

DATED 16th November 2022

1. THE COUNCIL OF THE BOROUGH OF KIRKLEES
2. SIMON JOHN ENGLAND AND CLARE VANNESSA KEKWICK
3. MILLER HOMES LIMITED

AGREEMENT

**pursuant to Section 106 of the Town and
Country Planning Act 1990 relating to Land
off Woodhead Road, Honley, Holmfirth**

**APPLICATION REFERENCE
2021/62/92206/W**

CONTENTS

CLAUSE

1.	Interpretation	2
2.	Legal Effect	10
3.	Conditionality	10
4.	Covenants to the Council.....	10
5.	Covenants by the Council	11
6.	Indexation	11
7.	Exclusions and Release	11
8.	Determination of deed	12
9.	Local land charge	12
10.	Council's costs.....	12
11.	Change of Ownership	12
12.	Disputes	13
13.	Waiver	13
14.	Council's Consents	14
15.	Notices	14
16.	Third party rights.....	15
17.	Value added tax.....	15
18.	Governing Law	15

ANNEX

ANNEX A.....	50
ANNEX B.....	51
ANNEX C.....	52

THIS DEED is made on the 16th day of November 2022

Parties

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall Huddersfield West Yorkshire HD1 2TA ("the Council");
- (2) **SIMON JOHN ENGLAND** of Hills Farm, Calves Hill, Chedworth, Cheltenham, Gloucestershire GL54 4AH and **CLARE VANNESSA KEKWICK** of 19 Broadwater Rise, Guildford, Surrey GU1 2LA ("the First Owner")
- (3) **MILLER HOMES LIMITED** (Scot Co. Reg. No. SC255429) of 1st Floor Miller House 2 Lochside View Edinburgh EH2 9DH ("the Second Owner").

BACKGROUND

- (A) The Council is the local planning authority for the Kirklees district within which the Site is situated and by whom the planning obligations within this Deed are enforceable pursuant to the Act.
- (B) The First Owner is the freehold owner of that part of the Site registered at the Land Registry under title numbers YY50058 and WYK690939.
- (C) The Second Owner is the freehold owner of that part of the Site registered at the Land Registry under title number YY161155.
- (D) The Second Owner has submitted the Application and seeks Planning Permission for the Development.
- (E) The Council resolved on 14 July 2022 that Planning Permission should be granted for the Development subject to the prior completion of this deed.
- (F) The parties by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the Act.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this deed:

1.1 Definitions:

Act: means the Town and Country Planning Act 1990 as amended

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 National Planning Policy Framework (NPPF) (or any successor policy or legislation in respect of affordable housing);

Affordable Housing Units: means 27 Dwellings consisting of 15 x Affordable Rent Units (plots 13, 16, 17, 18, 19, 39, 40, 44, 45, 62, 63, 134, 135, 136, 137) and 7 First Homes Units (plots 46, 47, 64, 65, 68, 69, 70) and 5 Shared Ownership Units (plots 14, 20, 21, 22, 23) to be provided as Affordable Housing or such other plots/tenure/mix as otherwise agreed in writing with the Council and "**Affordable Housing Unit**" shall be construed accordingly;

Affordable Rent Units: means affordable housing let at a rent and which complies with the definition of "Affordable housing for rent" as set out within Annex 2 of the NPPF, namely (i) the rent is set in accordance with the government's rent policy for affordable rent or is at least twenty percent below local market rents (including service charges where applicable); (ii) the landlord is a registered provider (iii) includes provision to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision.

Affordable Unit Price: means the sum to be paid by the Registered Provider (or Alternative Registered Provider) to the Owner which shall reflect the range of prices prevailing in the Interim Affordable Housing Policy or such other sum as may be reasonably agreed between the Owners and the Council;

Alternative Registered Provider: means such other Registered Provider listed at Schedule 5 of this Deed and as shall be nominated by the Council under Schedule 2 of this Deed or any other body approved in writing by the Council;

Application: means the application for planning permission for the Development which has been allocated reference 2021/62/92206/W by the Council and validated on the 26 May 2021;

Biodiversity Contribution: means the sum of £471,500 (four hundred and seventy one thousand five hundred pounds) Index Linked calculated on the basis of the currently identified on-site net loss of 20.5 habitat units x £20,000.00 (twenty thousand pounds) per habitat unit x 15% administration fee. The sum of money as calculated on the basis of achieving 'no net loss' in biodiversity at the Site and to be applied by the Council towards the provision of measures to ensure biodiversity within the vicinity of the Site pursuant to

Paragraph 3.4.6 of the document prepared by the Council and entitled: Biodiversity Net Gain Technical Advice Note June 2021;

Biodiversity Assessment: means the biodiversity assessment submitted pursuant to Para 1 of Schedule 6 to this Agreement, such report to focus on the on-site biodiversity provision with the purpose of identifying whether the on-site measures can be improved;

Biodiversity Additional Land: means land to be identified outside of the Site by the Owners such land to be made available to accommodate the Site's Biodiversity Requirements and to be identified sequentially as follows:

- (i) Zone 1 – to include land that shares a boundary with the Site;
- (ii) Zone 2 – to include land that shares a boundary with the settlements of Brockholes or Honley and to be found within the boundaries of polling districts HN01, HN02, HN03 and HN04;

the responsibility of securing such Biodiversity Additional Land to rest with the Owners absolutely.

Biodiversity Requirement: means 20.5 Biodiversity Units;

Biodiversity Unit: means the product of the size of an area and the distinctiveness and condition of the habitat it comprises to provide a measure of ecological value, calculated using the DEFRA biodiversity metric 2.0.

Bus Stop Improvements Contribution: means the sum of £33,000.00 (thirty three thousand pounds) to be paid by the Owners to the Council as a contribution towards the provision of one bus shelter and two real time information boards on Woodhead Road ;

Chargee: means any mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the Affordable Housing Units (which shall for the purpose of this definition exclude the First Homes Units) or any part thereof;

Commencement of Development: means 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 Act SAVE THAT for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, 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 shall be construed accordingly;

Contributions: means the Biodiversity Contribution, Bus Stop Improvements Contribution, Education Contribution, Financial Contribution, Off-site POS Contribution, Junction Improvements Contribution and Sustainable Transport Contribution;

Development: means the development of the Site for the erection of 137 homes with open space, landscaping and associated infrastructure;

Dwelling: means a residential unit that may be built on the Site pursuant to the Planning Permission and the term Dwellings shall be construed accordingly;

Education Contribution: means the sum of £546,137.00 (five hundred and forty six thousand one hundred and thirty seven pounds) to be paid by the Owners to the Council as a contribution towards the improvement of education facilities at Brockholes Primary School and Honley High School to accommodate pupil growth which directly arises from the Development;

Eligible Persons: means those persons and the members of their household whose needs are not met by the market and are in Housing Need;

Financial Contribution: means the payment to be made in lieu of the provision of on-site Affordable Rent Units and Shared Ownership Units. In the event a financial contribution is required:

(a) in respect of the relevant Affordable Rent Units, it shall be calculated to the equal value of median build costs for Kirklees, as recognised by the RICS Build Cost Information Service (BCIS); or

(b) in respect of the relevant Shared Ownership Units, it shall be calculated based on the Open Market Value of the applicable Affordable Unit(s) less 20% of the Open Market Value of the applicable Shared Ownership Unit

and an additional administration charge shall be payable to the Council of 1% of the Financial Contribution for its reasonable and proper costs incurred by the Council in consideration of the following:-

- (i) the determination of the Financial Contribution,
- (ii) the consideration of the evidence supplied by the Owners pursuant to paragraphs 5.4.2 of Schedule 2
- (iii) acknowledgement of receipt of the proper payment of the Financial Contribution;

First Home: means a Dwelling which may be disposed of as a freehold (or in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap;

Homes England: means the Homes and Communities Agency (trading as Homes England) or any body or bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment replacement or re-enactment of such Act);

Housing Need: means a person who needs to move from their present accommodation by reason of:

- a) leaving tied accommodation;
- b) a care leaver moving into independent living for the first time;
- c) a medical need for re-housing;
- d) needing to move to give or receive care or support;
- e) overcrowding;
- f) homelessness;
- g) such other need as approved by the Council in accordance with the Council's Housing Allocation Policy dated April 2021 or its successor policy.

Index Linked: means such increase in the All In Tender Price Index provided by BCIS of RICS (or such replacement index thereof) for the period commencing with the date of this Deed and ending on date of payment such increase to be calculated by reference to the index most recently published at the date at which the relevant payment is made;

Inspection and Certification Charge: means the sum of £1,750.00 (one thousand seven hundred and fifty pounds) towards the cost to the Council of inspecting the POS Area Scheme (as defined in paragraph 1.1 of Schedule 3) and certifying the same are in accordance with the approved POS Area Scheme;

Interim Affordable Housing Policy: means the Kirklees Interim Affordable Housing Policy January 2020 or such other policy concerning affordable housing which shall supersede or modify it;

Junction Improvements Contribution: means a sum of £15,000.00 (fifteen thousand pounds) to be paid by the Owners to the Council as a contribution towards signalised junction improvements in Honley required as a consequence of the Development;

Market Dwellings: means those Dwellings within the Development excluding Affordable Housing Units;

Occupation: means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied" and "Occupier" shall be construed accordingly;

Off-Site POS Contribution: means the sum of £94,288.00 (ninety four thousand two hundred and eighty eight pounds) to be paid by the Owners to the Council as a contribution towards the cost of improving the public open space at Brockholes recreation ground or other public open space in the vicinity of the Site;

Open Market Value: means the open market value agreed between the Council and the Owners as being the open market value of a Shared Ownership Unit at which the sale of

an interest in the property would have been completed unconditionally for cash consideration on the date of the valuation assuming;

- (i) a willing seller;
- (ii) that any restrictions imposed on the Dwelling by reason of this Deed are disregarded;
- (iii) that there are no restrictions as to the persons who may occupy the Shared Ownership Unit or to whom a transfer or lease may be granted or assigned; and
- (iv) that both parties to the transaction had acted knowledgeably prudently and without compulsion;

Owners: means the First Owner and the Second Owner together;

Plan 1: means the plan so marked and attached to this Agreement;

Plan 2: means the plan so marked and attached to this Agreement (or such other plan as may be agreed with the Council);

Plan 3: means the plan so marked and attached to this Agreement (or such other plan as may be agreed with the Council);

Planning Obligations: means the obligations, conditions and stipulations set out in this Deed and Schedules and the term Planning Obligation shall be construed accordingly;

Planning Permission: means a planning permission permitting the Development granted by the Council pursuant to the Application;

POS and Managed Areas: means those parts of the Site to be provided as public open space as part of the Development as well as areas of incidental landscaping shown shaded yellow on Plan 3 (or such other plan as may be agreed with the Council);

POS Management Company: means a limited company or companies registered at Companies House (including a residents management company) which may already be in existence or which may be formed by the Owners for the purposes of the management of the Development and/or the POS and Managed Areas serving the Development in accordance with the provisions of the Schedule 3 of this Deed and:

- a) which is/are incorporated in England and Wales or Scotland; and
- b) which has/have its/their registered office in England, Wales, or Scotland; and
- c) whose primary objects permit it/them to maintain and renew the POS and Managed Areas serving the Development.

And for the avoidance of doubt it is agreed that there may be more than one management company across the Site as a whole and/or a different management company responsible for the SuDS and the POS and Managed Areas

POS Management Scheme: means a scheme for the future maintenance and management of the POS and Managed Areas to be submitted by the Owners and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owners and the Council) and which shall include details of:

- (i) the ongoing maintenance operations in respect of the POS and Managed Areas, specifically identifying the management objective, task and the timing and frequency of the operation for all the features including any play features and/or street furniture within the POS and Managed Areas;
- (ii) the identity of the POS Management Company proposed to be responsible for the ongoing management and maintenance of the POS and Managed Areas;
- (iii) the arrangements and timing for the transfer of the responsibility for the management and maintenance of the POS and Managed Areas from the Owners to the POS Management Company; and
- (iv) the funding arrangements for the management and maintenance of the POS and Managed Areas

Protected Tenant: means any tenant or leaseholder (including their successors in title, chargees, mortgagees, receivers and administrative receivers) who:

- (a) has exercised the right to acquire an Affordable Rented Unit pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) or acquires the relevant Affordable Rented Unit pursuant to a voluntary sales policy of his landlord;
- (b) has exercised any statutory right to buy an Affordable Rented Unit;
- (c) has purchased 100% of the equitable shares of a Shared Ownership Unit so that the said leaseholder or purchaser owns the Dwelling

Reasonable Endeavours: means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable;

Registered Provider: means a body which is registered as a social landlord pursuant to the provisions of the Housing Act 1996 or is a registered provider of social housing as defined in the Housing and Regeneration Act 2008 or a social landlord registered with Homes England and/or any other body agreed by the Council;

Shared Ownership Units: means those Affordable Housing Units to be constructed on the Site to be provided on a shared ownership basis where a proportion of the equity is sold and the purchaser pays rent on the value of the Dwelling which has not been purchased in such numbers and at such locations as are identified within an Affordable Housing Scheme and which are to be owned and managed by a Registered Provider such that they shall be occupied on the basis of a Shared Ownership Lease;

Shared Ownership Lease: means such lease as shall from time to time be in accordance with Homes England's (or any successor) model form of shared ownership lease or such other successor bodies model form of lease;

Site: means the land off Woodhead Road, Honley, Holmfirth as shown edged red for identification purposes only on Plan 1;

SuDS: means the sustainable drainage measures to be provided by the Owners as part of the Development;

SuDS Maintenance and Management Plan: means a detailed management plan or plans setting out measures to be undertaken to ensure SuDS are properly maintained and managed, which shall include the information set out in paragraph 1.1 of Schedule 4 to this Deed, or such plan as may be agreed in writing with the Council from time to time;

SuDS Management Company: means a limited company or companies registered at Companies House (including a residents management company) which may already be in existence or which may be formed by the Owners for the purposes of the management of the SuDS provisions at the Site in accordance with the provisions of Schedule 4 of this Deed and:

- a) which is/are incorporated in England and Wales or Scotland; and
- b) which has/have its/their registered office in England, Wales, or Scotland; and
- c) whose primary objects permit it/them to maintain and renew the SuDS provisions at the Site.

And for the avoidance of doubt it is agreed that there may be more than one management company across the Site as a whole and/or a different management company responsible for the SuDS and the POS and Managed Areas

Sustainable Transport Contribution: means the sum of £70,075.50 (seventy thousand and seventy five pounds and fifty pence) to be paid by the Owners to the Council to be used towards sustainable travel measures to help improve sustainable travel/accessibility from the Site (for metro cards, bicycles, bicycle sheds, footpath creation/improvements or other sustainable transport related measures) to be administered as set out in the Travel Plan but for the avoidance of doubt the Sustainable Transport Contribution shall not be used towards administration or management costs of delivering the Travel Plan and sustainable travel measures PROVIDED THAT should there be part of the Sustainable Transport Contribution remaining upon expiry of the extended time period as outlined in

the Travel Plan then this remaining sum shall be used towards other local Sustainable Transport measures in the locality;

Travel Plan: means the document “P1401P_20220317- Woodhead Road, Honley - Travel Plan – Revision 6 dated 25/05/2022” submitted as part of the Application to promote the use of sustainable modes of transport by occupants of the Development and any subsequent travel plan that may be agreed with the Council;

Travel Plan Co-Ordinator: means a travel plan co-ordinator or travel plan co-ordinators to be appointed by the Owner;

Travel Plan Monitoring Fee: the sum of £10,000 (ten thousand pounds) to be paid by the Owners to the Council as a contribution towards the cost of monitoring the Sustainable Transport Contribution and compliance with the Travel Plan for a period of no less than 5 years;

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 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's successors in title and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this deed.

- 1.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.11 Where a party includes more than one person any obligations of that party shall be joint and several unless indicated otherwise in this Deed.

2. Legal Effect

- 2.1 The provisions of this Deed are planning obligations made pursuant to Section 106 of the Act and all other powers so enabling to the intent that they shall bind the Owners and each and every part of the Site subject to the terms and conditions herein. This Deed is enforceable by the Council as local planning authority for the purposes of the Act.
- 2.2 To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 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.
- 2.3 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, legality or enforceability of the remaining provisions of this Deed.

3. Conditionality

With the exception of Clause 10 (which takes effect immediately), this deed is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development

4. Covenants to the Council

The Owners covenant with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedules 1-6 and 8.

5. Covenants by the Council

The Council covenants with the Owners to observe and perform the covenants, restrictions and obligations contained in Schedule 7.

6. Indexation

6.1 All Contributions payable to the Council shall be Index Linked.

6.2 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 (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) 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.

7. Exclusions and Release

7.1 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site or the part in respect of which such breach occurs, except in respect of any breach subsisting prior to parting with such interest.

7.2 No person shall be liable for any breach of a covenant restriction or obligation contained in this Deed in relation to a part of the Site in which it does not have a freehold or leasehold interest.

7.3 The covenants contained in this Deed shall not be enforceable against:

- (a) individual purchasers or lessees or occupiers of Market Dwellings or their mortgagees, chargees or successors in title;
- (b) the individual purchasers or lessees or occupiers of an Affordable Housing Unit or their mortgagees, chargees or successors in title save for in respect of the Affordable Rent Units and the Shared Ownership Units the provisions of Schedule 2 paragraphs 1, 5 and 6 shall apply and in respect of First Homes the provisions of Schedule 2 paragraphs 2,3,4 and 6 shall apply (as relevant);
- (c) a Registered Provider acquiring an interest in the Site pursuant to Schedule 2 save for such Registered Provider shall be bound by the relevant provisions of Schedule 2;
- (d) a Chargee save for the provisions of Schedule 2 paragraphs 1, 5 and 6;

- (e) a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking;

8. Determination of deed

8.1 This Deed will come to an end if:

- (a) the Planning Permission is quashed, revoked or otherwise withdrawn or modified (without the consent of the Owners) at any time so as to render this Deed or any part of it irrelevant, impractical or unviable;
- (b) the Planning Permission expires before the Commencement of Development.

9. Local land charge

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

9.2 Following either:

- (a) the performance and satisfaction of all the Planning Obligations contained in this Deed; or
- (b) the determination of this Deed in accordance with Clause 8;

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

10. Council's costs

The Second Owner shall pay to the Council on or before the date of this deed:

- (a) The sum of £9,000.00 (nine thousand pounds) as a contribution towards the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this Deed.

11. Change of Ownership

The Owners agree with the Council 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 disposal of an individual Dwelling.

12. Disputes

- 12.1 If any dispute shall arise as to the interpretation and/or operation of any of the provisions of this Deed the parties agree that such dispute shall be referred to a barrister of not less than 10 years call or an independent qualified surveyor of not less than 10 years standing (as appropriate) to be agreed between the Owners and the Council or failing agreement as to the same (within 14 days of any party calling upon the other to agree) to be appointed upon the application of the Owners or Council by the President for the time being of the Law Society or his Deputy.
- 12.2 A person agreed or appointed as aforesaid shall act as an expert and not as an arbitrator and shall be entitled to look to other experts who he considers to be appropriately qualified for advice and who shall allow each side such time as he considers appropriate to make representations regarding the dispute and whose decision upon the reference (including the question of who shall pay his fees and outgoings in relation thereto) shall be delivered in writing to the parties hereto and shall be final and binding upon the parties (save in respect of manifest error).
- 12.3 If the expert shall die delay or become unwilling or incapable of acting or if for any reason the President or his Deputy appointing the expert shall in his absolute discretion think fit he may in writing discharge the expert and appoint another in his place

13. Waiver

- 13.1 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.
- 13.2 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.

14. Council's Consents

- 14.1 Where the agreement approval consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and shall not be unreasonably withheld or delayed.

15. Notices

- 15.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

- 15.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:

- (a) to the Council at Legal Services, High Street Buildings, High Street, Huddersfield HD1 2ND;
- (b) to the First Owner at the details provided on page 1 of this Deed;
- (c) to the Second Owner at the details provided on page 1 of this Deed;

at or as otherwise specified by the relevant party by notice in writing to each other party.

- 15.3 Any notice, request, demand or other written communication given or served in accordance with Clause 15.1 or Clause 15.2 shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.

- 15.4 A notice, request, demand or other written communication given under this deed shall not be validly given if sent by e-mail.

- 15.5 This Clause 15 does not apply to the service of any proceedings or other documents in any legal action.

16. Third party rights

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed PROVIDED THAT this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.

17. Value added tax

17.1 Each amount stated to be payable by the Council or the Owners to the other under or pursuant to this deed is exclusive of VAT (if any).

17.2 If any VAT is at any time chargeable on any supply made by the Council or the Owners under or pursuant to this deed, 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.

18. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

CORPORATE
The common seal of **The Council of the
Borough of Kirklees**

was affixed to this document in the presence
of:



020174

Authorised signatory

Director signature

Director name

in the presence of:

Witness signature

Witness name

Witness address

Witness occupation

in the presence of:

Witness signature

Witness name

Witness address

Witness occupation

in the presence of:

Witness signature

Witness name

Witness address

Witness occupation

Schedule 1 Financial Contributions

1. OFF-SITE POS CONTRIBUTION

- 1.1 The Owners will not allow or permit the Occupation of any Dwellings until the Off-Site POS Contribution has been paid to the Council.

2. EDUCATION CONTRIBUTION

- 2.1 The Owners will not allow or permit the Occupation of any Dwellings until 50% of the Education Contribution has been paid to the Council.
- 2.2 The Owners will not allow or permit the Occupation of more than 34 Dwellings until a further 25% of the Education Contribution has been paid to the Council.
- 2.3 The Owners will not allow or permit the Occupation of more than 67 Dwellings until 100% of the Education Contribution has been paid to the Council.

3. BUS STOP IMPROVEMENTS CONTRIBUTION

- 3.1 The Owners will not allow or permit the Occupation of any Dwellings until the Bus Stop Improvements Contribution has been paid to the Council.

4. SUSTAINABLE TRANSPORT CONTRIBUTION

- 4.1 The Owner will not allow or permit the Occupation of any Dwellings until the Sustainable Transport Contribution has been paid to the Council.

5. TRAVEL PLAN MONITORING FEE

- 5.1 The Owners will not allow or permit the Occupation of more than 50% of the Dwellings until the Travel Plan Monitoring Fee has been paid to the Council.

6. INSPECTION AND CERTIFICATION CHARGE

- 6.1 The Owners will not allow or permit the Occupation of any Dwelling until the Inspection and Certification Charge has been paid to the Council.

7. JUNCTION IMPROVEMENTS CONTRIBUTION

- 7.1 The Owners will not allow or permit the Commencement of Development until the Junction Improvements Contribution has been paid to the Council.

Schedule 2 – Affordable Housing

1. Delivery of Affordable Housing Units

1.1 The Owners shall not Occupy or permit to be Occupied:

1.1.1 more than 30% of the Market Dwellings until the Affordable Housing Units located in Phase 1 as indicated on Plan 2 have been constructed and (if relevant in the case of the Affordable Rent Units and Shared Ownership Units) made available for sale to a Registered Provider;

1.1.2 more than 65% of the Market Dwellings until the Affordable Housing Units located in Phase 1 and Phase 2 as indicated on Plan 2 have been constructed and (if relevant in the case of the Affordable Rent Units and Shared Ownership Units) made available for sale to a Registered Provider;

1.1.3 more than 85% of the Market Dwellings until all of the Affordable Housing Units have been constructed and (if relevant in the case of the Affordable Rent Units and Shared Ownership Units) made available for sale to a Registered Provider.

1.2 subject to paragraph 6 of this Schedule the Owners shall not permit the Affordable Housing Units to be Occupied other than as Affordable Housing in accordance with this Deed.

1.3 Allocation of the Affordable Rent Units shall be in accordance with the Council's Choice Based Lettings System "Choose 'n' Move" or such successor policy PROVIDED ALWAYS THAT where a Registered Provider is not a signatory to either the Council's Choice Based Lettings System or such successor policy then prior to Occupation of the Affordable Rent Units the Registered Provider shall enter into a nominations agreement

with the Council detailing how the Affordable Rent Units will be allocated to Eligible Persons;

- 1.4 The Council is to have nomination rights in respect of 100% of the initial lettings and 50% of the subsequent lettings in turn.
- 1.5 Subject to paragraph 6 the Owners shall not use or Occupy, or permit to be used or Occupied, the Shared Ownership Units other than on the basis of a Shared Ownership Lease to Eligible Persons;
- 1.6 Allocation of the Shared Ownership Units shall be in accordance with the Registered Provider's own allocations policy.

2. First Homes

"Additional First Homes Contribution"	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 2.12, 2.13 or 4 of this Schedule, the lower of the following two amounts:</p> <p>(a) 30% of the proceeds of sale; and</p> <p>(b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p> <p>and which for the avoidance of doubt shall in each case be paid to the Council following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.</p>
"Armed Services Member"	<p>means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service</p>
"Close Family"	<p>means a spouse, civil partner, partner, son, daughter, sibling, grandparent;</p>
"Compliance Certificate"	<p>means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the</p>

	Eligibility Criteria (National) and unless paragraph 2.6 applies the Eligibility Criteria (Local)
"Discount Market Price"	means a sum which is the Market Value discounted by at least 30% which will apply to the First Home in perpetuity unless otherwise set out in this Deed.
"Disposal"	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <ul style="list-style-type: none"> (a) a letting or sub-letting in accordance with paragraph 3 (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner (c) an Exempt Disposal <p>and "Disposed" and "Disposing" shall be construed accordingly</p>
"Eligibility Criteria (National)"	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <ul style="list-style-type: none"> (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)"	<p>means 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:</p> <ul style="list-style-type: none"> (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 criteria (i) or (ii) below are met: <ul style="list-style-type: none"> (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the 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 or the spouse/civil partner of members/deceased members or veterans within 5 years of leaving the Armed Forces. and/or

<p>"Exempt Disposal"</p>	<p>means the Disposal of a First Home in one of the following circumstances:</p> <ul style="list-style-type: none"> (a) a Disposal to a spouse or civil partner upon the death of the First Homes 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 Homes Owner (c) Disposal to a former spouse or former civil partner of a First Homes 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 4 shall apply to such sale) <p>Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 3</p>
<p>"First Homes Administration Charge"</p>	<p>Means the reasonable and proper costs incurred by the Council in consideration of the evidence provided to it pursuant to Paragraph 2.8.1 of this Schedule</p>
<p>"First Homes Owner"</p>	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <ul style="list-style-type: none"> (a) The First Owner and or Second Owner as at the date of this Deed; or (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 3
<p>"First Time Buyer"</p>	<p>means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003</p>
<p>"Income Cap (Local)"</p>	<p>means the 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 it being acknowledged that at the date of this agreement the Council has not set an Income Cap (Local)</p>
<p>"Income Cap (National)"</p>	<p>Means £80,000.00 (eighty thousand pounds)</p>

	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
"Local Connection Criteria"	<p>criteria which are met by a person who satisfies one or more of (i) to (vii) below:</p> <ul style="list-style-type: none"> (i) currently lives in Kirklees as their primary residence and has done so for the past 3 years; (ii) previously lived in Kirklees as their primary residence for at least 5 years cumulatively within the past 10 years; (iii) has Close Family ordinarily resident in Kirklees and that Close Family has been ordinarily resident in the locality for the past 3 years; (iv) needs to move to Kirklees to receive or provide care or support; (v) is employed full time on a permanent basis for more than 16 hours per week in Kirklees or is about to take up an offer of permanent full-time employment in Kirklees; (vi) needs to move to Kirklees to be close to local facilities because of a specific identified need; (vii) has some other connection to Kirklees as approved by the Council in writing; <p>OR</p> <p>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</p>
"Market Value"	means the open market value as assessed by a Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation
"Marketing Strategy"	means the strategy to be approved by the Council pursuant to clause 2.4 of this Deed and to detail the marketing measures to be undertaken to dispose of the First Home to Qualifying Persons upon a first disposal and Marketing Materials shall be construed accordingly
"First Homes Mortgagee"	means 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
"Practical Completion"	means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
"Price Cap"	means the amount for which the First Home is sold after the application of the 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"	means a person who meets the Eligibility Criteria (National) and (unless paragraph 2.6 applies) the Eligibility Criteria (Local)
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity

2 FIRST HOMES OBLIGATIONS

- 2.1 The First Homes shall not be visually distinguishable from the Market Dwellings based upon their external appearance;
- 2.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted
- 2.3 All First Homes shall be constructed to no less than the standard applied to the Market Dwellings.
- 2.4 Prior to Commencement of Development the Owners shall submit to the Council the Marketing Strategy for the Council's approval and the Owner shall not Commence

Development unless and until such Marketing Strategy has been approved by the Council such approval not to be unreasonably withheld or delayed and thereafter the First Homes shall be disposed of according to the terms of the agreed Marketing Strategy.

- 2.5 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

2.5.1 the Eligibility Criteria (National); and

2.5.2 the Eligibility Criteria (Local) (if any).

- 2.6 If after a First Home 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 2.5.2 shall cease to apply.

2.7 Subject to paragraphs 2.10 to 2.14, no First Home shall 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

2.8 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

2.8.1. The Council has been provided with evidence that:

2.8.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 2.6 applies meets the Eligibility Criteria (Local) (if any);

2.8.1.2.the Dwelling is being Disposed of as a First Home at the Discount Market Price and

2.8.1.3 the transfer of the First Home includes:

2.8.1.3.1 a definition of the "Council" which shall be The Council of theBorough of Kirklees;

2.8.1.3.2 a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clauses 2.5 to 2.13 of Schedule 2 of theS106 Agreement a copy of which is attached hereto as the Annexure."

2.8.1.3.3 A definition of " S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between

(1) the Council [and] (2) Simon John England and Clare Vanessa Kekwick and (3) Miller Homes Limited

2.8.1.3.4 a provision that the Property 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 Property or any part of it other than in accordance with the First Homes Provisions

2.8.1.3.5 a copy of the First Homes Provisions in an Annexure

2.8.2 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 2.7 and 2.8.1 have been met

2.8.3 The First Homes Administration Charge has been paid to the Council.

2.9 On the first Disposal of each and every First Home to 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 Home 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 HD1 2TA or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

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

2.10.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 2.5 and 2.6 (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 all 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 2.7 and 2.8.1; or

2.10.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 2.10.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

2.11 Upon receipt of an application served in accordance with paragraph 2.10 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

2.12. If the Council is satisfied that either of the grounds in paragraph 2.10 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 2.10 that the relevant Dwelling may be Disposed of:

2.12.1 to the Council at the Discount Market Price; or

2.12.2 (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 Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 2.14 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

2.13 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 2.10 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 2.10 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance

with paragraph 2.10 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

2.14 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 2.12 or 2.13 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

2.15 Upon receipt of the Additional First Homes Contribution the Council shall:

2.15.1 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 2.9 where such restriction has previously been registered against the relevant title

2.15.2 apply all monies received towards the provision of Affordable Housing

2.16 Any person who purchases a First Home free of the restrictions in schedule 2 of this Deed pursuant to the provisions in paragraphs 2.13 and 2.14 shall not be liable to pay the Additional First Homes Contribution to the Council.

3 USE

3.1 Each First Home shall be used only as the main residence of the First Homes 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 3.2 – 3.5 below.

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

3.3 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or

delay giving such consent and not to withhold such consent in any of circumstances 3.3.1 – 3.3.6 below:

- 3.3.1 the First Homes 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;
 - 3.3.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
 - 3.3.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
 - 3.3.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 3.3.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 3.3.6 the First Homes 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.
- 3.4 A letting or sub-letting permitted pursuant to paragraph 3.2 or 3.3 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.
- 3.5 Nothing in this paragraph 3 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

4 FIRST HOMES MORTGAGEE EXCLUSION CLAUSE

The obligations in paragraphs 2-3 of this Deed in relation to First Homes 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:

- 4.1 Such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 4.2 once notice of intention to Dispose of the relevant First Home 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 Home at its full Market Value and subject only to paragraph 4.3
- 4.3 following the Disposal of the relevant First Home 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.
- 4.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 4.4.1 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 2.9; and
 - 4.4.2 apply all such monies received towards the provision of Affordable Housing

5 AFFORDABLE RENT UNITS AND SHARED OWNERSHIP UNITS

- 5.1 As soon as reasonably practicable following the Commencement of Development the Owners will market the Affordable Rent Units and Shared Ownership Units for transfer to a Registered Provider(s) at the Affordable Unit Price.
- 5.2 If no Registered Provider has confirmed in writing to the Owners its willingness (subject to contract) to accept the transfer of the Affordable Rent Units and Shared Ownership Units at the Affordable Unit Price within six (6) calendar months of the Commencement of Development the Owners may serve notice on the Council to that effect.
- 5.3 Upon receipt of notice in writing from the Owners (in accordance with paragraph 5.2) the Council shall as soon as reasonably practicable nominate another Registered Provider ("an Alternative Registered Provider") and this provision may be repeated as often as is

necessary (subject to paragraph 5.4 below) until such time as an Alternative Registered Provider has confirmed its willingness subject to contract to purchase the Affordable Rent Units and Shared Ownership Units.

5.4 In the event that:

5.4.1 neither a Registered Provider nor an Alternative Registered Provider has confirmed its willingness subject to contract to purchase the Affordable Rent Units and Shared Ownership Units at the Affordable Unit Price within a period of twelve (12) calendar months from the Commencement of Development; and

5.4.2 the Owners have produced evidence in writing to the reasonable satisfaction of the Council that it has made reasonable endeavours to secure acceptance of the Affordable Units by an Alternative Registered Provider

then the Owners will be free to offer such Affordable Rent Units and Shared Ownership Units for sale on the open market but the provisions of paragraph 5.6 and 5.7 shall apply.

5.5 In the event that:

5.5.1 a Registered Provider or an Alternative Registered Provider after confirming its willingness to purchase the Affordable Rent Units and Shared Ownership Units does not then contract to buy the Affordable Units within two (2) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor (or the Alternative Registered Provider's solicitor as applicable); and

the Owners have produced evidence in writing to the reasonable satisfaction of the Council that such exchange of contracts has not been achieved; then:

5.5.2 if a period of 6 (six) calendar months from the Commencement of Development has expired the Owners will be free to offer the Affordable Rent Units and Shared

Ownership Units for sale on the open market but the provisions of paragraphs 5.6 and 5.7 below shall apply; or

5.5.3 in any other circumstances the provisions of paragraph 5.3 shall continue to apply.

5.6 In the event that the Owners are free to offer the Affordable Rent Units and Shared Ownership Units for sale on the open market pursuant to paragraph 5.4 or 5.5.3 hereof the Owners shall within 28 (twenty eight) days of receipt by the Council of the Owner's evidence pursuant to paragraph 5.4.2 or 5.5.2 (as applicable) the Owners will pay to the Council the Financial Contribution;

5.7 The Financial Contribution shall be determined in the first instance by agreement between the Owners and the Council and in default of such agreement shall be the average of two (2) valuations provided by two (2) independent valuers (who shall be members of the Royal Institute of Chartered Surveyors) one of which shall be selected by the Owners and the other by the Council and the parties shall each bear their own costs in respect of such valuations.

6 EXCLUSIONS AND RELEASE

6.1 The obligations in this Schedule 2 shall not be binding on:

6.1.1 An owner or occupier of a First Homes Dwelling or a First Homes Mortgagee or successors in title save for the provisions of paragraphs 2, 3, 4 and 6 as relevant

6.1.2 Any Protected Tenant

6.1.3 Any Chargee or any persons or bodies deriving title through such Chargee provided that the Chargee shall first have complied with paragraph 6.2

6.2 This Schedule 2 shall not be binding on a Chargee Provided That:

6.2.1 the Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units (**which shall for the purpose of this paragraph exclude the First Homes Units**) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit(s) (**which shall for the purpose of this paragraph exclude the First**

Homes Units)to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 6.2.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the relevant Affordable Housing Unit(s) (**which shall for the purpose of this paragraph exclude the First Homes Units**) free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

Schedule 3 – POS and Managed Areas

1 PROVISION OF ON-SITE PUBLIC OPEN SPACE AND MANAGED AREAS

- 1.1 Prior to the Occupation of any Dwelling a scheme for the laying out of the POS and Managed Areas shall be submitted by the Owners for approval by the Council (such approval not to be unreasonably withheld or delayed) (the "POS Area Scheme");
- 1.2 The Owners shall use reasonable endeavours to respond to any request from the Council to amend the draft POS Area Scheme and to secure an approved POS Area Scheme PROVIDED THAT in the event that 6 months has elapsed following the submission of a draft POS Area Scheme or an amended POS Area Scheme without the Council having either given its written approval or making a written request for an amendment then the draft (or amended draft) POS Area Scheme shall be deemed to be approved by the Council.
- 1.3 The Owners will provide the POS Area and Managed Areas in accordance with the POS Area Scheme approved by the Council and shall notify the Council in writing when such works have been completed.
- 1.4 Not later than three calendar months following receipt of the relevant notice referred to in Paragraph 1.3 of this Schedule the Council shall inspect the POS and Managed Areas and if it has been provided in accordance with the POS Area Scheme approved by the Council under Paragraph 1.1 and 1.2 of this Schedule to the Council's reasonable satisfaction and the Council shall notify the Owners in writing thereof.
- 1.5 If upon notification by the Owners pursuant to Paragraph 1.3 of this Schedule the works to the POS and Managed Areas have not been carried out in accordance with Paragraph 1.3 of this Schedule to the reasonable satisfaction of the Council it shall notify the Owners specifying the measures necessary to satisfactorily complete the POS and Managed Areas and the Owners shall within such period as specified by the Council (acting reasonably) carry out those works and shall notify the Council pursuant to Paragraph 1.3 of this Schedule (such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof).
- 1.6 The procedure set out at paragraphs 1.3 – 1.5 shall be repeated in respect of the POS and Managed Areas until such time as the Council either:

- 1.6.1 Notifies the Owners in writing that the POS and Managed Areas have been provided in accordance with the POS Area Scheme; or
- 1.6.2 Fails to inspect the POS and Managed Areas within three calendar months of the receipt of a notification from the Owners pursuant to paragraph 1.3 in which case the POS and Managed Areas will be deemed to be approved by the Council; or
- 1.6.3 Fails to issue notification to the Owners that the POS and Managed Areas have been provided in accordance with the POS Area Scheme within three calendar months from the date of the inspection where no remedial works have been identified in which case the POS and Managed Areas will be deemed to be approved by the Council
- 1.6.4 Fails to issue notification to the Owners that remedial works are required to the POS and Managed Areas within three calendar months from the date of inspection in which case the POS and Managed Areas will be deemed to be approved by the Council
- 1.7 Following written confirmation or deemed approval by the Council of the satisfactory completion of the POS and Managed Areas pursuant to Paragraph 1.6 of this Schedule the Owners shall thereafter maintain the POS and Managed Areas in accordance with the approved POS Management Scheme unless and until such time as it shall be transferred to a Management Company
- 1.8 No part of the POS and Managed Areas shall be transferred or leased to any POS Management Company unless the identity of that POS Management Company has been approved by the Council (acting reasonably). In seeking approval of any Management Company the Owners shall provide the Council with details of assets, how the ongoing maintenance and management works will be funded, the structure of the POS Management Company, voting rights and such other information as the Council (acting reasonably) shall require.
- 1.9 The Owners shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and email address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the POS and Managed Areas;
- 1.10 The Council may upon reasonable notice enter the Site in order to check and monitor compliance with the POS Management Scheme;
- 1.11 In the event that the Council considers (acting reasonably) that the requirements of the POS Management Scheme are not being complied with then the Council may serve a notice

on the Owners or the POS Management Company as relevant requiring the Owners or the POS Management Company (as appropriate) to undertake such remedial steps as are specified in the notice;

- 1.12 The Owners or the POS Management Company (as appropriate) shall comply with the terms of any notice served pursuant to Paragraph 1.11 above within 28 days of the date of service by the Council of the said notice.
- 1.13 The Owners covenant with the Council not at any time to use or allow the POS and Managed Areas to be used as a site compound for the storage of construction materials and plant and/or the location of a site office in connection with the Development (unless otherwise agreed in writing with the Council acting reasonably)
- 1.14 The Owners shall at their own cost and expense construct lay out and substantially complete the POS and Managed Areas in a proper and workmanlike manner with sound and good quality planting and materials in accordance with good horticultural and ecological practice to adoptable standards and to the reasonable satisfaction of the Council
- 1.15 Details of the organisation/person(s) responsible for replacement planting for the development, including the mechanism through which new occupiers will be made aware of the responsible organisation/person(s), will be submitted to and agreed with the Council (acting reasonably). The agreed mechanism shall include transfer of a copy of the approved planting plan and Landscape Management Plan (subject to clauses (d) & (e) of condition number 35), the contact details of the responsible organisation/person(s) and a reporting proforma to all new occupiers of the dwellinghouses hereby approved. The agreed mechanism shall be implemented as each and all dwellinghouses become occupied

2 MANAGEMENT AND MAINTENANCE OF THE PUBLIC OPEN SPACE AND MANAGED AREAS

- 2.1 The Owners shall not allow the Occupation of any Dwelling unless and until the Council has approved in writing the POS Management Scheme, such approval not to be unreasonably withheld or delayed.
- 2.2 Within 12 months (or within such other period of time that may be agreed in writing by the Council) of receipt of written confirmation or deemed approval by the Council of the satisfactory completion of the POS and Managed Areas pursuant to Paragraph 1 of this Schedule the Owners shall transfer the POS and Managed Areas to the Management Company PROVIDED THAT that the transfer shall contain a covenant so as to bind the POS and Managed Areas into whomsoever hands the same may be transferred to maintain the

POS and Managed Areas in accordance with the approved POS Management Scheme and shall not permit it to be used for anything other than open space (within the meaning of the Open Spaces Act 1906) and to allow the public reasonable access thereto, subject to Paragraph 2.5 of this Schedule

2.3 Responsibility for the maintenance of the POS and Managed Areas shall not at any time be transferred to an alternative management company unless the Council has been given a minimum of 28 (twenty eight) Working Days written notice that such a transfer is to take place and has issued its approval in writing thereto, such approval not to be unreasonably withheld or delayed.

2.4 For the avoidance of doubt the Owners shall manage and maintain the POS and Managed Areas in accordance with the approved POS Management Scheme until such time as it shall be transferred to a Management Company.

2.5 The Owners and the Management Company shall allow public access to the POS and Managed Areas SUBJECT ALWAYS to the following provisions:

2.5.1 access to the POS and Managed Areas shall be subject to such requirements and regulations as may from time to time be imposed by the Owners having regard to overriding reasons of safety, security and prudent building management (PROVIDED THAT such requirements and regulations shall not be imposed without the Council's (acting reasonably) prior approval);

2.5.2 the Owners may close the POS and Managed Areas or any part thereof for reasonable periods by reason of:

- (i) emergency;
- (ii) cleansing, maintenance and repair;
- (iii) at the direction of the emergency services or other lawful authority; and
- (iv) construction activities whilst the Development is being carried out.

Schedule 4 – SuDS Maintenance

1. Prior to the Commencement of Development, the Owners shall submit to the Council for approval the SuDS Maintenance and Management Plan in respect of the Development covering the following issues:
 - 1.1 Details and a programme for the long term management and maintenance works to cover all aspects of the SuDS to include:-
 - 1.1.1 a detailed maintenance schedule and methodology for all individual SuDS components to maintain the functionality of the SuDS, water storage and treatment;
 - 1.1.2 a detailed schedule and methodology for the inspection, maintenance and replacement as required of engineering features including inlet and outlet structures, flow controls tanks and channels;
 - 1.1.3 a detailed schedule and methodology for the inspection, maintenance and replacement as required of any other SuDS features;
 - 1.1.4 a detailed schedule and methodology for litter and debris removal, landscape and grass cutting, weeding and sediment removal;
 - 1.1.5 details of the procedure in place for dealing with extreme rainfall events (both prior and post event)
 - 1.1.6 plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Yorkshire Water sewers and details of whether the SuDS feature is a designated asset under the Flood & Water Management Act 2010.
 - 1.2 Detailed maintenance schedules will be provided which shall include details of the frequency of all actions and routine maintenance activities, the timing of all inspections (including annual inspections) and the timing of management works arising from inspections.
 - 1.3 Details of the maintenance regime that will be adopted during the construction phase up until the point that the SuDS is signed off as complete in accordance with the approved design.

- 1.4 Details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of SuDS.
2. In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of the SuDS Maintenance and Management Plan the Owners shall submit a revised version to the Council, taking into account any comments that the Council has provided for their approval. Such procedure shall be repeated as often as is necessary until the Council approved the SuDS Maintenance and Management Plan.
3. The Owners covenant to fully comply with the relevant approved SuDS Maintenance and Management Plan from the Commencement of Development and at all times thereafter to manage and maintain the SuDS in accordance with the details set out in the relevant SuDS Maintenance and Management Plan unless and until the SuDS have been adopted by a statutory undertaker or transferred to a SuDS Management Company.
4. Prior to Occupation of the final Dwelling to transfer the SuDS to the SuDS Management Company and thereafter, the SuDS Management Company shall maintain and manage those SuDS in accordance with the relevant SuDS Maintenance and Management Plan in perpetuity SAVE THAT this obligation shall not apply where the SuDS in question has been adopted by a statutory undertaker.
5. No part of the SuDS shall be transferred or leased to any SuDS Management Company unless the identity of the SuDS Management Company has been approved by the Council (acting reasonably). In seeking approval of any SuDS Management Company the Owners shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, the structure of the SuDS Management Company, voting rights and such other information as the Council (acting reasonably) shall require.
6. The Owners shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and email address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of any of the SuDS.
7. Unless and until such time as any part of the SuDS are adopted by a statutory undertaker the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the relevant SuDS Maintenance and Management Plan.
8. In the event that the Council considers (acting reasonably) that the requirement of the relevant SuDS Maintenance and Management Plan are not being complied with then the Council may serve a notice on the Owners or the SuDS Management Company as

relevant requiring the Owners or the SuDS Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.

9. The Owners or the SuDS Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 2.8 above within 14 days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.
10. The approved SuDS Maintenance and Management Plan(s) shall only be varied or amended with the prior written approval of the Council.

Schedule 5 – Registered Providers

1. Yorkshire Housing
2. Connect Housing
3. Unity Housing
4. InCommunities
5. Kirklees Community Association
6. Kirklees Homes and Neighbourhoods
7. Stonewater
8. Home Group
9. St Anne's
10. Accent Housing
11. Johnnie Johnson
12. Wakefield District Housing
13. Together Housing
14. Sage Housing
15. Housing 21
16. Sanctuary Housing
17. Riverside Group
18. First Choice Homes (Oldham)
19. Places for People
20. Your Housing Group
21. Thirteen Group
22. Leeds Federated
23. Anchor Hanover
24. Highstone Housing Association
25. Heylo Housing

Schedule 6 – Biodiversity Net Gain

Biodiversity Assessment

1. Prior to the Occupation of the Dwellings on the Development the Owners shall submit to the Council the Biodiversity Assessment;
2. If the Biodiversity Assessment indicates that the Biodiversity Requirement can be delivered on-site, then Paragraphs 3-9 of this Schedule shall not be applicable and the Owners' obligations in relation to Biodiversity Requirement shall be deemed to be satisfied in full.
3. If the Biodiversity Assessment indicates that the Biodiversity Requirement can be partially delivered on-site, then Paragraphs 4 to 9 shall apply only to those elements of the Biodiversity Requirement that cannot be delivered on-site.

Biodiversity Off-Setting Scheme

4. If the Biodiversity Assessment should indicate that the Biodiversity Requirement cannot be delivered on-site either partially or in full, the Owners may submit to the Council a draft Biodiversity Off-setting Scheme setting out the intended off-setting of the Biodiversity Requirement to be achieved on Biodiversity Additional Land (the "**Biodiversity Off-setting Scheme**").
5. The Biodiversity Off-Setting Scheme shall include (but not be limited to):
 - 5.1 the provision of an appropriate receptor site or sites, including:
 - 5.1.1 a management plan for the provision and maintenance of such off-setting measures for not less than 30 years from the date of implementation of the Biodiversity Off-Setting Scheme; and
 - 5.1.2 the provision of contractual terms to secure the delivery of the Biodiversity Off-Setting Scheme;
 - 5.1.3 evidence that the Biodiversity Additional Land is land within the control of the Owners and will remain within the control of the Owners for not less than 30 years from the date of implementation of the Biodiversity Off-Setting Scheme.
6. Upon written agreement of the Council (such written agreement not to be unreasonably withheld or delayed) the Biodiversity Requirement shall be delivered pursuant to the

Biodiversity Off-Setting Scheme and the provisions of Paragraphs 7-9 of this Schedule shall not apply.

7. If the agreed Biodiversity Off-Setting Scheme should indicate that the Biodiversity Requirement can only partially be delivered on Biodiversity Additional Land, and there remains any outstanding Biodiversity Requirement having also had regard to any on-site provision pursuant to Paragraphs 1 – 3 above, then Paragraphs 8 to 9 shall apply with respect to the outstanding Biodiversity Requirement.

Biodiversity Contribution

8. In the event that the Biodiversity Requirement cannot be delivered either on-site, or pursuant to the Biodiversity Off-setting Scheme, or a combination of both, then the Owners shall not permit Occupation of more than 50% of the Dwellings on the site until the Biodiversity Contribution has been paid to the Council;
9. In the event that the Biodiversity Requirement has been partially provided, either on-site or pursuant to the Biodiversity Off-setting Scheme, or a combination of both, then the Owners may write to the Council requesting a pro-rata reduction to the Biodiversity Contribution. Upon written agreement from the Council, the Owners shall be entitled to pay the agreed reduced figure on the same terms as outlined in Paragraph 8 above in accordance with Paragraph 3.4.5 of the document prepared by the Council and entitled: Biodiversity Net Gain Technical Advice Note June 2021.

Schedule 7 – Council's Covenants

1. The Council shall issue separate receipts on request for any sum paid to it under this Deed;
2. The Council shall place the Contributions in an interest bearing account or in separate accounts as the Council shall at its discretion decide.
3. The Council shall not apply the Contributions for any purpose other than for the purposes set out within this Deed; and
4. In the event that any Contribution (excluding the Education Contribution) (or any part or parts thereof) are not expended within 10 (ten) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee, and in the case of Education Contributions are not expended within 12 (twelve) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee.
5. The Council shall respond to any request to account for the sums expended within 28 (twenty eight) Working Days of that request being made provided that request was made within two years from the expiration of the relevant period mentioned in paragraph 4 above and repay any unexpended sums to the person who made the payment (or to that persons nominee) within 28 (twenty eight) Working Days of such response

Schedule 8 – Travel Plan

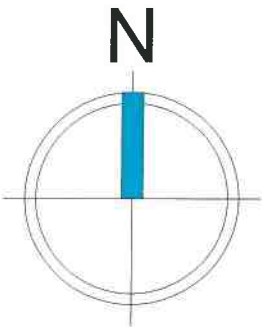
The Owners covenant with the Council:

1. To use Reasonable Endeavours to implement and thereafter comply with the terms of the Travel Plan prior to Occupation of the Development in respect of those parts of the Travel Plan that are capable of being implemented prior to such Occupation and at all times during the period when the Development is Occupied in respect of the remainder of the Travel Plan PROVIDED THAT any failure on the part of the Owner to comply with this provision which is due to acts, events or other circumstances beyond the reasonable control of the Owner shall not constitute a breach of this Agreement.
2. To appoint a nominated Travel Plan Co-Ordinator(s) and notify the details of the Travel Plan Co-Ordinator(s) to the Council in accordance with the provisions of the Travel Plan.

Plans


ANNEX A

020174



Scaled @ 1:2500



	TITLE: Location plan			
	SCALE AT A3: 1:2500	DATE: 24.05.21	DRAWN: TS	CHECKED: --
	PROJECT NO: 2108	DRAWING NO: 2108.02		REVISION: C



ANNEX B

ANNEX C

Managed areas
to be maintained by appointed
management company

020174

Managed areas updated, utility assets removed
from managed areas AP 29 09 2

Site Boundary amended, Plot 125 AP 12.05.22
 Flipped Management/habitat corridor added,
 tree removal updated following meeting with
 Juddens tree office

B UPDATED IN ACCORDANCE AP 02 03 22
WITH THE SITE PLAN FOLLOWING
COMMENTS FROM HIGHWAYS OFFICER

A. UPDATED IN ACCORDANCE AP 10.01.21
WITH THE SITE PLAN FOLLOWING
COMMENTS FROM PLANNING OFFICER

Rev	Description	Drawn	Date
-----	-------------	-------	------

miller homes
Miller Homes Ltd - Yorkshire
Lapwing House
Peel Avenue, Calder Park
Wakefield
West Yorkshire, WF2 7UA

Telephone 0870 336 4600
Fax 0870 336 4602
www.millerhomes.co.uk

Project Title
WOODHEAD ROAD
HONLEY

Drawing Title
Managed area plan

Scale	Drawn By	Checked By	Authorized By
1:500	AP		
	Date: Nov 24	Date	Date
Job No.	Stamping	Revision	
	08	D	

- PHASE 1
- PHASE 2
- PHASE 3
- FIRST HOMES
- AFFORDABLE RENT
- SHARED OWNERSHIP



Miller Homes Ltd - Yorkshire Lapping House Peel Avenue, Calder Park Wakefield West Yorkshire, WF2 7UA Telephone 0870 336 4800 Fax 0870 336 4802 www.millerhomes.co.uk	
Project No: WOODHEAD ROAD HONLEY	
Drawing No: AFFORDABLE HOUSING PLAN	
Date: 1:500	Drawn By: AP
Date: 05.05.22	Checked By: AP
Date: 05.05.22	Approved By: AP
Scale: 1:11	Reason: -