Market Dwellings" means those Dwellings within the Development excluding the Affordable Housing

"Open Market Value" means the open market value of a Discounted Market Value Unit being 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 Discounted Market Value Unit by reason of this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Discounted Market Value Unit 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.

"Occupation" means occupation for trading or residential purposes as the case may be provided that this shall not include occupation for fitting out purposes or occupation for any show house for the purpose of marketing, as the case may be and **"Occupiers"** and **"Occupied"** shall be construed accordingly

"Off-Site Open Space Contribution" means the sum of £102,291.00 (One hundred and two thousand and two hundred and ninety one pounds) to be expended on the improvement of public open space in the Council's area

"Plan 1" means the plan attached at Annex A and marked "Plan 1"

"Plan 2" means the plan attached at Annex A and marked "Plan 2"

"Planning Permission" means the planning permission to be granted under reference number 2019/62/90264/E for the erection of 22 dwellings

"Public Transport Improvement Contribution" means the sum of £34,011.00 (Thirty four thousand and eleven pounds) for the provision of public transport improvements as follows:

- £13,000 (Thirteen thousand pound) as a contribution towards bus shelter improvements in the vicinity of the Development
- £10,000 (Ten thousand pounds) as a contribution towards Real Time Information Display upgrades in the vicinity of the Development
- £11,011 (Eleven thousand pounds) towards the provision of Residential Metrocards for the residents of the Development

“Qualifying Buyer” means a person who is:-

- (i) a first-time buyer which shall have the meaning given by section 57AA(2) of the Finance Act 2003;
- (ii) is at least 24 years old but has not yet reached the age of 40;
- (iii) the salary or joint salaries of purchasers does not exceed £80,000 per annum: and
- (iii) will occupy the Discounted Market Value Unit as a sole or main residence.

“Residential Metrocards” means discounted annual MetroCards aimed to encourage public transport use by occupiers at new residential development site

“Site” means the land west of Oxford Road Gomersal Cleckheaton BD19 4LA shown edged red on Plan 1

“Surface Water Attenuation System” means the surface water attenuation system that is to be provided for the Site

“Transfer” means the transfer effecting a Disposal

“Working Days” means any day except a Saturday, Sunday or public holiday in England and Wales

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 Council covenants with the Owner to observe and perform the obligations contained in clause 7 of this Deed

- 2.3 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
- 2.4 The expressions "the Council" "the Owner" and "the Developer" shall include their successors in title and assigns
- 2.5 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
- 2.6 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings or against those deriving title from them save that the obligations in clause 5 of this Deed shall be enforceable against owner-occupiers or tenants of the Discounted Market Value Unit on the terms set out in those clauses
- 2.7 This Deed shall not be binding 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
- 2.8 This Deed shall come into effect upon the date of:
- (a) the grant of the Planning Permission; and
 - (b) Implementation
- 2.9 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
- 2.10 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

- 2.11 Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed
- 2.12 If any dispute arises out of this Deed the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally)
- 2.13 Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:
- (a) Council: Town Hall Huddersfield West Yorkshire
 - (b) Developer: Unit C Nepshaw Lane South Gildersome Morley Leeds LS27 7JQ ("the Developer") as otherwise specified by the relevant person by notice in writing to each other person
 - (c) Owner: at the address shown above on page 1
- 2.14 Any notice shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed
- 2.15 This Deed is a local land charge and shall be registered as such
- 2.16 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

2.17 The Developer shall pay to the Council its legal fees reasonably incurred in the preparation of this Deed

3. MANAGEMENT OF THE CULVERT AREA AND SURFACE WATER ATTENUATION SYSTEM

3.1 The Owner hereby covenants to maintain and keep in good repair the Culvert and Public Open Space Area in perpetuity

3.2 The Owner shall not cause or permit or suffer Occupation of any Dwelling permitted by the Planning Permission until the full details (including day to day contact details) of the Management Company has been confirmed to the Council

3.3 The Owner shall effect the Disposal of the Culvert and Public Open Space Area to a Management Company not later than 12 months following Occupation of the final Dwelling on such terms to be agreed between the Owner and the Management Company and further maintenance of the Culvert Area shall be thereafter carried out by the Management Company in perpetuity from the date of the Transfer in accordance with the provisions of this Deed

3.4 As soon as is reasonably practicable after the completion of any Disposal of the Culvert Area and Public Open Space the Developer shall notify the Council in writing and provide to the Council a copy of the Transfer

3.5 The Developer hereby covenants to maintain and keep in good repair the Surface Water Attenuation System until such time as it is adopted and maintained by the relevant statutory undertaker

4. OFF-SITE OPEN SPACE CONTRIBUTION

4.1 The Owner covenants to pay to the Council the Off-Site Open Space Contribution as follows:

4.1.1 prior to the occupation of the 7th Dwelling to pay to the Council £34,097.00 (Thirty four thousand and ninety seven pounds)

- 4.1.2 prior to the occupation of the 14th Dwelling to pay to the Council £34,097.00 (Thirty four thousand and ninety seven pounds)
- 4.1.3 prior to the occupation of the 22nd Dwelling to pay to the Council the remaining £34,097.00 (Thirty four thousand and ninety seven pounds)

such sum shall be Index Linked from the date of the Planning Permission until the date the sum is due to be paid

5. AFFORDABLE HOUSING

The Owner covenants with the Council:-

- 5.1 Not to dispose of a Discounted Market Value Unit other than in accordance with the terms of Clause 5.3
- 5.2 not to permit the Occupation of the 14th Market Dwelling until the Discounted Market Value Units have been completed in accordance with the Planning Permission and approved plans and have been made available for Disposal to a Qualifying Buyer
- 5.3 subject to clauses 5.11 and 5.12 below, not to Dispose of a Discounted Market Value Unit other than in accordance with the terms of clauses 5.4 to 5.10
- 5.4 prior to the first Disposal of each Discounted Market Value Unit to submit to the Council for approval details at the Open Market Value and the Discounted Sale Price and not to Dispose of a Discounted Market Value Unit unless the Open Market Value and Discounted Sale Price have been approved by the Council (such approval not to be unreasonably withheld or delayed)
- 5.5 that the Discounted Market Value Unit shall not be used or Occupied other than in accordance with the requirements of this Deed
- 5.6 to provide the Council with the notice of sales release date not less than six (6) weeks before the date upon which it proposes to release the Discounted Market Value Unit for Disposal

5.7 that if the Owner and the Council are unable to agree the Open Market Value of the Discounted Market Value Unit within 20 working days of the Owner notifying the Council of the Open Market Value of the Discounted Market Value Unit then the Open Market Value will be determined by averaging the written opinions as to the Open Market Value of two independent surveyors who are members of the Royal Institute of Chartered Surveyors and whose appointment shall be agreed by the parties with the costs of such appointment borne equally to be instructed by the Owner and the Council and the Discounted Sale Price shall be calculated from that Open Market Value.

5.8 subject to the provisions in clauses 5.11 and 5.12 not to Dispose of any Discounted Market Value Unit:-

- (a) for an amount which exceeds the Discounted Sale Price; or
- (b) to any person other than a Qualifying Buyer

5.9 that the first Disposal of a Discounted Market Value Unit shall contain a restriction that subject to paragraphs 5.11 and 5.12, no further Disposal to a third party shall take place other than to a Qualifying Buyer at a price not exceeding the Discounted Sale Price and further that no such transfer shall be registered at the Land Registry without the inclusion of a restriction in the following terms:

"No disposition of the registered estate other than by a charge by the proprietor of the registered estate is to be registered without a certificate signed by the Council's Affordable Housing Officer (or such other officer duly authorised by the Council to give such a certificate) confirming that the provisions of the Deed dated [] and made between [] and the Council of the Borough of Kirklees have been fully complied with"

5.10 no Disposal of any Discounted Market Value Unit shall be completed and no such Disposal shall be registered at the Land Registry unless the Council has first consented in writing to such registration PROVIDED THAT such consent shall be given forthwith upon:-

- (a) evidence being furnished that the disponee (or in the case of joint disponees one of the disponees) is a Qualifying Buyer; and
- (b) the Solicitor or Licensed or other authorised Conveyancer acting for the disponee(s) has certified to the Council that any consideration expressed to be given for the Discounted Market Value Unit by the disponee(s) did not exceed the Discounted Sale Price as evidenced by the certificate given by a valuer not more than six (6) months before the date of such Disposal; and
- (c) the reasonable administrative and legal costs incurred by the Council in consideration of the disponee's application and provision of Land Registry certificate shall be paid by the disponee.

5.11 the provisions of this Clause 5 shall not apply to a chargee or mortgagee of a Qualifying Buyer ("the Chargee") who seeks to Dispose of a Discounted Market Value Unit pursuant to any default under the terms of its mortgage or charge subject to the following:

- a) the Chargee shall give not less than 20 Working Days' notice to the Council of its intention to Dispose
- b) in the event that the Council responds within 20 Working Days from receipt of the notice indicating the arrangements for the Disposal of the Discounted Market Value Unit can be made in such as to safeguard them as Discounted Market Value Units then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such Disposal
- c) if the Council does not serve its response to the notice served under this paragraph within 20 Working days then the Chargee shall be entitled to dispose of the Discounted Market Value Unit free of the restrictions set out in this clause 5
- d) if the Council or any other person cannot within 40 Working Days of the date of service of its response under this paragraph secure such Disposal then provided that the Chargee shall have complied with its obligations under this paragraph the Chargee shall be entitled to Dispose of the of the Discounted Market Value Units free of the Restrictions set out in this Schedule.

5.12 if any of the Discounted Market Value Units have not been contracted for sale to a Qualifying Buyer six calendar months from the date the Discounted Market Value Unit has been first offered for Disposal to a Qualifying Buyer at the

Discounted Sale Price ("the Qualifying Date"), the Owner shall agree the Discounted Market Value Unit Commuted Sum with the Council and shall pay the Discounted Market Value Unit Commuted Sum to the Council within 25 Working Days from the date of the agreement thereof PROVIDED THAT such sum shall only be payable in respect of those Discounted Market Value Units not already transferred to Qualifying Buyer and that from the Qualifying Date the Developer will be free to offer such Discounted Market Value Units for sale on the open market as Market Dwellings free from the restrictions within this clause

5

6. PUBLIC TRANSPORT IMPROVEMENT CONTRIBUTION

6.1 The Owner covenants to pay to the Council the Public Transport Improvement Contribution as follows:-

6.1.1 prior to the occupation of the 7th Dwelling to pay to the Council £17,005.50 (Seventeen thousand and five pounds and fifty pence)

6.1.2 prior to the occupation of the 14th Dwelling to pay to the Council £17,005.50 (Seventeen thousand and five pounds and fifty pence)

such sum shall be Index Linked from the date of the Planning Permission until the date the sum is due to be paid

7. COUNCIL'S COVENANTS

7.1 The Council covenants with the Owner:

7.1.1 not to use the Off-Site Open Space Contribution, the Discounted Market Value Unit Commuted Sum and the Public Transport Improvement Contribution other than for the purpose for which it was paid (whether by the Council or another party)

7.1.2 in the event that the Off-Site Open Space Contribution, the Discounted Market Value Unit Commuted Sum and the Public Transport Improvement Contribution have not been spent or committed for expenditure by the Council within five years following the date of receipt

of the Off-Site Open Space Contribution and/or the Public Transport Improvement Contribution and/or the Discounted Market Value Unit Commuted Sum the Council shall refund to the Owners or their nominees any part of the Off-Site Open Space Contribution, the Discounted Market Value Unit Commuted Sum or the Public Transport Improvement Contribution which have not been spent or committed for expenditure, together with any accrued interest

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

ANNEX A: PLANS



A	31.01.19	RED LINE BOUNDARY AMENDED TO INCORPORATE THE FOOTPATH ON OXFORD ROAD	DRH	JLB
REV	DATE	DESCRIPTION	BY	CHECK

Riva Homes

Development	Oxford Road		
Location	Gomersal		
Marketing Name			
Drawing Title	Location Plan		
Drawing Number	R18:ORG:02		
Revision	A	Scale	1:1250 @ A4
Drawn By	DRH	Date Started	Mar 18
Checked by	JLB	Date	Mar 18

Riva Homes - WJ House - Unit C - Nephew Lane South
Morley - Leeds - LS27 7JQ - 0113 8187840 - www.rivahomes.co.uk

Plans

Riva Homes

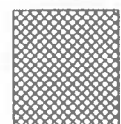
Development	Oxford Road
Location	General
Marketing Name	Oxford Meadows
Driving Time	Management Company Plan
Driving Number	R18:GOR:021
Version	1-500@A2
Drawn By	DRH
Checkd By	JLB
Date	May 19
Scale	1:500@A2

Site is shown on the map. The site is shown on the map. The site is shown on the map.

PLAN 2



01290
B.M. [Signature]



CROSS HATCHING DENOTES AREA TO BE WITHIN MANAGEMENT COMPANY

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:-)



012990

Service Director: Legal Governance and Commissioning/Authorised Signatory

EXECUTED AS A DEED by)
JPI HOLDINGS LIMIED)
by a Director in the presence of:-)

Director Signature

Witness Signature

Name

Address

Occupation

EXECUTED AS A DEED by)

ROBERT MARTIN in the presence)

of:-)

Signature



Witness Signature



Name



Address



Occupation



DATED 17 December 2019

THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

JPI HOLDINGS LIMITED

and

ROBERT MARTIN

DEED

Under Section 106 of the Town & Country Planning
Act 1990 relating to land to the west of Oxford Road
Gomersal Cleckheaton BD19 4LA

Julie Muscroft
Director – Legal, Governance & Commissioning
Kirklees Council
2nd Floor
High Street Buildings
High Street
Huddersfield
HD1 2ND