

THIS AGREEMENT is made the 9th day of December Two Thousand and Twenty-One

BETWEEN:-

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall Huddersfield West Yorkshire (hereinafter called "the **Council**")
- (2) **ROGER CLINTON HINCHLIFF, LIONEL MITCHELL CLARK, REVEREND DAVID JAMES HOPKIN, ANNE ELIZABETH WAINWRIGHT and JANET SUSAN HATTERSLEY** being the Trustees of the Samuel Wordsworth Charity C/O The Vicarage, Shrewsbury Road, Penistone Sheffield S36 6DY (hereinafter called the "**First Owner**") and together with the Second Owner hereafter referred to as "the Owner".
- (3) **LEEDS DIOCESAN BOARD OF FINANCE** incorporated and registered in England and Wales with company number 08823593 whose registered office is at Church House, 17-19 York Place, Civic Leeds LS1 2EX (hereinafter called the "**Second Owner**") and together with the First Owner hereafter referred to as "the Owner."
- (4) **FAIRBANK INVESTMENTS LIMITED** incorporated and registered in England and Wales with company number 07626244 whose registered office is at Marland House, 13 Huddersfield Road, Barnsley S70 4LW (hereinafter called the "**Developer**")

WHEREAS

- (A) 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 in respect of the Site are enforceable.
- (B) The First Owner is the freehold owner of part of the Site comprised in Title Number YY76716 free from encumbrances
- (C) The Second Owner is the freehold owner of the remaining part of the Site registered under Title Number YY139471 free from encumbrances.
- (D) The Developer has an interest in the land of the First Owner by way of an option to purchase dated 3rd May 2019
- (E) The Developer has an interest in the land of the Second Owner by way of a contract for sale dated 24th June 2020
- (F) The Developer has made a planning application to the Council and the Council refused planning permission on 10 March 2021.

- (G) The Appeal has been submitted to the Secretary of State consequent upon the Council's decision to refuse planning permission
- (H) The Owners by entering into this deed do so to create planning obligations in respect of the Site and each part of it pursuant to s106 of the TCPA 1990
- (I) The parties have agreed to enter into this deed in order to secure planning obligations contained in this deed in the event that Planning Permission is granted on the Appeal and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010

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:-

"1990 Act"	means the Town and Country Planning Act 1990;
"Administration Charge"	means 1% (one percent) of the Affordable Housing Contribution;
"the Affordable Dwellings"	means the Affordable Rented Dwellings and the Intermediate Dwellings;
"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the NPPF;
"Affordable Housing Contribution"	means a payment which may be made in lieu of the provision of on-site Affordable Dwellings (or a full complement thereof) and which,

- in respect of the relevant Affordable Rented Dwelling(s) shall be calculated as a financial contribution to the equal value of median build costs for Kirklees recognised by the RICS Build Cost Information Service (BCIS) in respect of the relevant Affordable Dwelling(s) as at the date the Affordable Housing Contribution in respect of the relevant Affordable Rented Dwelling(s) may be due; and
- in respect of the relevant Intermediate Dwelling(s) (including if the Owner elects that any Intermediate Unit(s) will be offered direct to Qualifying Buyers as a Discounted Market Value Unit(s)) shall be calculated at 20% of the Open Market Value of the relevant Intermediate Dwelling(s) as at the date the Affordable Housing Contribution in respect of the relevant Intermediate Dwelling(s) may be due;

“Affordable Housing Plan”

means a plan which shows the location of the Affordable Dwellings within the Development to be submitted to and approved by the Council prior to the Commencement of Development;

“Affordable Housing Requirement”

means the requirement to provide 20% (to the nearest whole number) of the Dwellings up to a maximum in number of 7 (seven) Dwellings as Affordable Dwellings

in accordance with the Affordable Housing Tenure Mix;

“Affordable Housing Tenure Mix”

means the requirement to provide 55% (to the nearest whole number) of the Affordable Dwellings up to a maximum in number of 4 Dwellings as Affordable Rented Dwellings and 45% (to the nearest whole number) of the Affordable Dwellings up to a maximum in number of 3 Dwellings as Intermediate Dwellings;

“Affordable Rent”

means a rent which shall be determined in accordance with the government’s rent policy and associated guidance relating to affordable rent as published from time to time by the government or Homes England or any successor; or is at least 20% below Local Market Rent (including service charges where applicable);

“the Affordable Rented Dwellings”

means the Dwellings of Affordable Housing to be provided as part of the Development (as indicated on the Affordable Housing Plan) at an Affordable Rent;

“the Affordable Price”

means the sum to be paid by the Registered Provider (or Alternative Registered Provider) to the Owner for the Affordable Rented Dwellings and in the event any Intermediate Dwelling(s) are to be transferred to the Registered Provider (or Alternative Registered Provider) the Intermediate Dwelling(s), which shall

reflect the range of prices prevailing in Appendix 1 to SPD2 or such other sum as may be reasonably agreed between the Owner and the Council;

"the Alternative Registered Provider"

means such other Registered Provider as may be nominated by the Council under paragraph 3 of the Second Schedule;

"the Appeal"

means the appeal to the Planning Inspectorate following the Council's refusal to grant Planning Permission and allocated the appeal reference number APP/Z4718/W/21/3276678

"the Application"

means the application for the Development submitted to the with a description with reference number 2020/91146

"Certification Fee"

means the sum of £250 (two hundred and fifty pounds) for the five (5) year period from the date of this Deed and thereafter such sum as is reasonably required by the Council as a contribution towards the Council's reasonable and proper costs incurred in certifying the Discounted Sale Price and that the Disponee is a Qualifying Person pursuant to paragraphs 3.4 and 3.5 of the Third Schedule;

"Commencement of Development"

means the date on which the Development commences 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 **SAVE THAT** the term

'material operation' shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, environmental or archaeological investigation, site and soil surveys and surveys for assessing the purposes of ground conditions, making the ground good solid and safe following such investigations and surveys, any other works required in order to comply with any true pre-commencement condition attached to the Planning Permission, erection of contractors work compound, erection of site office, erection of temporary access and egress points and delivery, storage and parking areas and erection of fencing or other means of enclosure to the Site boundary and **"Commence"**, **"Commences"**, **"Commencement"** shall be construed accordingly;

"Development"

means the development of the Site pursuant to the Planning Permission;

"Discounted Market Sales Housing"

means housing which is to be sold at the Discounted Sale Price and which complies with the following part of the definition of "Discounted market sales housing" as set out within annex 2 of the NPPF "eligibility is determined with regard to local incomes and local house prices";

"Discounted Market Sale Unit"

means, in the event the Owner elects that any Intermediate Dwelling(s) are going to

be provided by way of Discounted Market Sale Unit, the Dwelling(s) (as indicated on the Affordable Housing Plan) to be provided as a unit of Discounted Market Sales Housing in accordance with the provisions of the Third Schedule to this Deed;

“Discounted Sale Price”

means the sale price for a Discounted Market Value Unit which shall not exceed eighty per cent (80%) of the Open Market Value of that Discounted Market Value Unit;

“Disposal”

means a transfer of a freehold interest in a Discounted Market Value Unit or the grant of a leasehold interest of more than 25 years in a Discounted Market Value Unit and **“Dispose”** shall be construed accordingly;

“Dwellings”

means the Affordable Dwellings and the Market Dwellings;

“Education Contribution”

means such sum to be calculated in accordance with the Council’s supplementary planning document entitled “Policy & Guidance: Providing for Education Needs Generated by New Housing” on the basis of the number of Dwellings and number of bedrooms in those Dwellings comprised in the Development as detailed in the relevant Reserved Matters Approval, to be used by the Council towards the enhancement and

improvement of facilities in order to provide additional permanent places at schools in the vicinity of the Development;

“Homes England”

means the national housing and regeneration delivery agency for England;

“Intermediate Dwelling”

means any Dwelling of Affordable Housing to be provided as part of the Development (as indicated on the Affordable Housing Plan) by way of any type or tenure of housing described in paragraphs b), c) and d) in the definition of affordable housing in the glossary contained within Annex 2 to the NPPF;

“Levy”

means a tax tariff or charge introduced by the Council pursuant to regulations made under the Planning Act 2008 including but not limited to the Community Infrastructure Levy Regulations 2010 (as amended) or any subsequent legislation to fund the delivery of infrastructure;

“Local Market Rent”

means the market rent that the Dwelling in question would be let at if the provisions of this Deed did not apply and if the Dwelling was leased between a willing lessor and willing lessee on appropriate and standard lease terms in an arm's length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion;

“Market Dwellings”

means those Dwellings within the Development which are not Affordable Dwellings;

“NPPF”

means the National Planning Policy Framework July 2021 published by the Department for Communities and Local Government (or any future guidance or initiative that replaces or supplements it);

“Occupation”

means the occupation of any part of the Development on the Site for any purpose permitted by the Planning Permission but not including occupation by a person or persons engaged in construction or fitting out or security operations and **“Occupy”** and **“Occupied”** shall be construed accordingly;

“Open Market Value”

means the open market value agreed between the Council and the Owner as being the open market value of the Affordable Dwelling in question or if not agreed shall mean the average of two (2) valuations (carried out by two (2) independent surveyors, one of which shall be selected by the Owner and the other by the Council and the parties shall each bear their own costs in respect of such valuations) of the price at which the sale of an interest in the property would have been completed unconditionally for cash consideration on the date of valuation assuming:

- (a) a willing seller in an arm's length transaction with a willing buyer after proper marketing of the Dwelling in question;
- (b) that any restrictions imposed on the Dwelling by reason of this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Dwelling or to whom a transfer or lease may be granted or assigned; and
- (d) that both parties to the transaction had acted knowledgeably prudently and without compulsion;

“Open Space Contribution”

means such sum to be calculated in accordance with the Council's supplementary planning document entitled “Open Space Supplementary Planning Document” adopted June 2021 on the basis of the number of Dwellings comprised in the Development as detailed in the relevant Reserved Matters Approval, to be used by the Council towards the enhancement and improvement of facilities in the vicinity of the Development

“Open Space and Drainage Scheme”

means a scheme detailing the management and maintenance of any on-site open space and drainage works provided on site in accordance with conditions attached to the Planning Permission which shall be submitted to and

approved by the Council pursuant to paragraph 3 of the Second Schedule;

“Parties”

means the Council and the Owner;

“Planning Permission”

means the outline planning permission which may be granted subject to conditions pursuant to the Application;

“Protected Tenant”

means any tenant of any Affordable Rented Dwelling or Intermediate Dwelling who has exercised the right to acquire, right to buy or preserved right to buy pursuant to the Housing Act 1985 or Housing Act 1996, any other statutory provision or any equivalent contractual right in respect of a particular Affordable Rented Dwelling or Intermediate Dwelling or any tenant or leaseholder who has been granted a shared ownership lease by a Registered Provider and who has subsequently purchased the Registered Provider’s shares in the Intermediate Dwelling in which they live such that they own the entire Intermediate Dwelling;

“Qualifying Buyer”

means any person, people or household:

- (i) one of whom is a first time buyer as defined in paragraph 6(1) of Schedule 6ZA of the Finance Act 2003;
- (ii) the salary or joint salaries of whom does not at the time of proposed Disposal exceed £80,000 per annum (subject to any increase on an annual

basis or pro rata diem from the date of the grant of Planning Permission to the date of proposed Disposal based upon the Retail Price Index last published by the Office for National Statistics prior to the grant of Planning Permission or any official publication substituted for it); and

- (iii) who will occupy a Discounted Market Value Unit as their sole or main residence;

“Registered Provider”

means an organisation which is a private registered provider of social housing or other provider registered in accordance with the provisions of chapter 3 of Part 2 of the Housing and Regeneration Act 2008;

“Reserved Matter”

means any one of appearance, landscaping, layout and scale as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and **“Reserved Matters”** shall be construed accordingly;

“Reserved Matters Approval”

means the approval or approvals pursuant to the Planning Permission of some or all of the Reserved Matters required for the carrying out of the Development (as the context requires);

“the Site”

means the land to the west of Wesley Avenue Netherthong outlined red on the plan annexed hereto

“Sustainable Travel Contribution”

means such sum to be calculated in accordance with Local Plan policy LP20 on the basis of the number of Dwellings comprised in the Development as detailed in the relevant Reserved Matters Approval, **SUBJECT ALWAYS TO** being no more than the maximum figure of £14,833.50 (fourteen thousand eight hundred and thirty three pounds and fifty pence) based on an indicative 36 Dwellings such sum to be used by the Council towards helping finance and deliver the programme of public transport improvements and enhancements

“SPD2”

means the Council's Interim Supplementary Planning Document number 2 – Affordable Housing adopted by Kirklees Council on 14 January 2020; and

“Working Day”

means any day of the week other than Saturday Sunday or any bank or public holiday.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their statutory functions.

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act as substituted by section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Deed are not made under section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are planning obligations pursuant to section 106 of the 1990 Act which bind the Site [and the Biodiversity Land] and each and every part thereof as set out in the Second Schedule and are enforceable against the Owner and their successors in title by the Council in its capacity as local planning authority in respect of the Site.

4. CONDITIONALITY

- 4.1 This Deed shall take effect upon the date hereof but clause 5 shall be conditional upon:
- (a) the grant of the Planning Permission; and
 - (b) the Commencement of Development.

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council that the Site shall be subject to the restrictions and provisions set out in the Second Schedule.

6. THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner to comply with the restrictions and provisions on its part as set out in the Fourth Schedule.

7. MISCELLANEOUS

- 7.1 Upon completion of this Deed the Owner shall pay to the Council the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed up to a maximum sum of £1,500.00.
- 7.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 7.3 This Deed shall be registrable as a local land charge by the Council.
- 7.4 The Parties agree with one another to act reasonably and in good faith in fulfilment of the objectives of this Deed and in particular where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by their Head of Planning and Development Management or any other officer exercising the functions of the Head of Planning and Development Management from time to time.
- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 No person shall be liable for any breach which relates to any part of the Site in respect of which that person has had no interest since the date of this Deed.
- 7.8 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site, or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date.
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop:
- 7.9.1 any part of the Site in accordance with a planning permission other than the Planning Permission; nor
- 7.10 The obligations contained in this Deed shall not be binding on or enforceable against:
- (a) any owner, occupier, tenant of any of the Dwellings nor their mortgagee or chargee or any person deriving title from them **SAVE FOR** the provisions of paragraph 2 of the Second Schedule to this Deed which shall (subject to the remaining provisions of this Deed) be enforceable against an owner, occupier and tenant of the Affordable Dwellings on the Site unless and until they become a Protected Tenant;
 - (b) any mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge or security over the Site or over any part or parts thereof or Dwelling thereon unless (but subject always to the preceding and remaining provisions of this Deed) such mortgagee or chargee has entered into possession of the Site or any part thereof to which such obligation relates;
 - (c) any receiver, manager or administrative receiver appointed under any security documentation (including a mortgage or a charge) relating to the whole of the Site or any part or parts thereof or any Dwelling thereon or similarly any liquidator or administrator or housing administrator;
 - (d) a statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services; or

- (e) any owner, occupier or tenant of a Dwelling which is subject to a transfer pursuant to order of the courts; and
- Nor will it be enforceable against any person or body deriving title through any such person listed above.

8. DISPUTES

- 8.1 Where any of the Parties are in dispute or disagreement as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Deed or as to any other matter or thing arising out of or connected with this Deed or its meaning or construction then the Parties in dispute shall use their reasonable endeavours to resolve the dispute or disagreement within 20 Working Days of the dispute or disagreement arising.
- 8.2 Failing the resolution of any such dispute or disagreement within the said 20 Working Days the dispute or disagreement may be referred for determination in accordance with the provisions of this clause 8 on the reference of either or any of the parties to the dispute or disagreement.
- 8.3 The dispute or disagreement shall be referred to the decision of a reputable Chartered Surveyor unconnected to any of the parties and qualified to deal with the subject matter of the dispute or disagreement who shall either be jointly appointed by the parties within a period of 10 Working Days following a failure of the parties to resolve the dispute or disagreement pursuant to clause 8.2 above or failing agreement on such nomination appointed by the President for the time being of the Royal Institution of Chartered Surveyors.
- 8.4 The determination of the independent Chartered Surveyor (including any determination as to the responsibility for payment of their costs and those of the parties) shall be final and binding upon the parties save in the event of manifest error.
- 8.5 The reference shall be deemed to be a reference to any expert (and not an arbitrator).

8.6 The terms of reference of the Chartered Surveyor as an expert shall include the following:

- (a) they shall call for representations from all parties with 10 Working Days of a reference to them under this Deed and shall require the parties to exchange representations within this period;
- (b) they shall allow the parties 10 Working Days from the expiry of the 10 Working Days period referred to in sub-clause (a) above to make counter representations;
- (c) any representations or counter representations received out of time shall be disregarded by the independent Chartered Surveyor;
- (d) they shall provide the parties with a written decision (including their reasons) within 10 Working Days of the last date for receipt of counter-representations;
- (e) they shall be entitled to call for such independent expert advice as they shall think fit; and
- (f) their costs those of the parties and the costs of any independent expert advice called for by the Chartered Surveyor shall be included in their award.

9. COMMUNITY INFRASTRUCTURE LEVY

If after the date of this Deed a Levy which is applicable to the Development is introduced or becomes effective, then the Owner is entitled to submit proposed variations to this Deed for the Council's consideration with the intent that the planning benefits secured by this Deed should continue to be secured and delivered by some means but ensuring neither Owner is in a financially worse position as a result of the Levy than they would be if they had performed the obligations in this Deed and no CIL had been introduced.

10. JURISDICTION

This Deed is governed by and interpreted in accordance with the laws of England.

11. DELIVERY

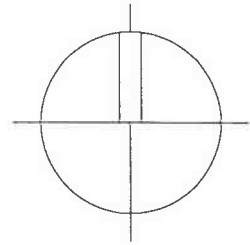
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

FIRST SCHEDULE

Location Plan identifying the Site

Hillway
West
014540

North



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LAND AT MIRY LANE
NETHERTHONG
HUDDERSFIELD

Scale 1:1250

Date MARCH 2020

Ref 20.08

Drwg No **0S1A**

 **mboothdesign**
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LOCATION PLAN

Indicative Layout



Site Plan 1:500

KEY:

- Existing trees and reference to Tree Report.
- Root protection area of existing trees.
- Tree Removed
- Indicative tree and hedge planting - subject to Landscape design.
- 1.8m high close boarded fence to rear gardens.
- 0.9m high timber picket or steel fence to frontages where shown.
- 0.75m high stone walls where shown.
- Rear garden plot number
- Parking space plot No
- Visitor Parking
- Existing levels
- Typical House - Type F
- Arrow indicated integral garage

F 20.08.2020 - Amend Open Space.

E 19.08.2020 - Revisions to layout; Add outline details for Open Space; Add link footpath; add street landscaping and reduce frontage parking; amend design of footpaths at access from Wesley Avenue.

D 22.06.2020 - Amend Plot 36.

C 17.03.2020 - Amend visitor parking opposite plot 3. Re-design link to Wesley Avenue.

B 09.03.2020 - Omit plot, redesign 8 9 10 23; add visitor parking; amend parking to 5 6 7 11 23 24 25 27.

A 05.02.2020 - First Issue

Residential Development
Land Wesley Avenue
Netherthong
Huddersfield

OUTLINE PROPOSALS

SITE PLAN



mboothdesign

architectural design and building consultants

Fairfield House
Barnes Close Barnsley

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E: mark@mboothdesign.co.uk

Scale 1:500 @ A2 Drawn MJ8

Date MARCH 2020 Ref. 20.08

Dwg No. P1 Rev. F

0cm 2cm 4cm 6cm

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SECOND SCHEDULE

Owner's covenants

1. CONTRIBUTIONS

The Owner covenants with the Council as follows:

Education Contribution

- 1.1 To pay 50% of the Education Contribution to the Council prior to first Occupation of 50% of the Dwellings.
- 1.2 Not to first Occupy more than 50% of the Dwellings until 50% of the Education Contribution has been paid to the Council.
- 1.3 To pay the remaining 50% balance of the Education Contribution to the Council prior to first Occupation of 85% of the Dwellings.
- 1.4 Not to first Occupy more than 85% of the Dwellings until the remaining 50% balance of the Education Contribution has been paid to the Council.

Open Space Contribution

- 1.5 To pay 50% of the Open Space Contribution to the Council prior to first Occupation of 50% of the Dwellings.
- 1.6 Not to first Occupy more than 50% of the Dwellings until 50% of the Open Space Contribution has been paid to the Council.
- 1.7 To pay the remaining 50% balance of the Open Space Contribution to the Council prior to first Occupation of 85% of the Dwellings.
- 1.8 Not to first Occupy more than 85% of the Dwellings until the remaining 50% balance of the Open Space Contribution has been paid to the Council.

Sustainable Travel Contribution

- 1.9 To pay 50% of the Sustainable Travel Contribution to the Council prior to first Occupation of 50% of the Dwellings.
- 1.10 Not to first Occupy more than 50% of the Dwellings until 50% of the Sustainable Travel Contribution has been paid to the Council.
- 1.11 To pay the remaining 50% balance of the Sustainable Travel Contribution to the Council prior to first Occupation of 85% of the Dwellings.
- 1.12 Not to first Occupy more than 85% of the Dwellings until the remaining 50% balance of the Sustainable Travel Contribution has been paid to the Council.

2. AFFORDABLE HOUSING

The Owner covenants with the Council as follows:

- 2.1 **SUBJECT ALWAYS TO** the subsequent provisions of this paragraph 2, not to permit in excess of 85% Market Dwellings to be Occupied until the Affordable Dwellings have been constructed in accordance with paragraph 2.2 hereof and:
 - 2.1.1 the Affordable Rented Dwellings have been made available for sale to a Registered Provider or the Alternative Registered Provider (if relevant); and
 - 2.1.2 the Intermediate Dwellings have been made available for sale either to a Registered Provider or the Alternative Registered Provider (if relevant) or direct to a Qualifying Buyer in accordance with the Third Schedule.
- 2.2 To construct and provide the Affordable Dwellings:
 - 2.2.1 to National Design Guide (1 October 2019) standards;
 - 2.2.2 in accordance with the Planning Permission and approved plans;
 - 2.2.3 in the locations shown on the Affordable Housing Plan; and
 - 2.2.4 in accordance with the Affordable Housing Requirement and Affordable Housing Tenure Mixunless otherwise agreed with a Registered Provider or the Alternative Registered Provider as may be the case.

- 2.3 If neither a Registered Provider or the Alternative Registered Provider (if relevant) has confirmed in writing to the Owner its willingness subject to contract to purchase the Affordable Dwellings which have been offered to it pursuant to paragraph 2.1 at the Affordable Price and on the Owner's other reasonable contract terms within twelve (12) calendar months of Commencement then the Council upon receipt of notice in writing from the Owner to that effect shall as soon as is practicably possible, nominate another Registered Provider and this provision may be repeated as often as is necessary (**SUBJECT ALWAYS TO** paragraph 2.4 below) until such time as a Registered Provider has confirmed its willingness subject to contract to purchase the Affordable Dwellings which have been offered to it at the Affordable Price.
- 2.4 If no Registered Provider has confirmed its willingness subject to contract to purchase the Affordable Dwellings which have been offered to it at the Affordable Price and on the Owner's other reasonable contract terms within a period of twenty-four (24) calendar months from Commencement and the Owner has produced evidence in writing to demonstrate to the reasonable satisfaction of the Council (acting reasonably) that it has used reasonable endeavours to secure sale of the Affordable Dwelling(s) in question to a Registered Provider then the Owner will be free to offer the Affordable Dwellings which have been offered to a Registered Provider(s) pursuant to paragraphs 2.1 and 2.3 for sale on the open market **SUBJECT TO** the provisions of paragraph 2.6.
- 2.5 If the Registered Provider or Alternative Registered Provider confirms its willingness to purchase the Affordable Dwellings which have been offered to it at the Affordable Price and on the Owner's other reasonable contract terms but does not then contract to buy those Affordable Dwellings within two (2) months from the delivery of the complete package of contract documentation to that Registered Provider's solicitor then:-
- 2.5.1 if a period of 24 (twenty-four) calendar months from Commencement has expired the Owner will be free to offer those Affordable Dwellings for sale on the open market and the provisions of this Deed shall no longer apply to those Dwellings **SUBJECT TO** the provisions of paragraph 2.6;

2.5.2 in any other circumstances the provisions of paragraph 2.3 shall (**SUBJECT ALWAYS TO** paragraph 3.4) continue to apply.

2.6 In the event that the Owner is free to offer the Affordable Dwellings for sale on the open market pursuant to paragraph 2.4 or 2.5.1 hereof the Owner shall within 28 (twenty-eight) days of agreement with the Council of the relevant sums and sale of the Affordable Dwellings (whichever is later), pay to the Council the Administration Charge and the Affordable Housing Contribution **PROVIDED ALWAYS THAT** in order to offer an Intermediate Unit for sale on the open market as a Market Dwelling the Owner only needs to comply with either paragraph 2 of this Schedule or paragraph 9 of the Third Schedule but not both, and only needs to pay a single Administration Charge and a single Affordable Housing Contribution in respect of an Intermediate Unit pursuant either to this paragraph 2.6 of this Schedule or paragraph 9 of the Third Schedule.

2.7 Paragraphs 2.4 to 2.6 may apply in respect of any one, more or all of the Affordable Dwellings.

3 Open Space and Drainage Scheme and long term management

The Owner covenants to:

- 3.1 Submit the Open Space and Drainage Scheme to the Council prior to Commencement of Development.
- 3.2 Not to Commence the Development until the Open Space and Drainage Scheme has been approved.
- 3.3 To maintain and manage in perpetuity any on-Site open space and drainage infrastructure in accordance with the approved Open Space and Drainage Scheme by way of incorporation of a management company which is registered at Companies House:
 - (a) which may already be in existence or which may be formed by the Owner for the purposes of carrying out the maintenance of the onsite open space and drainage infrastructure in accordance with this deed and which is incorporated in England and Wales or Scotland;

- (b) which has its registered office in England and Wales or Scotland; and
- (c) whose primary object is permitted to maintain and renew the drainage infrastructure and on site open space

THIRD SCHEDULE
Discounted Market Sale Unit

The Owner covenants with the Council:

1. Discounted Market Sale Units

- 1.1. Subject to the terms of this Deed no Discounted Market Sale Unit shall be Occupied otherwise than by a Qualifying Person together with their family or any other person who may reasonably be expected to reside with him.
- 1.2. Subject to the terms of this Deed no Discounted Market Sale Unit shall be sold at a sale price that is greater than the Discounted Sale Price.
- 1.3. The Owner shall use all reasonable endeavours to
 - 1.3.1. dispose of the Discounted Market Sale Units to Qualifying Persons in accordance with the Marketing Strategy; and
 - 1.3.2. to complete a transfer of a Discounted Market Sale Unit as soon as reasonably practicable following an agreement Subject to Contract to acquire a Discounted Market Sale Unit
- 1.4. On every first disposal and on each subsequent disposal, no disposal of a Discounted Market Sale Unit shall take place and no Discounted Market Sale Unit shall be Occupied until and unless the Council has certified:
 - 1.4.1. the Discounted Sale Price; and
 - 1.4.2. that the intended Disponee is a Qualifying Person;
- 1.5. In order for the Council to certify the relevant details pursuant to paragraph 1.4 above, the Owner shall provide to the Council the following:
 - 1.5.1. a copy of a RICS valuation report such valuation to have been carried out no more than 6 months prior to its submission to the Council and such valuation to be agreed by the Council;
 - 1.5.2. Details of the Proposed Discounted Sale Price for the relevant Discounted Market Sale Unit;
 - 1.5.3. Confirmation that the Qualifying Person meets the Qualifying Criteria;
 - 1.5.4. A letter from a reputable mortgage lender stating the maximum that they are able to lend to the Disponee which must be at or above the Discounted Sale Price but not at or above the Open Market Value of the Discounted Market Sale Unit;
 - 1.5.5. A copy of the draft sale contract in respect of the disposal to the Disponee;

- 1.5.6. The Certification Fee
- 1.6. Where the Owner for the time being has provided the Council with all of the details as required pursuant to paragraph 1.5 above, the Council acting reasonably at all times shall within 15 Working Days either:
- 1.6.1. Notify the Owner that it agrees with the details provided and therefore certify that the Disponee is a Qualifying Person and the Discounted Sale Price; or
- 1.6.2. Notify the Owner that it does not agree with the details provided.
- 1.7. If the Council notifies the Owner that it does not agree with the Open Market Value pursuant to paragraph 1.6 above then the Owner and the Council shall use reasonable endeavours for a further 20 Working Days to agree the relevant details. If those details still cannot be agreed between the Owner and the Council within those further 20 Working Days then the Open Market Value will be determined by an independent valuer appointed jointly by the Owner and the Council and failing such joint appointment by an independent valuer appointed by the President for the time being of RICS and the independent valuer's expenses in respect of any determination shall be borne by the Council and the Owner equally.
- 1.8. If pursuant to paragraph 1.6 above the Council notifies the Owner that it does not agree that the Disponee is a Qualifying Person the matter shall be referred for determination in accordance with clause 8 of this Deed.
- 1.9. The contract for the disposal of a Discounted Market Sale Unit shall include covenants to the effect that:
- 1.9.1. the Discounted Market Sale Unit is to be sold at a Discounted Market Sale Price;
- 1.9.2. the Disponee acknowledges that the Dwelling is a Discounted Market Sale Unit as defined in this Deed; and
- 1.9.3. the Disponee is a Qualifying Person as defined in this Deed, such covenant to also set out the basis upon which the Qualifying Person satisfies the Local Connection Criteria;
- 1.10. No Discounted Market Sale Unit shall be Occupied unless it is (or in the case of the first sale will following completion of the registration at the Land Registry of the transfer of such Discounted Market Sale Unit be) subject to the Discounted Sale Restriction on the register of title to the relevant Discounted Market Sale Unit.

1.11. If either

1.11.1. after the end of a period of 3 months from the Substantial Completion of a Discounted Market Sale Unit the Owner has not been able to reach agreement with a purchaser on a Subject to Contract basis for the transfer to it of the Discounted Market Sale Unit at the Discounted Sale Price; or

1.11.2. after a period of 6 months from the Substantial Completion of a Discounted Market Sale Unit there has not been a completed transfer of the freehold interest of the Discounted Market Sale Unit, then the Owner shall be able to request the Council's approval to dispose of the Discounted Market Sale Units at Open Market Value such approval not to be unreasonably withheld or delayed provided that:

1.11.2.1. the Owner has used all reasonable endeavours to market and dispose of the Discount Market Sales Units as detailed in 1.3 of this Third Schedule and provides evidence to the Council of those reasonable endeavours; and

1.11.2.2. the Owner pays to the Council twenty percent (20%) of the gross sale price of the relevant Dwelling received by the Owner on the disposal of each of those Discounted Market Sale Units as an Off-Site Affordable Housing Contribution; and

1.11.2.3. the Owner pays to the Council the Administration Charge.

1.12. For the purposes of this Agreement a Discounted Market Sale Unit shall be deemed to have been provided upon the date when the Owner has paid the Off-Site Affordable Housing Contribution in respect of that Dwelling pursuant to paragraph 1.11 above and thereafter the provisions of this paragraph 1.3 of this Third Schedule shall cease and determine in respect of that Dwelling.

FOURTH SCHEDULE

Council's covenants

The Council hereby covenants with the Owner as follows:

- 1 To issue separate receipts on request for any sum paid to the Council under this Deed.
- 2 Not to apply the Education Contribution towards any purpose other than the purpose identified in the definition of Education Contribution in clause 1.1.
- 3 Not to apply the Open Space Contribution towards any purpose other than the purpose identified in the definition of Open Space Contribution in clause 1.1.
- 4 Not to apply the Sustainable Travel Contribution towards any purpose other than the purpose identified in the definition of Sustainable Travel Contribution in clause 1.1.
- 5 Not to apply any Administration Charge which is paid to it towards any purpose other than administrative and staff costs relating to the calculation and agreement of any Affordable Housing Contribution.
- 6 Not to apply any Affordable Housing Contribution which is paid to it towards any purpose other than the provision of new Affordable Housing within its administrative area.
- 7 That in the event the Education Contribution, Open Space Contribution, Sustainable Travel Contribution or any part(s) thereof is not expended in accordance with this Deed within 10 (ten) years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the person who made the payment.
- 8 That in the event an Administration Charge is paid but it or any part thereof is not expended in accordance with this Deed within 10 (ten) years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the person who made payment.
- 9 That in the event an Affordable Housing Contribution is paid but it or any part thereof is not expended in accordance with this Deed within 10 (ten) years of the date of payment then the sum or sums not expended plus interest accrued will be repaid to the person who made payment.

- 10 To provide the Owner with such evidence to demonstrate the expenditure of any sum paid by the Owner to the Council under this Deed upon receipt of written request from the Owner.
- 11 To provide written confirmation of the discharge of the obligations on the part of the Owner contained in this Deed upon written request from the Owner.
- 12 To fully perform and observe all of its obligations and duties contained in this Deed.
- 13 To cancel all entries made in the Register of Local Land Charges in respect of this Deed forthwith on the performance and satisfaction of all the obligations contained in this Deed.

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:-)

He Henry W

Director - Legal, Governance
& Commissioning /Authorised Signatory



Signed as a deed by **ROGER**)
CLINTON HINCHLIFFE in the)
presence of:)

RC Hinchcliffe

P.M. Dimelow

Witness signature

Philip Michael Dimelow

Witness name

7 Meads Close Penistone S36 6EZ

Witness address

Retired

Witness occupation

Signed as a deed by **LIONEL**)
MITCHELL CLARK in the)
presence of:)



Witness signature

KAYLA BOOTH

Witness name

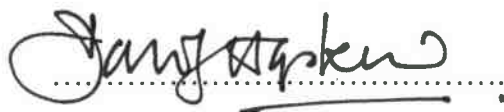
31 WENTWORTH MEADOWS
PENISTONE S36 6SW

Witness address

PHARMACY ASSISTANT

Witness occupation

Signed as a deed by **REVEREND**)
DAVID JAMES HOPKIN in the)
presence of:)



Witness signature

Philip Michael Dineen

Witness name

7 Mears Close Penistone S36 6EZ

Witness address

RETIRED

Witness occupation

Signed as a deed by **ANNE**)
ELIZABETH WAINWRIGHT in the)
presence of:)

A Wainwright

P.M. Dimelow

Witness signature

Philip Michael Dimelow

Witness name

7 Mears Close, Penistone S36 6EZ

Witness address

RETIRED

Witness occupation

Executed as a Deed by **LEEDS**)
DIOCESAN BOARD OF FINANCE)
acting by)
in the presence of:)

+ Nicholas Leeds

[Signature]

Witness signature

Linda Fiske

Witness name

96 Sandhill Oval, Leeds LS17 8EE

Witness address

Adm Sec. to the Bishop of Leeds

Witness occupation

Executed as a Deed by **FAIRBANK**)
INVESTMENTS LIMITED)
acting by)
a director in the presence of:)


.....

L C O'Neill

Witness signature

LYNDA O'NEILL

Witness name

179, HUDDERSFIELD ROAD, THONGSBIDGE

Witness address HOUMFARTH, HO9 3TT

RETIRED

Witness occupation

Signed as a deed by **JANET**)
SUSAN HATTERSLEY in the)
presence of:)


.....


.....

Witness signature

Rachel Lockwood

Witness name

Hilgham Common Rd, Barnsley S75 1LD

Witness address

Bank Officer

Witness occupation

DATED

2021

THE COUNCIL OF THE BOROUGH OF
KIRKLEES

and

**ROGER CLINTON HINCHLIFF, LIONEL
MITCHELL CLARK, REVEREND DAVID
JAMES HOPKIN, ANNE ELIZABETH
WAINWRIGHT and JANET SUSAN
HATTERSLEY** being the Trustees of the
Samuel Wordsworth Charity

and

LEEDS DIOCESAN BOARD

and

FAIRBANK INVESTMENTS LIMITED

DEED

**Under Section 106 of the Town & Country
Planning Act 1990 relating to residential
development on land west of Wesley
Avenue Netherthong**
