Dated 30 March **2026**

JOHN BROOKE and JANETTE BROOKE

and

THE COUNCIL OF THE BOROUGH OF KIRKLEES

Agreement under Section 106 of the Town and Country Planning Act 1990

Land at Beck Way, Hightown, Liversedge, WF15 6NB

Application Number 2020/90494
Legal Reference Number 108375

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THIS DEED is made the 30 day of March 2026

BETWEEN

(1) **JOHN BROOKE** and **JANETTE BROOKE** (trading as John Brooke Builders) of Syke Fold, Cleckheaton, West Yorkshire BD19 3AT (hereinafter called **"the Owners");**

(2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA (hereinafter called "the Council")

BACKGROUND

(A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations in this Deed are enforceable.

(B) The Owners have an interest in the Site as set out in Part 1 of Schedule 1

(C) The Owners have submitted the Application to the Council seeking planning permission for the Development.

(D) The Council are of the view that the Development should not be permitted unless the impact thereof is mitigated by entering into the obligations set out herein on behalf of the Owners which are

- necessary to make the Development acceptable in planning terms
- directly related to the Development and
- in all other respects are fairly and reasonably related in scale and kind to the Development

(E) The parties by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

OPERATIVE PROVISIONS

1. **DEFINITIONS AND INTERPRETATION**

1.1. In this Deed (which shall include the Schedules and Annexes hereto) the following expressions shall have the following meanings:

Expression	Meaning
1990 Act	the Town and Country Planning Act 1990
Application	the application for full planning permission for the Development allocated reference number 2020/90494
Commencement of Development	the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act (whether or not the carrying out of that material operation constitutes a lawful beginning of the Development) but excluding any operations undertaken in connection with or associated with • demolition, • site clearance, • archaeological investigations, • ecology survey or works, • investigations for the purpose of assessing ground conditions and any resultant remediation works, • environmental investigation, • site and soil surveys, • erection of a contractor's work compound, • erection of a site office, • erection of fencing to the site boundary; and/or • the temporary display of site notices or advertisements and **Commence Development** and **Commencement of Development** or any similar derivation of this term shall be construed accordingly.
Contributions	has the meaning set out in Schedule 2.
Default Interest Rate	4% per annum above the base rate from time to time of the Bank of England.
Development	the development of the Site comprising the election of 19 dwellings as described in the Application pursuant to the Planning Permission.

Expression	Meaning
Due Date	the latest date that any Contribution is to be paid in accordance with this Agreement
Expert	a person appointed in accordance with clause 11 to determine a dispute.
Index	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 the All In Tender Price Index ceases to exist such index as the Council reasonably nominates.
Index Linked	increased in accordance with the following formula: **Amount payable** = the figure specified in this Deed x (A/B) where: **A** = the figure for the Index that applied immediately preceding the Due Date or the date paid if earlier; and **B** = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission (or prior to the date of calculation where this Deed provides for a figure to be calculated at a different point in time).
Market Dwelling	any Dwelling that is not a First Home Unit
Mineral Rights	rights to exploit, mine, or produce minerals and other extractive resources lying below the surface of the Site;
NPPF	the National Planning Policy Framework published by the Department for Levelling Up, Housing and Communities updated December 2024 and any document that supplements or replaces it.
Occupy	to occupy for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development and 'Occupied' and like expressions shall be construed accordingly.

Expression	Meaning
Party	any person who is from time to time bound by the obligations herein or who may enforce or take advantage of any provision hereof
Plan 1	the plan titled 'Existing Site Location' numbered 0684/100 attached to this Deed at Part 2 of Schedule 1.
Plan 2	the plan entitled 'Long Section Chainages' numbered 963 003 attached to this Deed at Part 2 of Schedule 1
Planning Obligations	the obligations, restrictions, conditions and stipulations on the part of the Owners set out in Schedule 2 to Schedule 3 of this Deed.
Planning Permission	a planning permission granted by the Council pursuant to the Application or as defined in Clause 12
Practical Completion	the point when the construction of any Dwelling is sufficiently complete that, where necessary, a supervising architect has or would be able to issue a certificate of practical completion and it can be Occupied;
Site	the land described in Part 1 of Schedule 1 which is shown edged red on Plan 1.
Statutory Undertaker	any company corporation board or authority at the date of this Deed that is authorised by statute to carry on an undertaking for the supply of telephone or television or other electronic communications, electricity, gas, water, or drainage or other public services and any other body authorised to carry out such undertaking
Secretary of State	the Secretary of State for Housing and Communities from time to time appointed and includes any successor in function
Working Day	any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday

1.2. Unless specified to the contrary, any reference in this Deed to an enactment shall be construed as being a reference to that enactment as amended, extended, or re-enacted by or under any other enactment, and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.

1.3. References to clauses, paragraphs, Parts Annexes and Schedules are references to clauses, paragraphs, parts, annexes and schedules in this Deed.

1.4. References to paragraphs within specific Parts of the Schedules are references to the corresponding paragraphs within that Part of the Schedule unless specified otherwise.

1.5. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.

1.6. The term 'person' shall be interpreted and construed as including any natural person or persons acting together and any other legally constituted body whether or not incorporated by law.

1.7. The expression "the Council" shall include any successor authority to its statutory functions under the 1990 Act.

1.8. Where a covenant, restriction or requirement is expressed to be given by more than one Party, or where (from time to time) a party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.

1.9. Clause headings and the contents list shall not affect the construction of this Deed.

1.10. Any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.11. Any covenant by the Council or any Party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

1.12. Where any details, scheme, strategy or plan is required to be submitted for approval under this Deed and such approval is obtained, unless expressly stated otherwise nothing in this Deed shall prevent such details, scheme, strategy or plan from being resubmitted or amended by agreement with the Council.

2. **STATUTORY BASIS**

2.1. This Deed is made pursuant to section 106 of the 1990 Act and as such is enforceable pursuant to section 106(3) of the 1990 Act against the Owners and any person claiming or deriving title to the Site (or any part or parts thereof) through or under them or either of them as if that person had been an original covenanting party to this Deed subject to the terms of this Deed.

2.2. This Deed is enforceable by the Council as the local planning authority for the purposes of the 1990 Act.

2.3. To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3. **CONDITIONS PRECEDENT**

This Deed is conditional upon the grant of the Planning Permission.

4. **COVENANTS & DECLARATIONS**

4.1. The Owners covenant with the Council to comply with the Planning Obligations.

4.2. The Council covenants with the Owners to comply with the obligations on its part in Schedule 2 to Schedule 4 of this Deed.

5. **EXCLUSIONS & RELEASE**

5.1. No party shall be bound by the terms of this Deed or be liable for a breach of any Planning Obligation:

5.1.1. after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any breach occurring prior to parting with such interest and subsisting thereafter);

5.1.2. if its interest in the Site or relevant part thereof is solely as the owner of the subsoil of adopted highway and/or of Mineral Rights;

5.1.3. if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or

5.1.4. if that party is an owner or occupier of an individual Market Dwelling; or

5.1.5. if that party is an owner or occupier of a First Homes Unit save in respect of the provisions of Schedule 3 which shall apply.

5.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owners), quashed or revoked this Deed shall determine and cease to have effect.

5.3. No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

6. **REGISTRATION**

6.1. This Deed is a local land charge and may be registered as such by the Council.

6.2. Following either:

6.2.1. the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2. the determination of this Deed in accordance with Clause 5.2;

the Council shall as soon as reasonably practicable upon the written request of the Owners effect the cancellation of all entries made in the Register of Local Site Charges in respect of this Deed.

7. **NON-FETTER & WAIVER**

7.1. Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.

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

7.3. Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

8. **VAT**

8.1. All payments due in accordance with this Deed are expressed as being exclusive of value added tax.

8.2. If any payment is or is deemed to amount to a payment for a chargeable supply under the Value Added Tax Act 1994, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

9. **SEVERABILITY**

9.1. If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity, legality or enforceability of the remaining provisions of this Deed.

10. **CHANGE OF OWNERSHIP**

10.1. The Owners covenant to give written notice to the Council within 20 Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan **PROVIDED THAT** this obligation shall not apply to a sale or disposal of an individual Dwelling or to the disposal of part of the Site to a Statutory Undertaker for the purposes of its undertaking.

11. **DISPUTES**

11.1. Any refusal of agreement, approval, consent or expression of satisfaction or any other dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert.

11.2. The following provisions and terms of appointment shall apply to such disputes or disagreements:-

11.2.1. the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 11.1 above, shall be appointed or identified on application by any party by the following persons:

11.2.1.1. in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

11.2.1.2. in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

11.2.1.3. in the case of any other dispute the President of the Law Society.

11.2.2. the Expert shall act as an expert and not as an arbitrator

11.2.3. the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:

11.2.3.1. if any party to the dispute wishes to make written submissions to the Expert such submissions shall be sent to the Expert and all other parties to the dispute within 20 Working Days of receipt of the Expert's Notice;

11.2.3.2. the parties shall have 20 Working Days from the receipt of original written submissions (or such extended period as the Expert shall allow) to respond;

11.2.3.3. the Expert shall disregard any representations made out of this time;

11.2.3.4. the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time; and

11.2.3.5. to the extent not provided for by this clause the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination

11.2.4. the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written submissions;

11.2.5. the Expert's decision shall be in writing and shall give reasons for the decision; and

11.2.6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.

11.3. The decision of the Expert shall be binding on the parties save in the case of manifest error and/or fraud.

11.4. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

11.4.1. any party may apply to the relevant body as per Clause 11.2.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

11.4.2. Clause 11.2 shall apply to the new Expert as if they were the first Expert appointed.

11.5. Notwithstanding the above any dispute between the parties as to the meaning or interpretation of any provision of this Deed or as regards the enforceability of any provision shall only be determined by a Court

12. FUTURE PERMISSIONS

12.1. In the event that an application for planning permission s made pursuant to Section 73 or Section 73A or Section 73B or for a minor amendment to the Planning Permission pursuant to Section 96A of the 1990 Act and permission is granted by the Council in respect of that application then:

12.1.1. references to "Application", "Planning Permission" and "Development" in this Deed shall thereafter be deemed to include the application made pursuant to Sections 73 or 73A or 73B or Section 96A, the new planning permission granted pursuant to Section 73 or 73B of the 1990 Act and the development permitted by that permission or as changed pursuant to Section 96A respectively; and

12.1.2. this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for

a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council.

but in each case **PROVIDED THAT**:

12.1.3. nothing in this Clause 12 shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73B or 96A of the 1990 Act or in requiring new or varied planning obligations whether by way of a new or supplemental deed pursuant to Section 106 and/or Section 106A of the 1990 Act; and

12.1.4. to the extent that any of the Planning Obligations have been discharged in respect of the original Planning Permission nothing shall require the Owners to comply with that obligation again in respect of a planning permission granted under Section 73 or 73B of the 1990 Act.

13. DUTY TO ACT REASONABLY

13.1. All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any agreement, consent, confirmation, notification, specification, approval or expression of satisfaction is due by any party other than the Council to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

13.2. The Council covenants that where any details, scheme, strategy or plan is submitted for its approval under this Deed it shall act reasonably and not unreasonably withhold or delay its approval having regard to its duties under the 1990 Act.

14. INDEXATION

14.1. The Contributions payable to the Council shall be Index Linked.

14.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

15. INTEREST ON LATE PAYMENTS

15.1. Any amount due from the Owners to the Council under the terms of this Deed which is not paid on or prior to the Due Date shall accrue interest at the Default Interest Rate accruing from the Due Date to the date of actual payment.

16. **THIRD PARTY RIGHTS**

16.1. No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned with the express consent of the Council or becomes vested in law including parties who obtain title to the Site or any part thereof from any party to this Agreement.

17. **NOTICES**

17.1. Any notice to be given under or in connection with this Deed shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service:

17.1.1. to the Council addressed to the Head of Planning and Development Kirklees Council at Civic Centre 1, High Street, Huddersfield, HD1 2NF;

17.1.2. to any other Party at the address of that Party as stated in Part 1 of Schedule 1;

17.1.3. to any other person at its registered office (if a company) or its principal place of business or in the case of an individual to that individuals usual or last known place of abode;

or to such other address as may be notified by any Party to the others as its address for service

17.2. Any notice shall be deemed to have been received and served:

17.2.1. if delivered by hand, at the time the notice is left at the address for service as set out above unless received after 5pm or otherwise than on a Working Day in which case it shall be deemed received and served on 9am on the next Working Day after delivery; or

17.2.2. if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting.

17.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. **COSTS**

The Council acknowledges that the Owners have prior to the date of this Deed paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed.

19. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

THE PARTIES HEREBY WITNESS that this document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Part 1 Details of the Site and Interests of the Parties

1. **THE SITE**

All that land situate and known as land at Lands Beck Way, Hightown, Liversedge, WF15 6NB the freehold of which is registered at HM Land Registry under title number WYK824930 and therein described as land lying to the South of Halifax Road, Liversedge as shown edged in red on Plan 1

2. **INTEREST OF THE OWNERS**

The Owners are entitled to be registered as the proprietor of the Site with freehold title absolute and has supplied the Council with a certified copy of the transfer to them of that title and covenants

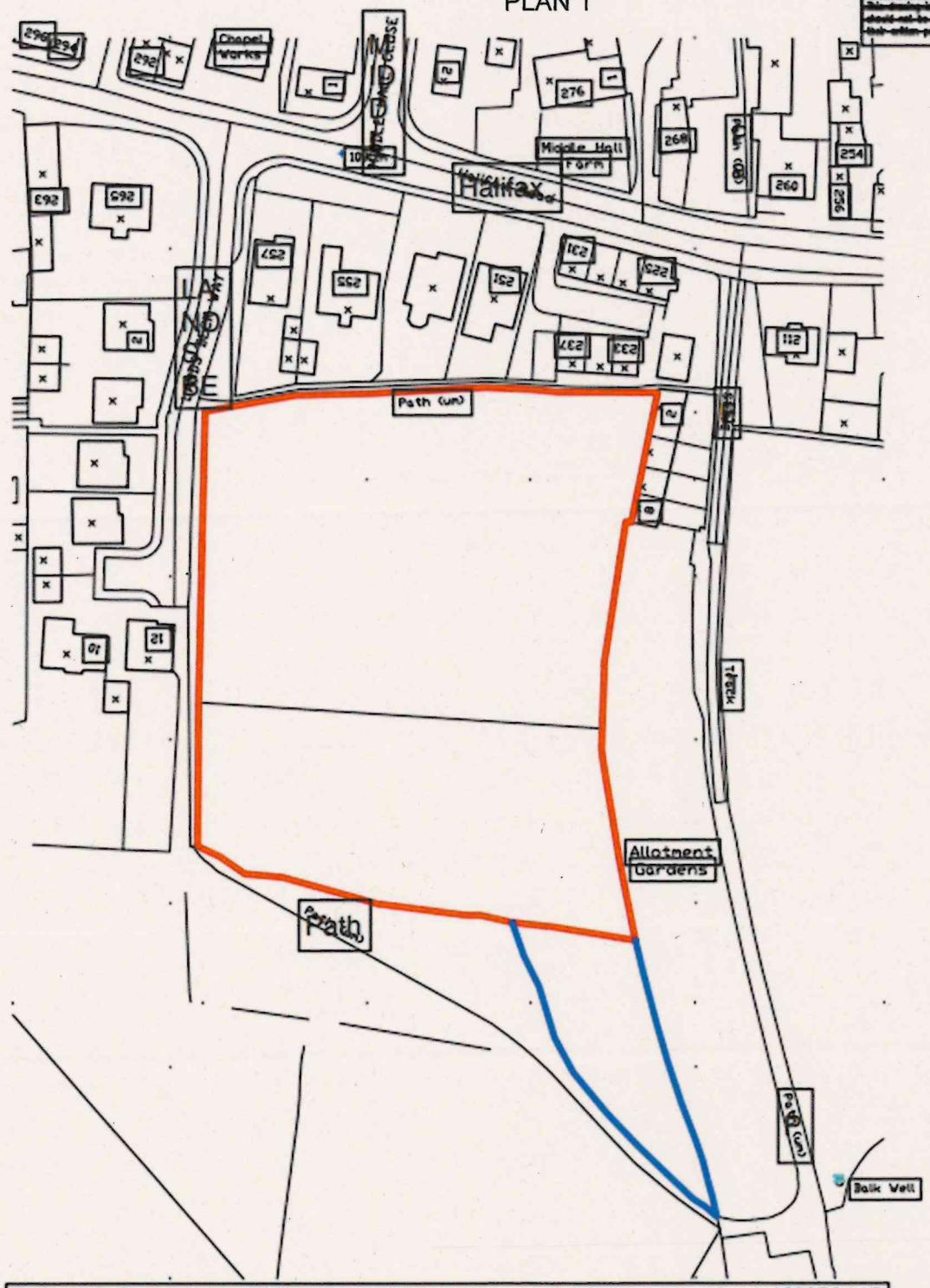
2.1. to promptly apply to the Land Registry to have them registered as freehold owners; and

2.2. supply the Council with Office Copies of the title once registration is complete

..

Part 2- Plans

PLAN 1



? Crown Copyright 2007. All rights reserved. Licence number 100020449

FOX | ARCHITECTURE & DESIGN

John Brooke Builders	
Housing Proposals Lands Beck Way, Liversedge	
Existing Site Location	
Feb 2020	1:1250@A4
0684/100	



General Notes

- This drawing should nc setting out purposes.
- This drawing shows th design only and is sub Authority approval.
- This drawing is based topographical / ordnar provided by others.

PLAN 2

022843

REV	DATE	DESCRIPTION

PROJECT
LANDS BECK WAY, LIVE

TITLE
LONG SECTION – CHAIN

SCALE
1:500 @ A3

DRAWING
963 003

DATE
18 05 2023

PARA HIGH

PARAGON HIGHWAYS
OFFICE 20/21 THE REAR WALLE
THE NOSTELL ESTATE,
WAKEFIELD WF4 1AB
01924 291536 / MAIL@PARAGO

SCHEDULE 2
FINANCIAL CONTRIBUTIONS

1. **THE CONTRIBUTIONS**

1.1. In this Schedule and in Schedule 4 the following expressions have the following meanings in addition to the definitions set out in Clause 1

Expression	Meaning
Bio Diversity Contribution	the sum of £68,080-00 (Sixty-eight thousand and eighty pounds only) to be paid to the Council and to be applied by the Council towards off site mitigation and compensation to enable the Development as a whole to achieve a 10% bio diversity net gain as required by Schedule 7a of the 1990 Act.
Off-Site POS Contribution	the sum of £42.565-00 (Forty-two thousand five hundred and sixty-five pounds only) to be paid to the Council for the purposes set out in Schedule 4
Sustainable Travel Contribution	the sum of £9,718-50 (Nine thousand seven hundred and eighteen pounds and fifty pence) for the purposes set out in Schedule 4

and the expression 'Contributions' shall be construed as referring to any or all of the above as the context admits

1.2. The Owners covenant as follows:

2. **BIO DIVERSITY CONTRIBUTION**

2.1. To pay or secure the payment of ~~to~~ the Bio Diversity Contribution to the Council; and

2.2. Not to cause or permit the Occupation of more than nine of the Dwellings until the Bio-Diversity Contribution has been paid in full.

3. **OFF-SITE POS CONTRIBUTION**

3.1. To pay or secure payment of the Off-Site POS Contribution to the Council; and

3.2. Not to cause or permit the Occupation of any Dwelling until the Off-Site POS Contribution has been paid in full.

4. **SUSTAINABLE TRAVEL CONTRIBUTION**

4.1. To pay or secure payment of the Sustainable Travel Contribution to the Council: and

4.2. Not to Occupy or cause or permit the Occupation of any Dwellings until the Sustainable Travel Contribution has been paid to the Council.

SCHEDULE 3
FIRST HOMES

1. **INTERPRETATION**

1.1. In this Schedule and in Schedule 4 the following expressions have the following meanings in addition to the definitions set out in Clause 1:

Expression	Meaning
Additional First Homes Contribution	the lowest of: (a) 30% of the net proceeds of sale after deduction of any SDLT payable by the First Home Owner as a result of the disposal of the First Home and the reasonable cost of selling; and (b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the First Homes Unit under relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Home Owner to the First Homes Mortgagee under the terms of any mortgage
Affordable Housing	housing for sale or rent, for those whose needs are not met by the market as defined in Annex 2 to the NPPF
Compliance Certificate	the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 3.4 below applies the Eligibility Criteria (Local)
Armed Service Member	a) a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force b) a former member of (a) above who was a member within the 5 (five) years prior to the purchase of the First Home, c) a divorced or separated spouse or civil partner of (a) above

Expression	Meaning
	d) a spouse or civil partner of a deceased member or former member of (a) above whose death was caused wholly or partly by their service;
Authority to Exchange	a notice served by the Council to the Owners (which for the purposes of this definition shall include the Owners and any First Homes Owner) providing the Council's consent to exchange contracts on the First Home such notice to be issued after: a) an Authority to Proceed has been issued; and b) the Owners have submitted a request to the Council for an Authority to Exchange to be issued following a mortgage offer having been received by the intended purchaser and contract having been agreed between the Owners and the intended purchaser;
Authority to Proceed	a notice from the Council to the Owners (which for the purposes of this definition shall include the Owners and any First Homes Owner) notifying the Owners that the intended purchaser meets the Eligibility Criteria (National) and/or the Eligibility Criteria (Local) unless paragraph 3.4 below applies;
Close Family	a spouse, civil partner, partner, parent, son, daughter, sibling, grandparent;
Disposal	a Transfer of a First Home other than: a) a letting or sub-letting in accordance with paragraph 4 below; b) a Transfer of a First Home Unit or land on which a First Home Unit is to be provided before that First Home Unit is made available for occupation except where the Transfer is to a First Home Owner; or c) an Exempt Disposal and **Disposed of** and **Disposing** shall be construed accordingly.

Expression	Meaning
Eligibility Criteria (National)	criteria which are met in respect of a purchase of the First Home Unit if: a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).
Eligibility Criteria (Local)	the criteria published by the Council in the document entitled "First Homes Provision Statement Kirklees Council December 2021" (or any subsequent updating/replacing documentation) at the date of the relevant Disposal of a First Home which are met in respect of a Disposal of a First Home if: a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and b) any or all of criteria (i) to (iii) below are met: (i) the purchaser meets the First Homes Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the First Homes Local Connection Criteria); and/or (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member;
Exempt Disposal	the Disposal of the First Homes Unit in one of the following circumstances: (a) a Disposal to a spouse or civil partner upon the death of the First Home Owner; (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Home Owner;

Expression	Meaning
	(c) Disposal to a former spouse or former civil partner of a First Home Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order; (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 3.12 of Schedule 3, shall apply to such sale); PROVIDED THAT in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 4 of Schedule 3,.
First Home	a Dwellings to be Disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Home Discount Market Price and which on its first Disposal does not exceed the Price Cap;
First Homes Administration Charge	the reasonable and proper costs incurred by the Council in consideration of the evidence provided to it pursuant to paragraph 3.6.1 below and the provision of the Compliance Certificate;
First Home Discount Market Price"	a sum which is the Market Value of the First Homes Unit discounted by at least 30%;
First Home Owner	the person or persons having the freehold or leasehold interest (as applicable) in the First Homes Unit other than: a) the party named herein as 'the Owner'; or b) another developer or other entity to which the freehold interest or leasehold interest in a First Homes Unit or in the land on which a First Homes Unit is to be provided has been Transferred before that First Homes Unit is made available and is Disposed of for occupation as a First Home; or c) a tenant or sub-tenant of a permitted letting under paragraph 5 of Schedule 6.

Expression	Meaning
First Homes Mortgagee	any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home.
First Homes Unit	a Dwelling identified as a First Home which shall be provided as a First Home in accordance with Schedule 3 each First Homes Unit being shown being Plots 2, 3, 7 and 8 on Plan 2 and marked thereon with a blue dot,.
First Time Buyer	a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
Income Cap (Local)	£80,000.00 (EIGHTY THOUSAND POUNDS ONLY) or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant Disposal of the First Home;
Income Cap (National)	£80,000.00 (EIGHTY THOUSAND POUNDS ONLY) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home;
Initial Disposal	the first Disposal of the First Homes Unit following Practical Completion;
Local Connection Criteria	criteria which are met by a person who satisfies one or more of (a) to (g) below: (a) currently lives in the Locality as their primary residence and has done so for the past 3 years; (b) previously lived in the Locality as their primary residence for at least 5 years cumulatively within the past 10 years; (c) has Close Family ordinarily resident in the Locality and that Close Family has been ordinarily resident in the Locality for the past 3 years;

Expression	Meaning
	(d) needs to move to the Locality to receive or provide care or support; (e) is employed full time on a permanent basis for more than 16 hours per week in the Locality or is about to take up an offer of permanent full-time employment in the Locality; (f) needs to move to the Locality to be close to local facilities because of a specific identified need; (g) has some other connection to the Locality as approved by the Council in writing; OR such other local connection criteria as may be published by the Council from time to time as its "First Homes Local Connection Criteria" (or equivalently so titled) and which is in operation at the time of the relevant Disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant Disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that Disposal;
Locality	the administrative area of the Borough of Kirklees.
Marketing Strategy	the strategy approved by the Council pursuant to paragraph 3.2 below detailing the marketing measures to be undertaken to Dispose of the First Homes Unit to a Qualifying Person prior to the Initial Disposal.
Market Value	the open market value as assessed by a Valuer in accordance with the RICS Valuation - Professional Standards (as applicable at the date of assessment or any such replacement guidance issued by the Royal Institution of Chartered Surveyors) and agreed between the Council and the Owners as being the open market value of the First Homes Unit at which the sale of an interest in the First Home Unit would have been completed unconditionally for cash consideration on the date of the valuation assuming: (a) a willing seller and a willing buyer;

Expression	Meaning
	(b) that any restrictions imposed on the First Homes Unit by reason of Schedule 6 to this Deed are disregarded; (c) that there are no restrictions as to the persons who may occupy the First Homes 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;
Price Cap	the amount for which the First Home Unit is sold after the application of the First Home Discount Market Price which on its first Disposal shall not exceed TWO HUNDRED AND FIFTY THOUSAND POUNDS (£250,000) or such other amount as may be published from time to time by the Secretary of State;
Qualifying Person	a person who meets the Eligibility Criteria (National) and (unless paragraph 3.4 of Schedule 3 applies) the Eligibility Criteria (Local);
SDLT	Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
Valuer	for the purposes of this Schedule a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer with that organisation to advise on Market Value and acting in an independent capacity

2. **OBLIGATIONS**

2.1. Subject always to Paragraph 5.1, unless otherwise agreed in writing by the Council, the Owners covenant with the Council as below save that

2.1.1. paragraphs 3 and 4 of this Schedule 3 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

2.1.2. paragraph 5 shall apply as set out therein.

3. **DELIVERY MECHANISM**

3.1. The Owners (which for the purposes of this Schedule shall include the Owners and any First Homes Owner) shall not Dispose of or Occupy any First Home other than in accordance with this paragraph 3 and paragraph 4 of this Schedule 3.

3.2. Prior to Commencement of Development the Owners shall submit to the Council a draft Marketing Strategy for the Council's approval and the Owners shall not Commence the Development unless and until such marketing strategy has been approved by the Council (or by the Expert pursuant to Clause 11) and thereafter each First Homes Unit shall only be Disposed of according to the terms of the Marketing Strategy.

3.3. Each First Homes Unit shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as a First Home to a person or person(s) meeting:

3.3.1. the Eligibility Criteria (National); and

3.3.2. the Eligibility Criteria (Local).

3.4. If after a First Homes Unit has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 3.3.2 shall cease to apply.

3.5. Subject to paragraphs 3.8 to 3.12, the First Homes Unit shall not be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee.

3.6. The First Homes Unit shall not be Disposed of (whether on a first or any subsequent sale) unless and until:

3.6.1. The Council has been provided with evidence that:

3.6.1.1. the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.4 applies meets the Eligibility Criteria (Local) (if any);

3.6.1.2. the First Homes Unit is being Disposed of as a First Home at the First Home Discount Market Price; and

3.6.1.3. the transfer of the First Homes Unit includes:

3.6.1.3.1. a definition of the "Council" which shall be "the Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire"

3.6.1.3.2. a definition of "*First Homes Provisions*" in the following terms:

"means the provisions set out in paragraphs 3.1 – 3.11 of Schedule 3 of the Section 106 Agreement a copy of which is attached hereto as the Annexure."

3.6.1.3.3. a definition of "*Section 106 Agreement*" in the following terms:

"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [DATE OF THIS DEED] made between (1) Malcolm Seed Valerie Seed Verdun Aldridge Seed and Judith Seed and (2) John Brooke and Janette Brooke and (3) the Council of the Borough of Kirklees"

3.6.1.3.4. a provision that the First Homes Unit is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Homes Unit or any part of it other than in accordance with the First Homes Provisions;

3.6.1.3.5. a copy of the First Homes Provisions in an Annexure; and

3.6.1.3.6. the First Homes Administration Charge has been paid to the Council by the Owners in respect of the Initial Disposal and the owner of the First Home on all subsequent disposals;

3.6.2. the Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.5 and 3.6.1 have been met.

3.6.3. the Council has issued the Authority to Proceed and the Authority to Exchange and the Council hereby covenants that it shall issue:

3.6.3.1. the Authority to Proceed within fifteen (15) Working Days of being provided with the relevant information pursuant to paragraphs 3.6.1.1 and 3.6.1.2 above;

3.6.3.2. the Authority to Exchange and Compliance Certificate within twenty (20) Working Days of receiving a request to issue the Authority to Exchange and having been provided with evidence sufficient to satisfy it that requirement of paragraphs 3.5 and 3.6.1 have been met.

3.7. On the first Disposal of each and every First Homes Unit the First Home Owner shall apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Homes Unit of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire or its solicitor or licenced conveyancer that the provisions of Paragraph 3.6 of Schedule 3 (the First Homes provisions) of the agreement dated ..... and made pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Malcolm Seed Valerie Seed Verdun Aldridge Seed and Judith Seed and (2) John Brooke and Janette Brooke and (3) the Council of the Borough of Kirklees have been complied with or that they do not apply to the disposition"

3.8. The owner of a First Homes Unit (which for the purposes of this clause shall include the Owners and any First Home Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

3.8.1. the First Homes Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 3.1 and 3.4 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 3.5 and 3.6.1; or

3.8.2. ~~requiring the First Home Owner to undertake active marketing for the period specified in paragraph 3.8.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship~~.

3.9. Upon receipt of an application served in accordance with paragraph 3.8 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is Disposed of to it at the First Home Discount Market Price.

3.10. If the Council is satisfied that either of the grounds in paragraph 3.8 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.8 that the relevant Dwelling may be Disposed of:

3.10.1. to the Council at the First Home Discount Market Price; or

3.10.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home.

and on the issue of that written confirmation the obligations in this Schedule which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.12 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is Disposed of other than as a First Home

3.11. If the Council does not wish to acquire the relevant First Homes Unit itself and is not satisfied that either of the grounds in paragraph 3.8 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.8 serve notice on the owner of the First Homes Unit setting out the further steps it requires the owner to take to secure the Disposal of that Dwelling as a First Home and the timescale (which shall be no longer than six (6) months) **PROVIDED THAT** if at the end of that period the owner of the First Homes Unit has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 3.8 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

3.12. Where a First Homes Unit is Disposed of other than

3.12.1. as a First Home; or

3.12.2. to the Council at the First Home Discount Market Price in accordance with paragraphs 3.10 or 3.11 above

the Owners of the First Homes Unit shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

3.13. Upon receipt of the Additional First Homes Contribution the Council shall:

3.13.1. within 20 Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.6.3 where such restriction has previously been registered against the relevant title; and

3.13.2. apply all monies received towards the provision of Affordable Housing within the Locality.

3.14. Any person who purchases a First Homes Unit free of the restrictions in this Schedule pursuant to the provisions in paragraphs 3.11 and 3.12 shall not be liable to pay the Additional First Homes Contribution to the Council.

4. **USE OF THE FIRST HOMES**

4.1. Each First Homes Unit shall be used only as the main residence of the First Home Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with paragraphs 4.1.1 to 4.1.4 below inclusive.

4.1.1. A First Home Owner may let or sub-let their First Homes Unit for a fixed term of no more than two (2) years, provided that the First Home Owner notifies the Council in writing before the First Homes Unit is Occupied by the prospective tenant or sub-tenant (and a First Home Owner may let or sub-let their First Homes Unit pursuant to this paragraph more than once during that First Home Owner's period of ownership **PROVIDED THAT** the aggregate of such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed two (2) years).

4.1.2. In addition, a First Home Owner may let or sub-let their First Homes Unit for any period provided that the First Home Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting and in such case the Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances in paragraphs 4.1.2.1 to 4.1.2.6 below:

4.1.2.1. the First Home Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;

4.1.2.2. the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;

4.1.2.3. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;

4.1.2.4. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;

4.1.2.5. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

4.1.2.6. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

4.1.3. A letting or sub-letting permitted pursuant to paragraph 4.1.1 or 4.1.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

4.1.4. Nothing in this paragraph 6 prevents a First Home Owner from renting a room within their First Home or from renting their First Homes Unit as temporary sleeping accommodation provided that the First Homes Unit remains at all times the First Home Owner's main residence.

5. **EXCLUSIONS AND RELEASE**

5.1. The obligations in paragraphs 1-5 of this Schedule in relation to First Homes Units shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver **PROVIDED THAT**:

5.1.1. such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Homes Unit; and

5.1.2. once notice of intention to Dispose of the relevant First Homes Unit has been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Homes Unit at its full Market Value and subject only to paragraph 5.1.3; and

5.1.3. following the Disposal of the relevant First Homes Unit the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.

5.1.4. following receipt of notification of the Disposal of the relevant First Homes Unit the Council shall:

5.1.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.6.3; and

5.1.4.2. apply all such monies received towards the provision of Affordable Housing.

SCHEDULE 4

COUNCIL'S COVENANTS

1. **RECEIPT OF CONTRIBUTIONS**

1.1. The Council shall issue separate receipts on request for any Contributions paid to it pursuant to this Deed.

1.2. The Council will place all sums received pursuant to this Deed in an interest bearing account (or in separate interest bearing accounts as the Council shall at its discretion decide).

2. **USE OF CONTRIBUTIONS**

2.1. The Council will use:

2.1.1. the Additional First Homes Contribution for the purposes set out in paragraph 5.1.4.2 of Schedule 3

2.1.2. the Bio Diversity Contribution to assist in securing that the biodiversity gain objective is met in accordance with Section 90A and Schedule 7A

2.1.3. the Off-Site POS Contribution towards the provision of open space and other recreational facilities in the vicinity of the Development to address the shortfall of provision of open space within the Site after the completion of the Development

2.1.4. the Sustainable Travel Contribution to fund the provision of Metro-cards to be supplied to occupiers of the Development

2.2. The Council will not apply any sums received pursuant to this Deed for any purpose other than as described in this Deed without the agreement of the Party that paid that sum.

2.3. The Council shall on reasonable request by any Party provide details of the sums collected and retained, the interest accrued, the sums expended and the purposes for which the sums have been expended **PROVIDED THAT** the Council shall not be obliged to comply with more than one such request within any 12 month period.

2.4. The Council shall upon written request repay any Contributions or parts thereof paid to it under this Deed (plus any actual interest accrued) to the person who made the payment if not committed by contract or expended within 10 years from the date of payment.

3. **PERFORMANCE**

3.1. The Council shall on reasonable request by the Owners issue written confirmation that each Planning Obligation has been performed.

3.2. In the event that the Council is satisfied that all of the Planning Obligations have been performed, the Council will thereafter cancel all relevant entries in the register of local land charges.

EXECUTION

EXECUTED AS A DEED (but not delivered until the date hereof) by **JOHN BROOKE** in the presence of:

Witness Signature: .....

Name of Witness: .....

Address: .....

.....

Occupation .....

EXECUTED AS A DEED (but not delivered until the date hereof) by **JANETTE BROOKE** in the presence of:

Witness Signature: .....

Name of Witness: .....

Address: .....

.....

Occupation .....

EXECUTED AS A DEED (but not delivered until the date of it) by the affixing of **THE CORPORATE COMMON SEAL of THE COUNCIL OF THE BOROUGH OF KIRKLEES** in the presence of

022843

Authorised Sealing Officer