

**Dated** \_\_\_\_\_ **2025**

**JAMES ANDREW OLDROYD**

**and**

**SUSAN HEATHER HOODLESS**

**and**

**STEPHEN ATKINSON**

**and**

**JONES HOMES (YORKSHIRE) LIMITED**

**and**

**THE COUNCIL OF THE BOROUGH OF KIRKLEES**

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

**Relating to**

**Land Off Primrose Lane Hightown Liversedge**

Application Number 2023/91116  
Legal Reference Number 106959

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**BETWEEN**

- (1) **JAMES ANDREW OLDROYD** of 3 Primrose Lane, Liversedge, WF15 6NS and **SUSAN HEATHER HOODLESS** of 5 Primrose Lane, Liversedge, WF15 6NS (together **the First Owner**); and
- (2) **STEPHEN ATKINSON** of Whitegates Farm, 44 Leeds Road, Mirfield, WF14 0DB (**the Second Owner**); and
- (3) **JONES HOMES (YORKSHIRE) LIMITED** (Company registration No: 3186376) whose registered office is at Emerson House, Heyes Lane, Alderley Edge, Cheshire, SK9 7LF (**the Developer**); and
- (4) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire HD1 2TA (**the Council**).

**BACKGROUND**

- (A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations in this Deed are enforceable.
- (B) The First Owner and the Second Owner (together **the Owner**) have an interest in the Site as set out in Paragraph 1 of Schedule 1.
- (C) The Developer has submitted the Application to the Council seeking planning permission for the Development.
- (D) The Council are of the view that the Development should not be permitted unless the impact thereof is mitigated by entering into the Planning Obligations set out herein on behalf of the Owner and the Developer which are:
  - necessary to make the Development acceptable in planning terms;
  - directly related to the Development; and
  - in all other respects are fairly and reasonably related in scale and kind to the Development.

- (E) The parties by entering into this Deed do so to create Planning Obligations in respect of the Site and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

## **OPERATIVE PROVISIONS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1. In this Deed the following expressions shall have the following meanings:

<b>Expression</b>	<b>Meaning</b>
<b>1990 Act</b>	the Town and Country Planning Act 1990.
<b>Administration Charge</b>	1% (one per cent) of the Affordable Housing Financial Contribution.
<b>Affordable Housing</b>	the housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the NPPF (or any successor publication or legislation in respect of Affordable Housing).
<b>Affordable Housing and Housing Mix SPD</b>	the Council's Affordable Housing and Housing Mix SPD dated March 2023 (or any successor or replacement document as may be published by the Council).
<b>Affordable Housing Financial Contribution</b>	the payment to be made in lieu of the provision of on-Site Affordable Housing calculated in accordance with the Affordable Housing and Housing Mix SPD.
<b>Affordable Housing Plan</b>	the plan showing the layout of the Affordable Housing to be provided on the Site as part of the Development and labelled Plan 2.
<b>Affordable Housing Price</b>	a sum to be paid by the Registered Provider to the Owner based on the following transfer values set out in the Affordable Housing and Housing Mix SPD: a) In the case of each Affordable Rented Dwelling - £861.00 (eight hundred and sixty-one pounds) per square metre; and

<b>Expression</b>	<b>Meaning</b>
	<p>b) In the case of each Intermediate Dwelling - £1,292.00 (one thousand two hundred and ninety-two pounds) per square metre</p> <p>or such other value as may be agreed in writing between the Owner and the Registered Provider</p> <p><b>PROVIDED THAT:</b></p> <p>a) In the event that the Council adopts or publishes any revised transfer value the transfer values at (a) and (b) shall be updated accordingly; and</p> <p>b) in the case of (a) and (b) above the applicable sum shall be Index Linked as if the Due Date was the date of the UK House Price Index of March 2023 to the date of the applicable Contract.</p>
<b>Affordable Housing Units</b>	<p>the 15 (fifteen) Dwellings to be provided on the Site as Affordable Housing as part of the Development consisting of 8 (eight) Affordable Rented Units 2 (two) Intermediate Dwellings and 5 (five) First Homes in accordance with Schedule 5 and Schedule 6 and the Affordable Housing Plan and reference to Affordable Housing Unit shall mean any or all of the Affordable Housing Units.</p>
<b>Affordable Rent</b>	<p>a rent which is no more than 80% (eighty per cent) of the local market rent (including service charges where applicable) calculated using RICS approved valuation methods.</p>
<b>Affordable Rented Dwelling</b>	<p>an Affordable Housing Unit shown on the Affordable Housing Plan with a red dot to be provided by a Registered Provider at an Affordable Rent and which complies with the definition of 'Affordable Housing for Rent' in Annex 2 of the NPPF.</p>
<b>Allocations Policy</b>	<p>means the Council's policy for the allocation of social housing in accordance with the requirements of The Housing Act 1996.</p>

<b>Expression</b>	<b>Meaning</b>
<b>Application</b>	the application for full planning permission for the Development allocated reference number 2023/91116.
<b>Armed Services Member</b>	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 5 (five) years prior to the purchase of the Discount Market Sale Dwelling 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.
<b>Bus Stop Contribution</b>	the sum of £20,000 (twenty thousand pounds) Index Linked to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>Chargee</b>	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 (each a <b>Receiver</b> ) of the Affordable Housing Units or any part thereof or any persons or bodies deriving title through such mortgagee or chargee or Receiver.
<b>Commencement of Development</b>	<p>the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act (whether or not the carrying out of that material operation constitutes a lawful beginning of the Development) but excluding any operations undertaken in connection with or associated with</p> <ul style="list-style-type: none"> <li>• demolition,</li> <li>• site clearance,</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>• archaeological investigations,</li> <li>• ecology survey or works,</li> <li>• investigations for the purpose of assessing ground conditions and any resultant remediation works,</li> <li>• environmental investigation,</li> <li>• site and soil surveys,</li> <li>• erection of a contractor's work compound,</li> <li>• erection of a site office,</li> <li>• erection of fencing to the site boundary; and/or</li> <li>• the temporary display of site notices or advertisements</li> </ul> <p>and <b>Commence Development</b> and <b>Commencement of Development</b> or any similar derivation of this term shall be construed accordingly.</p>
<b>Contract</b>	a contract or contracts with a Registered Provider for the construction and subsequent Transfer at the Affordable Housing Price of all or any of the Dwellings that are to be RP Dwellings.
<b>Contributions</b>	<p>the Bus Stop Contribution;</p> <p>the Off-Site Ecological Net Gain Contribution;</p> <p>the Education Contribution;</p> <p>the Off-Site POS Contribution;</p> <p>the On-Site POS Inspection Fee;</p> <p>the Sustainable Transport Contribution;</p> <p>the TRO Contribution; and</p> <p>the Travel Plan Monitoring Fee</p> <p>each a <b>Contribution</b>.</p>
<b>Default Interest Rate</b>	4% (four per cent) per annum above the base rate from time to time of the Bank of England.
<b>Development</b>	the development of the Site comprising the erection of 77 dwellings with access from Darley Road and associated works as described in the Application pursuant to the Planning Permission.

<b>Expression</b>	<b>Meaning</b>
<b>Discount Market Sale Dwelling</b>	the Affordable Housing Units shown on the Affordable Housing Plan as Intermediate Dwellings to be sold at the Discount Market Sale Price and which complies with the definition of 'Discounted Market Sales Housing' as set out within Annex 2 of the NPPF.
<b>Discount Market Sale Commuted Sum</b>	the sum to be paid by the Owner to the Council in lieu of the provision of the Discounted Market Sale Dwelling on the site and which shall be calculated at 20% (twenty per cent) of the Open Market Value of the relevant Discount Market Sale Dwelling as at the date this Discount Market Sale Commuted Sum may be due.
<b>Discount Market Sale Price</b>	80% (eighty per cent) of the Open Market Value which on first disposal of the Discount Market Sale Dwelling only shall not exceed £250,000 (two hundred and fifty thousand pounds).
<b>Discount Market Sale Qualifying Person</b>	<p>an individual who is:</p> <ul style="list-style-type: none"> <li>(i) a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer);</li> <li>(ii) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed £80,000 (eighty thousand pounds) per annum; and</li> </ul> <p>will occupy the property as their sole or main residence.</p>
<b>DMS Compliance Certificate</b>	the certificate issued by the Council confirming that a Discount Market Sale Dwelling is being disposed of as a Discount Market Sale Dwelling to a Discount Market Sale Qualifying Person;
<b>Due Date</b>	the latest date that any Contribution is to be paid in accordance with this Deed.

<b>Expression</b>	<b>Meaning</b>
<b>Dwelling</b>	a house flat maisonette or other unit of accommodation intended for single residential use that may be built or provided on the Site as part of the Development.
<b>Ecological Habitat</b>	the ecology and biodiversity to be provided on the Site as part of the Development in accordance with Schedule 7 to include but not be limited to the planting of woodland wildflowers within existing woodland within the Site.
<b>Education Contribution</b>	the sum of £118,791 (one hundred and eighteen thousand seven hundred and ninety one pounds) Index Linked to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>Eligible Person</b>	<p>an individual who:</p> <ul style="list-style-type: none"> <li>a) has an annual income of no greater than £80,000.00; and</li> <li>b) is unable to afford to purchase a home that meets their needs on the open market.</li> </ul>
<b>Expert</b>	a person appointed in accordance with Clause 11 to determine a dispute.
<b>First Time Buyer</b>	a first time buyer as defined by Paragraph 6 of Schedule 6ZA to the Finance Act 2003.
<b>Homes England</b>	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).
<b>Index</b>	the BCIS All-In Tender Price Index.
<b>Index Linked</b>	<p>increased in accordance with the following formula:</p> <p><b>Amount payable</b> = the figure specified in this Deed x (A/B) where:</p>

<b>Expression</b>	<b>Meaning</b>
	<p><b>A</b> = the figure for the Index that applied immediately preceding the Due Date or the date paid if earlier; and</p> <p><b>B</b> = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission (or prior to the date of calculation where this Deed provides for a figure to be calculated at a different point in time).</p>
<b>Intermediate Dwelling</b>	an Affordable Housing Unit for sale or rent provided above social rent levels but below open market rent levels or for sale by way of shared ownership or rent to buy by way of equity loans or at a cost below local market value.
<b>Landscaping Plan</b>	the plan showing the Trees to be provided on the Site in accordance with Schedule 3 as part of the Development and labelled Plan 4.
<b>Landscaping Strategy</b>	the strategy for the provision of landscaping within the Site submitted to and approved by the Council in accordance with the Planning Permission.
<b>Management Company</b>	<p>a limited company or companies at Companies House (including a residents management company) which may already be in existence or which may be formed by the Owner for the purposes of the management of the Development and/or the On-Site POS and/or the Trees and/or the On-Site Ecological Net Gain serving the Development in accordance with the provisions of Schedule 3 and/or Schedule 4 and/or Schedule 7 and:</p> <p>(a) which is/are incorporated in England and Wales or Scotland; and</p> <p>(b) which has/have its/their registered office in England Wales or Scotland; and</p> <p>(c) whose primary objects permit it/them to manage and maintain the On-Site POS and/or the Trees</p>

<b>Expression</b>	<b>Meaning</b>
	and/or the On-Site Ecological Net Gain and/or the Sustainable Drainage System.
<b>Market Dwelling</b>	any Dwelling that is not an Affordable Housing Unit.
<b>Nominations Agreement</b>	an agreement between the Council and the Owner setting out the selection and prioritisation of tenants and occupiers of the Affordable Housing Dwellings;
<b>NPPF</b>	the National Planning Policy Framework published by the Department for Levelling Up Housing and Communities updated February 2025 and any document that supplements or replaces it.
<b>Occupy</b>	to occupy for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration marketing display or security of the Development and <b>Occupied</b> shall be construed accordingly.
<b>Occupier</b>	an individual occupier of a Dwelling.
<b>Off-Site Ecological Net Gain Contribution</b>	the sum of £14,467 (fourteen thousand four hundred and sixty seven pounds) Index Linked to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>Off-Site POS Contribution</b>	the sum of £118,220 (one hundred and eighteen thousand two hundred and twenty pounds) Index Linked to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>On-Site Ecological Management Scheme</b>	a scheme for the future maintenance and management of the On-Site Ecological Net Gain for a period of 30 (thirty) years to be approved pursuant to conditions attached to the Planning Permission together with any variation of such scheme approved from time to time by the Council.

<b>Expression</b>	<b>Meaning</b>
<b>On-Site Ecological Net Gain</b>	the Ecological Habitat to be provided on the Site in accordance with conditions attached to the Planning Permission as part of the Development to be managed and maintained in accordance with the On-Site Ecological Management Scheme.
<b>On-site POS</b>	that area of the Site to be provided as an open amenity area consisting of retained woodland and public open space shown shaded green on Plan 3 and amenity green space shown shaded brown on the Plan 3 for use by the occupiers of the Development.
<b>On-Site POS Inspection Fee</b>	the sum of £1,000 (one thousand pounds) (Index Linked) to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>On-Site POS Management Scheme</b>	a scheme for the future maintenance and management of the On-Site POS in perpetuity to be submitted by the Owner for approval by the Council in accordance with Schedule 3 together with any variation of such scheme agreed in writing from time to time between the Owner and the Council.
<b>On-Site POS Plan</b>	the plan showing the On-Site POS to be provided on the Site in accordance with Schedule 3 as part of the Development and labelled Plan 3.
<b>Open Market Value</b>	the open market value as assessed by a Valuer in accordance with the RICS Valuation Standards January 2014 (or any such replacement guidance issued by RICS) and agreed between the Council and the Owner as being the open market value of an Affordable Housing Dwelling at which the sale of an interest in the Affordable Housing Dwelling would have been completed unconditionally for cash consideration on the date of the valuation assuming: <ul style="list-style-type: none"> <li>(a) a willing seller;</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>(b) that any restrictions imposed on the Dwelling by reason of this Deed are disregarded;</li> <li>(c) that there are no restrictions as to the persons who may occupy the Affordable Housing Dwelling or to whom a transfer or lease may be granted or assigned;</li> <li>(d) that both parties to the transaction had acted knowledgeably prudently and without compulsion; and</li> <li>(e) given by the Valuer and which shall be valid for no more than 6 (six) months after the date upon which it is approved by the Council.</li> </ul>
<b>Plan 1</b>	drawing number 3416-1-000 B delineating the Site a reduced copy of which is included in Schedule 1.
<b>Plan 2</b>	drawing number 3416-1-001 rev ZZ entitled 'Proposed Site Layout' being the Affordable Housing Plan a reduced copy of which is included in Schedule 1.
<b>Plan 3</b>	drawing number 4132 2102 Rev D entitled 'POS Typologies Plan' a reduced copy of which is included in Schedule 1.
<b>Plan 4</b>	drawing number 4132 2100 Rev N entitled 'Soft Landscaping Plan' a reduced copy of which is included in Schedule 1.
<b>Planning Obligations</b>	the legal obligations made to mitigate the impact of the Development pursuant to Section 106 of the 1990 Act.
<b>Planning Permission</b>	the permission to be granted by the Council pursuant to the Application permitting the carrying out of the Development.
<b>Protected Tenant</b>	<p>any tenant who:</p> <ul style="list-style-type: none"> <li>a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual</li> </ul>

**Expression****Meaning**

right) in respect of a particular Affordable Housing Unit;

b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

c) has acquired an Affordable Housing Unit from a Registered Provider through Social HomeBuy funded pursuant to Section 19(3) of the Housing and Regeneration Act 2008 or any amendment or replacement thereof;

d) has been granted a lease on Shared Ownership Terms by a Registered Provider (or similar arrangement where a share of the equity in the Affordable Housing Unit is owned by the Tenant and the remainder is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining equity so that the tenant becomes the owner of the freehold or leasehold unencumbered by the provisions of this Schedule.

and any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in Paragraphs (a) to (d) above.

**Reasonable Endeavours**

attempts to fulfil the relevant obligation 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 may be reasonable to expect but shall not extend to an obligation to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary).

**Registered Provider**

a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 or any company or other body approved by Homes England for receipt of social housing grant as

<b>Expression</b>	<b>Meaning</b>
	may be proposed by the Owner and approved by the Council and reference to <b>Registered Providers</b> shall be construed accordingly.
<b>RP Dwellings</b>	the Affordable Rented Dwellings and Shared Ownership Dwellings that are to be transferred to a Registered Provider.
<b>Secretary of State</b>	the Secretary of State for Housing and Communities from time to time appointed and includes any successor in function.
<b>Shared Ownership Dwelling</b>	the Affordable Housing Units shown on the Affordable Housing Plan with a green dot as an Intermediate Dwelling to be provided by a Registered Provider on Shared Ownership Terms which complies with the definition of 'Other affordable routes to home ownership' in Annex 2 of the NPPF.
<b>Shared Ownership Terms</b>	a lease of an Affordable Housing Unit in substantially the form of one of the model leases published by or on behalf of Homes England for a premium that is when the Affordable Housing Unit is first acquired less than the Open Market Value of the Affordable Housing Unit but is at least 25% (twenty five per cent) of that value but no more than 75% (seventy five per cent) of that value representing the share of the equity in the Affordable Housing Unit owned by the Occupier and subject to the Occupier paying a rent to a Registered Provider for that share of the equity still owned by the Registered Provider and containing provision for the Occupier to acquire a larger share of the equity than initially purchased up to 100% (one hundred per cent) of that equity whereupon the Occupier ceases to be subject to the provisions of Schedule 5.
<b>Site</b>	the land described in Schedule 1 shown edged red on Plan 1.

<b>Expression</b>	<b>Meaning</b>
<b>Statutory Undertaker</b>	any company corporation board or authority at the date of this Deed that is authorised by statute to carry on an undertaking for the supply of telephone or television or other electronic communications electricity gas water or drainage or other public services and any other body authorised to carry out such undertaking including Yorkshire Water Service Limited or any successor to its statutory functions under the Water Industry Act 1991 or such other licensed water company.
<b>Sustainable Transport Contribution</b>	the sum of £39,385.50 (thirty nine thousand three hundred and eighty five pounds and fifty pence) Index Linked to be paid to the Council in accordance with Schedule 2 for the purposes set out in Schedule 8.
<b>Sustainable Drainage System</b>	the system for the provision of surface water drainage infrastructure for the Development and <b>SUDS</b> shall be construed accordingly.
<b>SUDS Management Scheme</b>	the scheme for the maintenance and management of the SUDS by the Owner until the adoption of the SUDS by a Statutory Undertaker (if any) to be submitted by the Owner for approval by the Council in accordance with conditions attached to the Planning Permission together with any variation of such scheme approved in writing from time to time by the Council.
<b>Transfer</b>	<p>depending on the context:</p> <ul style="list-style-type: none"> <li>• the transfer of the freehold or</li> <li>• the grant of a lease of no less than 125 years or</li> <li>• the assignment of a lease with no less than 125 years of the term remaining at the date of the assignment</li> </ul> <p>which does not seek to restrict occupation or use otherwise than in accordance with this Deed.</p>

<b>Expression</b>	<b>Meaning</b>
<b>Travel Plan Monitoring Fee</b>	the sum of £10,000 (ten thousand pounds) Index Linked to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>Trees</b>	all or any of the 58 (fifty-eight) new semi-mature trees to be planted within the Site as part of the Development including within the curtilages of individual Dwellings as shown by a green circle on Plan 4 and in accordance with the approved Landscaping Strategy and Schedule 3 and <b>Tree</b> shall be construed accordingly.
<b>Tree Management Scheme</b>	a scheme for the future maintenance and management of the Trees in perpetuity to be submitted by the Owner for approval by the Council in accordance with Schedule 3 together with any variation of such scheme agreed in writing from time to time between the Owner and the Council.
<b>TRO Contribution</b>	£10,000 (ten thousand pounds) to be paid to the Council in accordance with Schedule 2 for the purposes specified in Schedule 8.
<b>Valuation</b>	an independent assessment of the Open Market Value of an Affordable Dwelling prepared by a Valuer.
<b>Valuer</b>	for the purposes of this Schedule a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer with that organisation and appointed by the Owner pursuant to Schedule 5 and acting in an independent capacity.
<b>Working Day</b>	any day from Monday to Friday inclusive which is not Christmas Day Boxing Day Good Friday Easter Monday or a Statutory Bank Holiday.

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

- 1.3. References to Clauses Paragraphs Parts Annexes and Schedules are references to Clauses Paragraphs Parts, Annexes and Schedules in this Deed.
- 1.4. References to Paragraphs within specific Parts of the Schedules are references to the corresponding Paragraphs within that Part of the Schedule unless specified otherwise.
- 1.5. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.6. The term 'person' shall be interpreted and construed as including any natural person or persons acting together and any other legally constituted body whether or not incorporated by law.
- 1.7. The expression 'the Council' shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8. Where a covenant restriction or requirement is expressed to be given by more than one party or where (from time to time) a party is comprised of more than one person liability for such covenant restriction or requirement shall be joint and several.
- 1.9. Clause headings and the contents list shall not affect the construction of this Deed.
- 1.10. Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11. Any covenant by the Council or any other party not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.12. Where any details scheme strategy or plan is required to be submitted for approval under this Deed and such approval is obtained unless expressly stated otherwise nothing in this Deed shall prevent such details scheme strategy or plan from being resubmitted or amended by agreement between the Owner and the Council.

## 2. **STATUTORY BASIS**

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

- 2.2. This Deed is enforceable by the Council as the local planning authority for the purposes of the 1990 Act.
- 2.3. To the extent that the covenants restrictions and requirements in this Deed are not made under Section 106 of the 1990 Act they are made under Section 1 of the Localism Act 2011 and Section 111 of the Local Government Act 1972 and all other powers so enabling.

3. **CONDITIONS PRECEDENT**

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

4. **COVENANTS & DECLARATIONS**

- 4.1. The Owner covenants with the Council to comply with the Planning Obligations.
- 4.2. The Council covenants with the Owner to comply with the obligations on its part within Schedule 8 and Schedule 2 to Schedule 7 as applicable.

5. **EXCLUSIONS & RELEASE**

- 5.1. Save as otherwise provided for herein no party shall be bound by the terms of this Deed or be liable for a breach of any Planning Obligation:
  - 5.1.1. after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any breach occurring prior to parting with such interest and subsisting thereafter);
  - 5.1.2. if its interest in the Site or relevant part thereof is solely as the owner of the subsoil of adopted highway and/or of Mineral Rights;
  - 5.1.3. if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
  - 5.1.4. if that party is an owner or occupier of an individual Market Dwelling; or
  - 5.1.5. if that party is an owner or occupier of an individual Affordable Housing Unit save in respect of the provisions of Schedule 5 and (subject to Paragraph 1 of Schedule 6) Schedule 6 which shall apply.
- 5.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owner) quashed or revoked this Deed shall determine and cease to have effect.

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

## 6. **REGISTRATION**

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

6.2. Following either:

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

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

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

## 7. **NON-FETTER & WAIVER**

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

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

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

## 8. **VAT**

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

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

9. **SEVERABILITY**

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

10. **CHANGE OF OWNERSHIP**

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

11. **DISPUTES**

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

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

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

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

- 11.2.1.2. in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or
- 11.2.1.3. in the case of any other dispute the President of the Law Society.
- 11.2.2. the Expert shall act as an expert and not as an arbitrator.
- 11.2.3. the Expert shall be required to give notice of their appointment to each of the parties (the **Expert's Notice**) and thereafter:
  - 11.2.3.1. if any party to the dispute wishes to make written submissions to the Expert such submissions shall be sent to the Expert and all other parties to the dispute within 20 (twenty) Working Days of receipt of the Expert's Notice;
  - 11.2.3.2. the parties shall have 20 (twenty) Working Days from the receipt of original written submissions (or such extended period as the Expert shall allow) to respond;
  - 11.2.3.3. the Expert shall disregard any representations made out of this time;
  - 11.2.3.4. the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time; and
  - 11.2.3.5. to the extent not provided for by this Clause the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination;
- 11.2.4. the Expert shall make his decision within 20 (twenty) Working Days of the close of the period for submissions of written submissions;
- 11.2.5. the Expert's decision shall be in writing and shall give reasons for the decision; and

- 11.2.6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 11.3. The decision of the Expert shall be binding on the parties save in the case of manifest error and/or fraud.
- 11.4. If the Expert dies or becomes unwilling or incapable of acting or does not deliver the decision within the time required by this Clause then:
- 11.4.1. any party may apply to the relevant body pursuant to Clause 11.2.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
- 11.4.2. Clause 11.2 shall apply to the new Expert as if they were the first Expert appointed.
- 11.5. Notwithstanding the above any dispute between the parties as to the meaning or interpretation of any provision of this Deed or as regards the enforceability of any provision shall only be determined by a Court.

## 12. **FUTURE PERMISSIONS**

- 12.1. In the event that an application is made pursuant to Section 73 Section 73A Section 73B or Section 96A of the 1990 Act for an amendment to the Planning Permission and planning permission is granted by the Council in respect of that application then:
- 12.1.1. references to 'Application' 'Planning Permission' and 'Development' in this Deed shall thereafter be deemed to include the application made pursuant to Section 73 Section 73A Section 73B or Section 96A of the 1990 Act the new planning permission granted pursuant to Section 73 Section 73A or Section 73B of the 1990 Act and the development permitted by that permission or as changed pursuant to Section 96A of the 1990 Act respectively; and
- 12.1.2. this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council.

but in each case **PROVIDED THAT:**

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

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

13. **DUTY TO ACT REASONABLY**

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

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

14. **INDEXATION**

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

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

15. **INTEREST ON LATE PAYMENTS**

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

16. **THIRD PARTY RIGHTS**

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

17. **NOTICES**

17.1. Any notice given to a party under or in connection with this Deed shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

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

17.2.1. if delivered by hand at the time the notice is left at the proper address (unless received after 5pm or on a non-Working Day in which case it shall be deemed received and served on 9am on the next Working Day); or

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

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

18. **COSTS**

18.1. The Council acknowledges that the Developer has prior to the date of this Deed paid the reasonable legal costs of the Council incurred in the preparation negotiation and completion of this Deed.

19. **JURISDICTION**

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

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

## **SCHEDULE 1 - SITE OWNERSHIP AND PLANS**

### **1. SITE OWNERSHIP**

- 1.1. The First Owner is the freehold owner of that part of the Site registered with HM Land Registry under title numbers YY115017 and WYK447480.
- 1.2. The Second Owner is the freehold owner of that part of the Site registered with HM Land Registry under title number WYK180036.

### **2. PLANS**

- 2.1. Plan 1 - Site Plan.
- 2.2. Plan 2 - Affordable Housing Plan.
- 2.3. Plan 3 – On-Site POS Plan.
- 2.4. Plan 4 – Landscaping Plan.



**PLAN 1**

**Primrose Lane, HIGHTOWN**  
 DO NOT SCALE - ALL DIMENSIONS & LEVELS TO BE CHECKED ON SITE - THIS DRAWING IS COPYRIGHT

SKETCH  
 subject to structural review  
 subject to accurate measured survey

NO	DATE	BY	DESCRIPTION
1	10.05.2022	SM	SM

PROJECT	PROPOSED RESIDENTIAL PRIMROSE LANE HIGHTOWN
CLIENT	JONES HOMES
TITLE	SITE LOCATION PLAN
SCALE	1:100 @ A2
DATE	10.05.2022
PROJECT NO	3416-1-000 B
REV	60

Niemen Architects  
 Deck 2 The Waterscape  
 42 Leeds & Bradford Road  
 Kirkstall Leeds LS5 9EG  
 Tel: 0113 239 5400  
 Fax: 0113 239 5401  
 office@niemen.co.uk  
[www.niemen.co.uk](http://www.niemen.co.uk)







## **SCHEDULE 2 – FINANCIAL CONTRIBUTIONS**

The Owner covenants as follows:

1. **BUS STOP CONTRIBUTION**

- 1.1. To pay to the Council the Bus Stop Contribution; and
- 1.2. Not to cause or permit the Occupation of any Dwellings until the Bus Stop Contribution has been paid to the Council.

2. **OFF-SITE ECOLOGICAL NET GAIN CONTRIBUTION**

- 2.1. To pay to the Council the Off-Site Ecological Net Gain Contribution; and
- 2.2. Not to Commence Development or cause or permit the Commencement of Development until the Off-Site Ecological Net Gain Contribution has been paid in full.

3. **ON-SITE POS INSPECTION FEE**

- 3.1. To pay to the Council the On-Site POS Inspection Fee; and
- 3.2. Not to Commence Development or cause or permit the Commencement of Development until the On-Site POS Inspection Fee has been paid to the Council.

4. **SUSTAINABLE TRANSPORT CONTRIBUTION**

- 4.1. To pay to the Council the Sustainable Transport Contribution; and
- 4.2. Not to cause or permit the Occupation of any Dwellings until the Sustainable Transport Contribution has been paid to the Council.

5. **TRO CONTRIBUTION**

- 5.1. To pay to the Council the TRO Contribution; and
- 5.2. Not to cause or permit the Occupation of any Dwellings until the TRO Contribution has been paid to the Council.

6. **TRAVEL PLAN MONITORING FEE**

- 6.1. To pay to the Council the Travel Plan Monitoring Fee; and
- 6.2. Not to cause or permit the Occupation of any Dwellings until the Travel Plan Monitoring Fee has been paid to the Council.

7. **OFF-SITE POS CONTRIBUTION**

- 7.1. To pay to the Council the Off-Site POS Contribution; and
- 7.2. Not to cause or permit the Occupation of more than 50% (fifty per cent) of the Dwellings until the Off-Site POS Contribution has been paid in full.

8. **EDUCATION CONTRIBUTION**

- 8.1. To pay to the Council the Education Contribution; and
- 8.2. Not to cause or permit the Occupation of more than 50% (fifty per cent) of the Dwellings until the Education Contribution has been paid in full.

### **SCHEDULE 3 – ON-SITE PUBLIC OPEN SPACE AND TREES**

#### **1. ON-SITE POS MANAGEMENT SCHEME**

- 1.1. The Development shall not be Occupied until the Owner has submitted a draft On-Site POS Management Scheme to the Council for approval that includes:
  - 1.1.1. proposals for the ongoing maintenance operations in respect of the On-Site POS specifically identifying the management objective task and the timing and frequency of the operation for all the features of the On-Site POS;
  - 1.1.2. the identity of the Management Company (if any) which is to be responsible for the ongoing management and maintenance of the On-Site POS;
  - 1.1.3. if applicable the arrangements and timing for the transfer of the responsibility for the management and maintenance of the On-Site POS from the Owner to the Management Company; and
  - 1.1.4. the funding arrangements for the management and maintenance of the On-Site POS.
- 1.2. The Owner shall invite the Council to review the draft On-Site POS Management Scheme within 25 (twenty five) Working Days of the date of receipt of the draft On-Site POS Management Scheme from the Owner and the Council shall thereafter notify the Owner in writing of its approval to the draft On-Site POS Management Scheme or provide in writing its proposed amendments to the draft On-Site POS Management Scheme pursuant to which the Owner shall submit a revised draft On-Site POS Management Scheme incorporating those amendments as are accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the draft On-Site POS Management Scheme within the 25 (twenty five) Working Days referred to above it shall be deemed that the Council has approved the draft On-Site POS Management Scheme submitted by the Owner.
- 1.3. In the event that after a period of not less than 25 (twenty-five) Working Days following receipt from the Owner of a revised draft On-Site POS Management Scheme the Council

serves further written notice upon the Owner stating that the Council does not approve the revised On-Site POS Management Scheme:

- 1.3.1. the Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owner of a further revised draft On-Site POS Management Scheme; and/or
  - 1.3.2. either the Owner or the Council may invoke the provisions of Clause 11 in respect of the acceptability or otherwise of the relevant revised draft On-Site POS Management Scheme.
- 1.4. The Owner covenants that it shall not permit the Occupation of any Dwelling until it has received the Council's approval or deemed approval of the On-Site POS Management Scheme pursuant to Paragraph 1.2 or Paragraph 1.3 of this Schedule (or until the receipt of an Expert's determination in relation to the acceptability of the same).

2. **DELIVERY MANAGEMENT AND MAINTENANCE OF THE ON-SITE PUBLIC OPEN SPACE**

- 2.1. To provide the On-Site POS in accordance with the Planning Permission and the On-Site POS Plan and any other plans approved thereto.
- 2.2. Not to permit the Occupation of more than 50% (fifty per cent) of the Dwellings until the On-Site POS has been constructed in accordance with the Planning Permission.
- 2.3. To notify the Council in writing that the On-Site POS has been completed in accordance with Paragraph 2.1 of this Schedule.
- 2.4. Upon the On-Site POS being constructed in accordance with the Planning Permission and the On-Site POS Plan the Owner may transfer responsibility for the On-Site POS to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) in accordance with the On-Site POS Management Scheme and thereafter all further maintenance shall be carried out by the Management Company and the Owner shall have no further liability to do so.

2.5. If the On-site POS is transferred to a Management Company after the transfer the Management Company shall be obliged to:

2.5.1. maintain and manage in perpetuity the On-Site POS in accordance with the On-Site POS Management Scheme or any variations that may be agreed in writing from time to time unless or until the On-Site POS or any part thereof are adopted as highway maintainable at public expense or a public body takes on their management and maintenance,

permit public access to the On-Site POS on the same terms as those set out in Paragraph 2.9 below.

2.6. For the avoidance of doubt the Owner shall manage and maintain the On-Site POS in accordance with the approved On-Site POS Management Scheme until such time as responsibility is transferred to a Management Company or any part thereof is adopted as highway maintainable at public expense or a public body takes on their management and maintenance.

2.7. The Owner shall retain the liability to maintain and manage the On-site POS notwithstanding the provisions of Clause 5.1.1 and further covenants:

2.7.1. not to transfer the freehold or grant a lease of the On-site POS to any person or entity other than the Developer and/or Management Company approved as part of the On-Site POS Management Scheme or pursuant to Paragraph 2.8 below.

2.8. To secure that a restriction is registered against the title to that part of the Site consisting of the On-site POS pursuant to Rules 91 and 91A of the Land Registration Rules 2003 in Form L preventing a transfer of the freehold or the grant of a lease of the On-site POS without a certificate signed by of the Council that the terms of Paragraph 2.7.1 have been complied with or that they do not apply to the disposition Responsibility for the maintenance of the On-Site POS 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 of responsibility is to take place and has issued its approval in writing thereto such approval not to be unreasonably withheld or delayed or the Expert has approved it after a referral pursuant to Clause 11.

2.9. The Owner shall allow public access to the On-Site POS **SUBJECT ALWAYS** to the following provisions:

2.9.1. access to the On-Site POS shall be subject to such requirements and regulations as may from time to time be imposed by the Owner 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 prior approval; and

2.9.2. the Owner may erect notices on the On-Site POS and access to the On-Site POS may be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;

2.9.3. the Owner may close the On-Site POS or any part thereof for reasonable periods by reason of:

2.9.3.1. emergency;

2.9.3.2. cleansing maintenance and repair;

2.9.3.3. at the direction of the emergency services or other lawful authority; and

2.9.3.4. construction activities whilst the Development is being carried out.

2.10. In the event that the Council considers that the requirements of the relevant On-Site POS Management Scheme are not being complied with then the Council may serve a notice on the Owner or the Management Company (as applicable) requiring the Owner or the Management Company (as applicable) to undertake such remedial steps as are specified in the notice.

2.11. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to Paragraph 2.7 above within 10 (ten) Working 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.

2.12. If the Owner or the Management Company (as appropriate) shall fail to comply with the notice referred to in Paragraph 2.11 the Council may enter the On-Site POS and carry out such works as it considers necessary to ensure compliance with the On-Site POS

Management Scheme and may recover from the Owner or Management Company the costs incurred in doing so.

3. **TREE MANAGEMENT SCHEME**

3.1. The Development shall not be Occupied until the Owner has submitted a draft Tree Management Scheme to the Council for approval.

3.2. The draft Tree Management Scheme shall include (but not be limited to) proposals for the ongoing inspection routine maintenance operations and additional works resulting from the inspections in respect of the Trees specifically identifying:

3.2.1. the method by which the Occupiers of those Dwellings with a Tree within its curtilage shall be notified that the Management Company shall require access to the curtilage of the Dwelling for management and maintenance activities;

3.2.2. the timing and frequency of the inspections and operations to be undertaken;

3.2.3. for the replacement of any Tree which is damaged becomes diseased dies or similar with an equivalent semi-mature tree;

3.2.4. an emergency procedure to enable the Management Company and/or its emergency workers to carry out all reasonable works to make the Tree safe should any Tree be likely to cause damage to persons or property or similar to include out of hours contact numbers;

3.2.5. the identity of the Management Company which is to be responsible for the ongoing management and maintenance of the Trees;

3.2.6. the arrangements and timing for the transfer of the responsibility for the management and maintenance of the Trees from the Owner to the Management Company; and

3.2.7. the funding arrangements for the management and maintenance of the Trees.

3.3. The Owner shall invite the Council to review the draft Tree Management Scheme within 25 (twenty five) Working Days of the date of receipt of the draft Tree Management Scheme from the Owner and thereafter notify the Owner in writing of its approval to the

draft Tree Management Scheme or provide in writing its proposed amendments to the draft Tree Management Scheme pursuant to which the Owner shall submit a revised draft Tree Management Scheme incorporating those amendments as are accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the draft Tree Management Scheme within the 25 (twenty five) Working Days referred to above it shall be deemed that the Council has approved the draft Tree Management Scheme submitted by the Owner.

3.4. In the event that after a period of not less than 25 (twenty-five) Working Days following receipt from the Owner of a revised draft Tree Management Scheme the Council serves further written notice upon the Owner stating that the Council does not approve the revised Tree Management Scheme:

3.4.1. the Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owner of a further revised draft Tree Management Scheme; and/or

3.4.2. either the Owner or the Council may invoke the provisions of Clause 11 in respect of the acceptability or otherwise of the relevant revised draft Tree Management Scheme.

3.5. The Owner covenants that it shall not permit the Occupation of any Dwelling until it has received the Council's approval or deemed approval of the Tree Management Scheme pursuant to Paragraph 3.1 or Paragraph 3.2 of this Schedule (or until the receipt of an Expert's determination in relation to the acceptability of the same).

3.6. The Owner covenants that the first and all subsequent legal transfers of any Dwelling with a Tree planted or to be planted within its curtilage in accordance with the approved Landscaping Strategy shall include a restrictive covenant that shall:

3.6.1. prohibit the Occupier from causing or permitting any Tree planted within the curtilage of the Dwelling to be damaged felled or removed; and

3.6.2. allow the Management Company access to the curtilage of the Dwelling for the purposes of carrying out inspections routine maintenance activities and any works arising from the inspections at the frequency and timings set out in the Tree Management Scheme or in the case of an emergency to allow access for the Management Company to make the Tree safe in accordance with the Tree Management Scheme's emergency procedures.

4. **DELIVERY MANAGEMENT AND MAINTENANCE OF THE TREES**

- 4.1. To provide the Trees in accordance with the Planning Permission and the Landscaping Strategy and any other plans approved thereto and to notify the Council in writing that the Tree planting has been completed.
- 4.2. The Owner shall thereafter manage and maintain the Trees until a Management Company is appointed and takes on responsibility for the same.
- 4.3. The Trees shall thereafter be managed and maintained in perpetuity by the Management Company in accordance with the Tree Management Scheme and the Owner shall have no further liability to do so.
- 4.4. Not to permit the Occupation of any Dwelling where a Tree is to be located within its curtilage until the relevant Tree has been planted within its curtilage in accordance with the Landscaping Strategy.
- 4.5. Not to permit the Occupation of more than 70% (seventy per cent) of the Dwellings until all Trees located outside the curtilage of a Dwelling have been planted in accordance with the Landscaping Strategy.
- 4.6. Responsibility for the maintenance of the Trees 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 or the Expert has approved it after a referral pursuant to Clause 11.
- 4.7. In the event that the Council considers that the requirements of the Tree Management Scheme are not being complied with then the Council may serve a notice on the Owner or the Management Company (as applicable) requiring the Owner or the Management Company (as applicable) to undertake such remedial steps as are specified in the notice.
- 4.8. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to Paragraph 4.6 above within 10 (ten) Working 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.
- 4.9. If the Owner or the Management Company (as appropriate) shall fail to comply with the notice referred to in Paragraph 4.6 the Council may carry out such works as it considers

necessary to ensure compliance with the Tree Management Scheme and may recover from the Owner or Management Company the costs incurred in doing so.

## **SCHEDULE 4 - SUSTAINABLE URBAN DRAINAGE SYSTEMS**

### **1. PROVISION AND MANAGEMENT OF SUSTAINABLE DRAINAGE SYSTEM**

- 1.1. The Owner covenants to provide the SUDS in accordance with the Planning Permission.
- 1.2. The Owner covenants to comply fully with the relevant approved SUDS Management Scheme and at all times thereafter to manage and maintain the SUDS in accordance with the details set out in the relevant SUDS Management Scheme unless and until the SUDS have been adopted by a Statutory Undertaker.
- 1.3. The Owner shall maintain and manage those SUDS in accordance with the relevant SUDS Management Scheme in perpetuity SAVE THAT this obligation shall not apply where the SUDS in question has been adopted by a Statutory Undertaker.
- 1.4. The approved SUDS Management Scheme shall only be varied or amended with the prior written approval of the Council.
- 1.5. The Owner 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.

### **2. DEFAULT OF SUDS MANAGEMENT**

- 2.1. Unless and until such time as any part of the SUDS are adopted by a Statutory Undertaker the Council may upon reasonable notice to any party then with an interest in the SUDS enter the Site in order to check and monitor compliance with the relevant SUDS Management Scheme.
- 2.2. In the event that the Council considers that the requirements of the relevant SUDS Management Scheme are not being complied with then the Council may serve a notice on the Owner requiring the Owner to undertake such remedial steps as are specified in the notice.
- 2.3. The Owner shall comply with the terms of any notice served by the Council pursuant to Paragraph 2.2 above within 10 (ten) Working 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.

## **SCHEDULE 5 - AFFORDABLE HOUSING**

### **1. PROVISION OF AFFORDABLE HOUSING**

- 1.1. As part of the carrying out of the Development the Owner shall ensure that the Affordable Housing Units shall be provided in accordance with the Affordable Housing Plan.
- 1.2. The Owner shall notify the Council of the Practical Completion of each Affordable Housing Unit within 10 (ten) Working Days thereof.
- 1.3. No more than 50% (fifty per cent) of the Market Dwellings shall be Occupied until 66% (sixty six per cent) of the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.4. The Owner shall not cause or permit the Occupation of 50% (fifty per cent) of the Market Dwellings until 66% (sixty six per cent) of the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.5. No more than 75% (seventy five per cent) of the Market Dwellings shall be Occupied until 100% (one hundred per cent) of the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.6. The Owner shall not cause or permit the Occupation of more than 75% (seventy five per cent) of the Market Dwellings until 100% (one hundred per cent) the Affordable Housing Units have been constructed and are ready for Occupation.
- 1.7. Subject only to Paragraphs 2.3 and 5.6 of this Schedule the Owner shall not permit the Affordable Housing Units to be Occupied or used other than as Affordable Housing.

### **2. TRANSFER OF THE AFFORDABLE HOUSING UNITS**

- 2.1. The Owner shall offer to Transfer each RP Dwelling to one or more Registered Providers at the Affordable Housing Price and shall not Commence the Development until details of all Registered Providers to whom the RP Dwelling has been offered (the **Initial Offer**) is supplied to the Council.
- 2.2. Following the date of the Initial Offer the Owner shall use Reasonable Endeavours to Transfer each RP Dwelling to a Registered Provider at the Affordable Housing Price such provision to be repeated as often as is necessary (subject to Paragraph 2.3 of this

Schedule) until such time as a Registered Provider shall have confirmed its willingness to enter into a Contract to purchase the RP Dwellings at the Affordable Housing Price.

2.3. In the event that:

2.3.1. despite Reasonable Endeavours the Owner has not entered into a Contract within a period of 24 (twenty-four) months from the date of the Initial Offer (or such shorter period of time that may be agreed in writing by the Council); and

2.3.2. the Owner has produced evidence in writing to the reasonable satisfaction of the Council that it has used Reasonable Endeavours throughout the 24 (twenty four) month period to enter into such Contract,

then (subject only to the prior receipt of both the Affordable Housing Financial Contribution and the Administration Charge in respect of the RP Dwelling) the Owner may Transfer such RP Dwelling on the open market free of the restrictions at Paragraph 1.7 above.

2.4. In the event that the Owner is free to offer the RP Dwelling for sale on the open market pursuant to the provisions of Paragraph 2.3 above the Owner shall serve a written notice on the Council confirming that they intend to sell the RP Dwelling on the open market (**Owner's Notice**).

2.5. The Owner shall within 20 (twenty) Working Days of the date of the Owner's Notice pay to the Council the Affordable Housing Financial Contribution and the Administration Charge in respect of the RP Dwelling and shall not complete the Transfer of such RP Dwelling until both the Affordable Housing Financial Contribution and the Administration Charge in respect thereof has been paid.

### 3. **AFFORDABLE RENTED DWELLINGS**

3.1. The provisions of this Paragraph 3 shall apply to the Affordable Rented Dwellings identified as such on the Affordable Housing Plan.

3.2. The Affordable Rented Dwelling shall not be Occupied otherwise than as an Affordable Rented Dwelling by an Eligible Person.

- 3.3. No Affordable Rented Dwelling shall be Occupied unless or until the Registered Provider owning that Affordable Rented Dwelling enters into an agreement with the Council to allocate such Affordable Rented Dwelling in accordance with the Allocations Policy and the Nominations Agreement.

#### 4. **SHARED OWNERSHIP DWELLINGS**

- 4.1. The provisions of this Paragraph 4 shall apply to the Shared Ownership Dwellings identified as such on the Affordable Housing Plan.
- 4.2. No Shared Ownership Dwelling shall be Occupied otherwise than by an Eligible Person on Shared Ownership Terms.
- 4.3. Allocation of the Shared Ownership Dwellings shall be in accordance with the Registered Provider's own allocations policy.

#### 5. **DISCOUNT MARKET SALE DWELLINGS**

- 5.1. Not less than 6 (six) weeks prior to the date upon which the Owner proposes to release the Discount Market Sale Dwelling(s) for disposal the Owner shall submit to the Council for approval details of the Open Market Value and the Discount Market Sale Price and shall not dispose of the Discount Market Sale Dwelling unless the Open Market Value and Discount Market Sale Price have been approved by the Council (such approval not to be unreasonably withheld or delayed and the Council shall be entitled to have regard to the market area local incomes and local house prices).
- 5.2. The Owner shall not dispose of any Discount Market Sale Dwelling otherwise than at the Discount Market Sale Price and to a person who is a Discount Market Sale Qualifying Person(s).
- 5.3. The first disposal of a Discount Market Sale Dwelling shall contain a restriction that subject to Paragraphs 5.4 and 5.5 of this Schedule no further disposal to a third party shall take place other than to a Discount Market Sale Qualifying Person(s) at a price not exceeding the Discount Market Sale Price and further that no such transfer shall be registered at the Land Registry without the inclusion of a restriction in the following terms:

*"no disposition of the registered estate other than by a charge by the proprietor of the registered estate is to be registered without a certificate signed by Council of the Borough of Kirklees or its solicitor or conveyancer confirming that the*

*provisions of the Deed dated [ .....] and made between (1) James Andrew Oldroyd and Susan Heather Hoodless (2) Stephen Atkinson (3) Jones Homes (Yorkshire) Limited and (4) the Council of the Borough Of Kirklees have been fully complied with”*

and the Owner must provide evidence to the Council that such restriction has been entered no later than 20 (twenty) Working Days following the date of disposal.

- 5.4. No first or subsequent disposal of a Discount Market Sale Dwelling shall be completed and no such disposal shall be registered at the Land Registry unless the Council has issued a DMS Compliance Certificate.
- 5.5. On the first and each subsequent disposal of a Discount Market Sale Dwelling the Owner shall provide the Council with:
  - 5.5.1. evidence that the intended purchaser(s) is a Discount Market Sale Qualifying Person(s);
  - 5.5.2. the solicitor or licenced or other authorised conveyancer acting for the intended purchaser(s) has certified to the Council that any consideration expressed to be given for the Discount Market Sale Dwelling by the purchaser did not exceed the Discount Market Sale Price as evidence by a RICS Valuation given by a valuer and which shall be valid for no more than 6 (six) months after the date upon which it is approved by the Council;
  - 5.5.3. payment of the reasonable legal and administrative costs incurred by the Council in consideration of the intended purchaser(s) application and provision of the DMS Compliance Certificate.
- 5.6. In the event that:
  - 5.6.1. despite using Reasonable Endeavours the Discount Market Sale Dwelling has not been contracted for sale to a Discount Market Sale Qualifying Person within a period of 6 (six) calendar months from the date the Discount Market Sale Dwelling was first offered for disposal; and
  - 5.6.2. the Owner has produced evidence in writing to the reasonable satisfaction of the Council that it has used all reasonable endeavours throughout the 6 (six) month period to dispose of the Discount Market Sale Dwelling;

the Owner will be free to offer such Discount Market Sale Dwelling for sale on the open market free from the restrictions in this schedule but the provisions of Paragraph 5.7 of this Schedule apply.

5.7. In the event that the Owner is free to dispose of the Discount Market Sale Dwelling for sale on the open market pursuant to the provisions of Paragraph 5.6 above of this Schedule:

5.7.1. the Owner shall serve a written notice on the Council confirming that they intend to sell the Discount Market Sale Dwelling on the open market **(Owner's Notice)**;

5.7.2. following confirmation by the Council of receipt of the Owner's Notice and confirmation that the requirements set out in Paragraph 5.6 of this Schedule have been complied with the Owner may dispose of the Discount Market Sale Dwelling on the open market free of the provisions of this Schedule; and

5.7.3. the Owner shall within 20 (twenty) Working Days of the date of the disposal of the dwelling shall pay to the Council the Discount Market Sale Commuted Sum.

5.8. Upon receipt of the Discount Market Sale Commuted Sum the Council shall:

5.8.1. within 20 (twenty) Working Days of such receipt provide a complete application to enable the removal of the restriction on the title set out in Paragraph 5.3 where such restriction has previously been registered against the relevant title; and

5.8.2. apply all monies towards the provision of Affordable Housing.

5.9. Each Discount Market Sale Dwelling shall be used only as the main residence of the individual Occupier 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 5.10 and 5.12 below.

5.10. The individual Occupier may let or sub-let their Discount Market Sale Dwelling for a fixed term of no more than two (2) years **PROVIDED THAT** the individual Occupier notifies the Council in writing before the Discount Market Sale Dwelling is Occupied by the prospective tenant or sub-tenant.

- 5.11. An individual Occupier may let or sub-let their Discount Market Sale Dwelling pursuant to this Paragraph more than once during that individual Occupier's period of ownership but the aggregate of such lettings or sub-lettings during an individual Occupier's period of ownership may not exceed 2 (two) years.
- 5.12. An individual Occupier may let or sub-let their Discount Market Sale Dwelling for any period **PROVIDED THAT** the individual Occupier notifies the Council and the Council consents in writing to the proposed letting or sub-letting.
- 5.13. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances in Paragraphs 5.13.1 and 5.13.6 below where individual Occupier:
- 5.13.1. is required to live in accommodation other than their Discount Market Sale Dwelling for the duration of the letting or sub-letting for the purposes of employment;
  - 5.13.2. is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - 5.13.3. reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - 5.13.4. reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - 5.13.5. requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; or
  - 5.13.6. reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 5.14. A letting or sub-letting permitted pursuant to Paragraphs 5.10 or 5.11 or 5.12 must be by way of a written lease or sub-lease (as the case may be) of the whole of the Discount Market Sale Dwelling on terms which expressly prohibit any further sub-letting.
- 5.15. Nothing in this Schedule prevents an individual Occupier from renting a room within their Discount Market Sale Dwelling or from renting their Discount Market Sale Dwelling as temporary sleeping accommodation **PROVIDED THAT** the Discount Market Sale Dwelling remains at all times the individual Occupier's main residence.

6. **EXCLUSIONS TO THIS SCHEDULE**

6.1. The obligations in this Schedule 5 shall not be binding on:

- 6.1.1. any Protected Tenant (or any mortgagee or chargee receiver or administrative receiver of the Protected Tenant) or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees;
- 6.1.2. any Chargee (subject only to Paragraph 6.2 below); or
- 6.1.3. any purchaser of an individual Affordable Housing Unit from a mortgagee or chargee pursuant to any default by an individual mortgagor of an Affordable Housing Unit or any person deriving title from that individual mortgagor.

6.2. This Schedule 5 shall not be binding on a Chargee **PROVIDED THAT:**

- 6.2.1. such Chargee has first given written notice to the Council of its intention to dispose of the relevant Affordable Housing Unit(s) and thereafter has used Reasonable Endeavours over a period of 3 (three) months from the date of the written notice to complete a Transfer of the relevant Affordable Housing Unit(s) to a 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 Transfer has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the obligations in this Schedule 5 which thereafter will determine absolutely in respect of such Affordable Housing Unit(s).

## SCHEDULE 6 - FIRST HOMES

### 1. INTERPRETATION

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

<b>Expression</b>	<b>Meaning</b>
<b>Additional First Homes Contribution</b>	the lowest of: <ul style="list-style-type: none"><li>(a) 30% (thirty per cent) of the net proceeds of sale after deduction of any SDLT payable by the Owner or the First Homes Owner as a result of the disposal of the First Homes Unit and the reasonable cost of selling; and</li><li>(b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the First Homes Unit under relevant security documentation including all accrued principal monies interest and reasonable costs and expenses that are payable by the Owner or 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 Owner or the First Homes Owner in connection with the sale of the First Homes Unit.</li></ul>
<b>Authority to Exchange</b>	a notice served by the Council to the Owner (which for the purposes of this definition shall include the Owner and any First Homes Owner) providing the Council's consent to exchange contracts on the First Homes Unit such notice to be issued after: <ul style="list-style-type: none"><li>(a) an Authority to Proceed has been issued; and</li><li>(b) the Owner has submitted a request to the Council for an Authority to Exchange to be issued following a mortgage offer having been received by the intended purchaser and contract having been agreed between the Owner and the intended purchaser.</li></ul>

<b>Expression</b>	<b>Meaning</b>
<b>Authority to Proceed</b>	a notice from the Council to the Owner (which for the purposes of this definition shall include the Owner and any First Homes Owner) notifying the Owner that the intended purchaser meets the Eligibility Criteria (National) and/or the Eligibility Criteria (Local) unless Paragraph 4.5 applies.
<b>Close Family</b>	a spouse civil partner partner parent son daughter sibling grandparent.
<b>Compliance Certificate</b>	the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless Paragraph 4.5 of this Schedule applies the Eligibility Criteria (Local).
<b>Disposal</b>	<p>a Transfer of a First Homes Unit other than:</p> <ul style="list-style-type: none"> <li>a) a letting or sub-letting in accordance with Paragraph 5;</li> <li>b) a Transfer of a First Homes Unit or land on which a First Homes Unit is to be provided before that First Homes Unit is made available for occupation except where the Transfer is to a First Homes Owner; or</li> <li>c) an Exempt Disposal</li> </ul> <p>and <b>Disposed of</b> and <b>Disposing</b> shall be construed accordingly.</p>
<b>Eligibility Criteria (National)</b>	<p>criteria which are met in respect of a purchase of the First Homes Unit if:</p> <ul style="list-style-type: none"> <li>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</li> <li>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).</li> </ul>
<b>Eligibility Criteria (Local)</b>	the criteria published by the Council in the document entitled 'First Homes Provision Statement Kirklees Council December 2021' (or any subsequent updating/replacing documentation) at the date of the relevant Disposal of a First

## Expression

## Meaning

Homes Unit which are met in respect of a Disposal of a First Homes Unit if:

- a) the purchaser's annual gross income (or in the case of a joint purchase the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- b) any or all of criteria (i) to (iii) below are met:
  - (i) the purchaser meets the First Homes Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the First Homes Local Connection Criteria); and/or
  - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a First Homes Armed Services Member.

## Exempt Disposal

the Disposal of the First Homes Unit in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First 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 6 of this Schedule 6 shall apply to such sale);
- PROVIDED THAT** in each case other than (d) the person to whom the Disposal is made complies with the terms of Paragraph 4 of this Schedule 6.

<b>Expression</b>	<b>Meaning</b>
<b>First Home</b>	an Affordable Housing Unit to be Disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Homes Discount Market Price and which on its first Disposal does not exceed the Price Cap.
<b>First Homes Administration Charge</b>	the reasonable and proper costs incurred by the Council in consideration of the evidence provided to it pursuant to Paragraph 4.7.1 and the provision of the Compliance Certificate.
<b>First Homes Armed Services Member</b>	<ul style="list-style-type: none"> <li>(a) a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force</li> <li>(b) a former member of (a) above who was a member within the 5 (five) years prior to the purchase of the First Homes Unit</li> <li>(c) a divorced or separated spouse or civil partner of (a) above</li> <li>(d) a spouse or civil partner of a deceased member or former member of (a) above whose death was caused wholly or partly by their service.</li> </ul>
<b>First Homes Discount Market Price</b>	a sum which is the Market Value of the First Homes Unit discounted by at least 30% (thirty per cent) to apply to the First Homes Unit in perpetuity unless otherwise set out in this Deed.
<b>First Homes Owner</b>	<p>the person or persons having the freehold or leasehold interest (as applicable) in the First Homes Unit other than:</p> <ul style="list-style-type: none"> <li>a) the party named herein as 'the Owner'; or</li> <li>b) another developer or other entity to which the freehold interest or leasehold interest in a First Homes Unit or in the land on which a First Homes Unit is to be provided has been Transferred before that First Homes Unit is made available and is Disposed of for occupation as a First Home; or</li> <li>c) a tenant or sub-tenant of a permitted letting under Paragraph 5 below.</li> </ul>

<b>Expression</b>	<b>Meaning</b>
<b>First Homes Mortgagee</b>	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.
<b>First Homes Unit</b>	an Affordable Housing Unit identified as a First Home on the Affordable Housing Plan with a blue dot which shall be provided as a First Home in accordance with this Schedule 6.
<b>First Time Buyer</b>	a first time buyer as defined by Paragraph 6 of Schedule 6ZA to the Finance Act 2003.
<b>Income Cap (Local)</b>	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 Homes Unit it being acknowledged that at the date of this Deed the Council has not set an Income Cap (Local).
<b>Income Cap (National)</b>	£80,000.00 (eighty thousand pounds) 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 Homes Unit.
<b>Initial Disposal</b>	the first Disposal of the First Homes Unit following Practical Completion.
<b>Local Connection Criteria</b>	<p>criteria which are met by a person who satisfies one or more of (a) to (g) below:</p> <ul style="list-style-type: none"> <li>(a) currently lives in the Locality as their primary residence and has done so for the past 3 (three) years;</li> <li>(b) previously lived in the Locality as their primary residence for at least 5 (five) years cumulatively within the past 10 (ten) years;</li> <li>(c) has Close Family ordinarily resident in the Locality and that Close Family has been ordinarily resident in the Locality for the past 3 (three) years;</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>(d) needs to move to the Locality to receive or provide care or support;</li> <li>(e) is employed full time on a permanent basis for more than 16 (sixteen) hours per week in the Locality or is about to take up an offer of permanent full-time employment in the Locality;</li> <li>(f) needs to move to the Locality to be close to local facilities because of a specific identified need;</li> <li>(g) has some other connection to the Locality as approved by the Council in writing;</li> </ul> <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 Homes Unit and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant Disposal of the First Homes Unit shall be the 'Local Connection Criteria' which shall apply to that Disposal.</p>
<b>Locality</b>	the administrative area of the Borough of Kirklees.
<b>Marketing Strategy</b>	the strategy approved by the Council pursuant to Paragraph 4.3 below detailing the marketing measures to be undertaken to Dispose of the First Homes Unit to a Qualifying Person prior to the Initial Disposal.
<b>Market Value</b>	<p>the open market value as assessed by a Valuer in accordance with the RICS Valuation - Professional Standards (as applicable at the date of assessment or any such replacement guidance issued by the Royal Institution of Chartered Surveyors) and agreed between the Council and the Owner as being the open market value of the First Homes Unit at which the sale of an interest in the First Homes Unit would have been completed unconditionally for cash consideration on the date of the valuation assuming:</p> <ul style="list-style-type: none"> <li>(a) a willing seller and a willing buyer;</li> </ul>

<b>Expression</b>	<b>Meaning</b>
	<ul style="list-style-type: none"> <li>(b) that any restrictions imposed on the First Homes Unit by reason of this Schedule 6 are disregarded;</li> <li>(c) that there are no restrictions as to the persons who may occupy the First Homes Unit or to whom a transfer or lease may be granted or assigned; and</li> <li>(d) that both parties to the transaction had acted knowledgeably prudently and without compulsion.</li> </ul>
<b>Practical Completion</b>	the point at which the construction of the First Homes Unit is sufficiently complete that where necessary a supervising architect has or would be able to a certificate of practical completion and the First Homes Unit can be Occupied.
<b>Price Cap</b>	the amount for which the First Homes Unit is sold after the application of the First Homes Discount Market Price which on its first Disposal shall not exceed £250,000 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State.
<b>Qualifying Person</b>	a person who meets the Eligibility Criteria (National) and (unless Paragraph 4.5 of this Schedule applies) the Eligibility Criteria (Local).
<b>SDLT</b>	Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect.

## 2. **OBLIGATIONS**

2.1. Subject always to Paragraph 6.1 unless otherwise agreed in writing by the Council the Owner covenants with the Council as below save that:

- 2.1.1. Paragraph 3 of this Schedule 6 shall not apply to a First Homes Owner;
- 2.1.2. Paragraphs 4 and 5 of this Schedule 6 apply as set out therein but and for the avoidance of doubt where a First Homes Unit is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Homes Unit owned by that First Homes Owner; and
- 2.1.3. Paragraph 6 shall apply as set out therein.

3. **FIRST HOMES STANDARDS**

- 3.1. The internal specification of the First Homes Units 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 Units are permitted.

4. **DELIVERY MECHANISM**

- 4.1. As part of the carrying out of the Development the Owner shall ensure that the Affordable Housing Units shall be provided in accordance with the Affordable Housing Plan and retained as First Homes Units in perpetuity subject to the terms of this Schedule.
- 4.2. The Owner (which for the purposes of this Schedule shall include the Owner and any subsequent First Homes Owner) shall not Dispose of or Occupy any First Homes Unit other than in accordance with this Paragraph 4 and Paragraph 5 of this Schedule 6.
- 4.3. Prior to Commencement of Development the Owner shall submit to the Council a draft Marketing Strategy for the Council's approval and the Owner shall not Commence the Development unless and until such marketing strategy has been approved by the Council (or by the Expert pursuant to Clause 11) and thereafter each First Homes Unit shall only be Disposed of according to the terms of the Marketing Strategy.
- 4.4. Each First Homes Unit shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as a First Home to a person or person(s) meeting:
- 4.4.1. the Eligibility Criteria (National); and
  - 4.4.2. the Eligibility Criteria (Local).
- 4.5. If after a First Homes Unit has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any) Paragraph 4.4.2 shall cease to apply.
- 4.6. Subject to Paragraphs 4.9 to 4.13 the First Homes Unit shall not be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty per cent) of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee.

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

4.7.1. The Council has been provided with evidence that:

4.7.1.1. the intended purchaser meets the Eligibility Criteria (National) and unless Paragraph 4.5 applies meets the Eligibility Criteria (Local) (if any);

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

4.7.1.3. the transfer of the First Homes Unit includes:

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

4.7.1.3.2. a definition of '*First Homes Provisions*' in the following terms:  
  
*'means the provisions set out in Paragraphs 4.6 and 4.7 of Schedule 6 of the Section 106 Agreement a copy of which is attached hereto as the Annexure.'*

4.7.1.3.3. a definition of '*Section 106 Agreement*' in the following terms:

*"means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ DATE OF THIS DEED ] made Between (1) James Andrew Oldroyd Susan Heather Hoodless (2) Stephen Atkinson (3) Jones Homes (Yorkshire) Limited and (4) The Council of the Borough of Kirklees"*

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

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

- 4.7.1.3.6. the First Homes Administration Charge has been paid to the Council by the Owner in respect of the Initial Disposal and the owner of the First Homes Unit on all subsequent disposals;
- 4.7.2. the Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within 20 (twenty) Working Days of being provided with evidence sufficient to satisfy it that the requirements of Paragraphs 4.6 and 4.7.1 have been met.
- 4.7.3. the Council has issued the Authority to Proceed and the Authority to Exchange and the Council hereby covenants that it shall issue:
  - 4.7.3.1. the Authority to Proceed within 15 (fifteen) Working Days of being provided with the relevant information pursuant to Paragraphs 4.7.1.1 and 4.7.1.2 above;
  - 4.7.3.2. the Authority to Exchange and Compliance Certificate within 20 (twenty) Working Days of receiving a request to issue the Authority to Exchange and having been provided with evidence sufficient to satisfy it that requirements of Paragraphs 4.6 and 4.7.1 above have been met.
- 4.8. On the first Disposal of each and every First Homes Unit the Owner (subject to Paragraph 4.2) shall apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Homes Unit of the following restriction:

*'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by the Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire or its solicitor or licenced conveyancer that the provisions of Paragraphs 4.6 and 4.7 of Schedule 6 (the First Homes provision) of the agreement dated ..... and made pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) James Andrew Oldroyd and Susan Heather Hoodless (2) Stephen Atkinson (3) Jones Homes (Yorkshire) Limited and (4) the Council of*

*the Borough of Kirklees have been complied with or that they do not apply to the disposition'*

4.9. The Owner (subject to Paragraph 4.2) may apply to the Council to Dispose of a First Homes Unit other than as a First Home on the grounds that either:

4.9.1. the First Homes Unit has been actively marketed as a First Home for 6 (six) months in accordance with Paragraphs 4.4 and 4.5 (and in the case of a first Disposal the 6 (six) months shall be calculated from a date no earlier than 6 (six) months prior to Practical Completion) and reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with Paragraphs 4.6 and 4.7.1; or

4.9.2. requiring the First Homes Owner to undertake active marketing for the period specified in Paragraph 4.9.1 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.

4.10. Upon receipt of an application served in accordance with Paragraph 4.9 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is Disposed of to it at the First Homes Discount Market Price.

4.11. If the Council is satisfied that either of the grounds in Paragraph 4.9 above have been made out it shall confirm in writing within 28 (twenty-eight) Working Days of receipt of the written request made in accordance with Paragraph 4.9 that the relevant First Homes Unit may be Disposed of:

4.11.1. to the Council at the First Homes Discount Market Price; or

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

and on the issue of that written confirmation the obligations in this Schedule which apply to First Homes Units shall cease to bind and shall no longer affect that Dwelling apart from Paragraph 4.13 which shall cease to apply on receipt of payment by the Council where the relevant First Homes Unit is Disposed of other than as a First Home

4.12. If the Council does not wish to acquire the relevant First Homes Unit itself and is not satisfied that either of the grounds in Paragraph 4.9 above have been made out then it shall within 28 (twenty eight) Working Days of receipt of the written request made in accordance with Paragraph 4.9 serve notice on the Owner(subject to Paragraph 4.2) setting out the further steps it requires the Owner to take to secure the Disposal of that First Homes Unit as a First Home and the timescale (which shall be no longer than 6 (six) months) **PROVIDED THAT** if at the end of that period the Owner has been unable to Dispose of the First Homes Unit as a First Home he may serve notice on the Council in accordance with Paragraph 4.9 following which the Council must within 28 (twenty eight) Working Days issue confirmation in writing that the First Homes Unit may be Disposed of other than as a First Home.

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

4.13.1. as a First Home; or

4.13.2. to the Council at the First Homes Discount Market Price in accordance with Paragraphs 4.11 or 4.12 above

the Owner (subject to Paragraph 4.2) of the First Homes Unit shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

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

4.14.1. within 20 (twenty) Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in Paragraph 4.8 where such restriction has previously been registered against the relevant title; and

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

4.15. Any person who purchases a First Homes Unit free of the restrictions in this Schedule pursuant to the provisions in Paragraphs 4.12 and 4.13 shall not be liable to pay the Additional First Homes Contribution to the Council.

5. **USE OF THE FIRST HOMES**

5.1. Each First Homes Unit 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 5.1.1 to 5.1.4 below inclusive.

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

5.1.2. In addition a First Homes Owner may let or sub-let their First Homes Unit 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 and in such case the Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances in Paragraphs 5.1.2.1 to 5.1.2.6 below:

5.1.2.1. 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;

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

5.1.2.3. 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;

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

- 5.1.2.5. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- 5.1.2.6. 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.
- 5.1.3. A letting or sub-letting permitted pursuant to Paragraph 5.1.1 or 5.1.2 above must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Homes Unit on terms which expressly prohibit any further sub-letting.
- 5.1.4. Nothing in this Paragraph prevents a First Homes Owner from renting a room within their First Home or from renting their First Homes Unit as temporary sleeping accommodation **PROVIDED THAT** the First Homes Unit remains at all times the First Homes Owner's main residence.

## 6. **EXCLUSIONS AND RELEASE**

- 6.1. The obligations in Paragraphs 2 to 5 of this Schedule in relation to First Homes Units shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (each a **Receiver**)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver **PROVIDED THAT**:
  - 6.1.1. such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Homes Unit; and
  - 6.1.2. once notice of intention to Dispose of the relevant First Homes Unit has been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Homes Unit at its full Market Value and subject only to Paragraph 6.1.3; and
  - 6.1.3. following the Disposal of the relevant First Homes Unit the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all

accrued principal monies interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.

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

6.1.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in Paragraph 4.8; and

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

**SCHEDULE 7 - ECOLOGY DELIVERY MANAGEMENT AND MAINTENANCE OF THE  
ON-SITE ECOLOGICAL NET GAIN**

The Owners covenant as follows:

1. To provide the On-Site Ecological Net Gain in accordance with the Planning Permission.
2. To notify the Council in writing that the On-Site Ecological Net Gain has been completed in accordance with Paragraph 3 of this Schedule.
3. Upon the On-Site Ecological Net Gain being delivered in accordance with the Planning Permission the Owner may transfer responsibility for the On-Site Ecological Net Gain to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) in accordance with the On-Site Ecological Management Scheme and thereafter all further maintenance shall be carried out by the Management Company and the Owner shall have no further liability to do so
4. The On-site Ecological Net Gain shall be managed and maintained for a minimum period of 30 (thirty) years in accordance with the On-Site Ecological Management Scheme or any variations that may be approved in writing from time to time
5. Notwithstanding the provisions of Clause 5.1.1 the Owner shall continue to manage and maintain the On-Site Ecological Net Gain in accordance with the approved On-Site Ecological Management Scheme until such time as responsibility for the same shall be transferred to a Management Company and the Owner further covenants:
  - 5.1. not to transfer the freehold or grant a lease of any part of the Site accommodating the On-Site Ecological Net Gain to any person or entity other than a Management Company approved pursuant to Paragraph 3 above or Paragraphs 6 and 7 below; and
  - 5.2. to secure that a restriction is registered against the title to that part of the Site accommodating the On-Site Ecological Net Gain pursuant to Rules 91 and 91A of the Land Registration Rules 2003 in Form L preventing a transfer of the freehold or the grant of a lease of that part of the Site without the consent of the Council.

6. The responsibility for the On-Site Ecological Net Gain shall not be transferred to any Management Company other than in accordance with the approved On-Site Ecological Management Scheme.
7. Responsibility for the maintenance of the On-Site Ecological Net Gain 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 or the Expert has approved it after a referral pursuant to Clause 11.
8. In the event that the Council considers that the requirements of the relevant On-Site Ecological Management Scheme are not being complied with then the Council may serve a notice on the Owner or the Management Company (as applicable) requiring the Owner or the Management Company (as applicable) to undertake such remedial steps as are specified in the notice.
9. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to Paragraph 8 above within 10 (ten) Working 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. If the Owner or the Management Company (as appropriate) shall fail to comply with the notice referred to in Paragraph 8 the Council may enter the On-Site Ecological Net Gain and carry out such works as it considers necessary to ensure compliance with the On-Site Ecological Management Scheme and may recover from the Owner or Management Company the costs incurred in doing so.

**SCHEDULE 8**  
**COUNCIL'S COVENANTS**

**1. RECEIPT OF CONTRIBUTIONS**

- 1.1. The Council shall issue separate receipts on request for any Contributions paid to it pursuant to this Deed.
- 1.2. The Council will place all sums received pursuant to this Deed in an interest bearing account (or in separate interest bearing accounts as the Council shall at its discretion decide).
- 1.3. The Council will use:
  - 1.3.1. the Additional First Homes Contribution for the purpose set out in Schedule 6;
  - 1.3.2. the Discount Market Sale Commuted Sum for the purpose set out in Schedule 5;
  - 1.3.3. the Affordable Housing Financial Contribution for the provision of Affordable Housing in and/or around the Locality and for the purposes hereof and without prejudice to the generality may use the contribution to fund or part fund Affordable Housing to be provided by any Registered Provider;
  - 1.3.4. the Bus Stop Contribution towards the provision of 2 (two) real time displays on bus stops on Halifax Road;
  - 1.3.5. the Off-Site Ecological Net Gain Contribution towards off Site measures to assist in achieving the biodiversity gain objective in accordance with Section 90A and Schedule 7A of the 1990 Act;
  - 1.3.6. the Education Contribution towards the provision of additional places at Headlands C of E Junior Infant and Nursery School and Spen Valley High School;
  - 1.3.7. the Off-Site POS Contribution towards improvements to existing public open within the vicinity of the Site

- 1.3.8. the On-Site POS Inspection Fee towards the Council's costs of inspecting the On-Site POS in accordance with Schedule 8;
  - 1.3.9. the Sustainable Transport Contribution towards the promotion of sustainable travel;
  - 1.3.10. the TRO Contribution towards the traffic regulation order for the imposition of 'no waiting' restrictions on Darley Road and at the Ripley Road and Halifax Road junction;
  - 1.3.11. the Travel Plan Monitoring Fee towards the monitoring of the travel plan to be submitted pursuant to the Planning Permission;
- 1.4. The Council will not apply any sums received pursuant to this Deed for any purpose other than as described in this Deed.
  - 1.5. The Council shall on reasonable request by the Owner provide details of the sums collected and retained the interest accrued the sums expended and the purposes for which the sums have been expended **PROVIDED THAT** the Council shall not be obliged to comply with more than one such request within any 12 (twelve) calendar month period.
  - 1.6. The Council shall upon written request repay any Contributions or parts thereof paid to it under this Deed (plus any actual interest accrued) to the person who made the payment if not committed by contract or expended within 10 (ten) years from the date of payment such written request to include the requisite details of the person who made the payment to enable any payment to be made.

## 2. **ON-SITE PUBLIC OPEN SPACE**

- 2.1. The Council shall inspect the On-Site POS no later than 1 (one) calendar month following receipt of the relevant notice referred to in Paragraph 2.3 of Schedule 3 **PROVIDED THAT** the On-Site POS Inspection Fee has been paid in accordance with Paragraph 3 of Schedule 2.
- 2.2. Following the Council's inspection of the On-Site POS the Council shall notify the Owners in writing that the On-Site POS:
  - 2.2.1. has been completed in accordance with the Planning Permission and the On-Site POS Plan to the Council's reasonable satisfaction; or

2.2.2. has not been completed in accordance with the Planning Permission and the On-Site POS Plan to the Council's reasonable satisfaction.

2.3. The Council shall specify the measures necessary to complete the On-Site POS to its reasonable satisfaction and the Owner shall carry out those works and shall notify the Council pursuant to Paragraph 2.3 of Schedule 3 (with such procedure being repeated as often as is necessary until such time as the Council confirms satisfactory completion thereof or the matter is referred to the Expert in accordance with Clause 11).

**SIGNED AS A DEED** (but not delivered until the date hereof) by **JAMES ANDREW OLDROYD** in the presence of



Signature of witness: .....

Name (BLOCK CAPITALS): .....

Address: .....  
.....

Occupation .....

**SIGNED AS A DEED** (but not delivered until the date hereof) by **SUSAN HEATHER HOODLESS** in the presence of



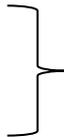
Signature of witness: .....

Name (BLOCK CAPITALS): .....

Address: .....  
.....

Occupation .....

**SIGNED AS A DEED** (but not delivered until the date hereof) by **STEPHEN ATKINSON** in the presence of



Signature of witness: .....

Name (BLOCK CAPITALS): .....

Address: .....  
.....

Occupation .....

**EXECUTED AS A DEED** (but not delivered until the date hereof) by **JONES HOMES (YORKSHIRE) LIMITED** acting by a Director In the presence of: }

Signature of witness: .....

Name (BLOCK CAPITALS): .....

Address: .....  
.....

Occupation .....

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

**Authorised Sealing Officer**