

DATED _____ **2026**

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)

-and-

**SANDRA ELIZABETH MELLOR & RICHARD EDWARD ANTONY MELLOR & SARAH
JANE KUCERA (2)**

-and-

NEWETT HOMES LIMITED (3)

AGREEMENT

Under Section 106 of the Town & Country Planning Act 1990 (as amended)
relating to
Land Northeast of Shepley Road, Stocksmoor, Huddersfield HD4 6XW

WALKER MORRIS LLP
33 Wellington Street
LEEDS
LS1 4DL
Tel: 0113 2832500
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Ref: CAS/NEW00884.181

THIS AGREEMENT is made the day of Two Thousand and Twenty-Six

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Civic Centre 3, Market Street, Huddersfield, HD1 1WG (hereinafter called “the **Council**”) of the first part; and
- (2) **SANDRA ELIZABETH MELLOR & RICHARD EDWARD ANTONY MELLOR & SARAH JANE KUCERA** care of Sarah Jane Kucera, 106 Gregories Road, Beaconsfield HP9 1HN the trustees of the Anthony Mellor 2018 Discretionary Settlement (hereinafter called “the **Owner**”) of the second part; and
- (3) **NEWETT HOMES LIMITED** (Company No. 10402485) whose registered office is care of Stirling Investments, Thorp Arch Grange, Walton Road, Thorp Arch, Wetherby, West Yorkshire LS23 7BA (hereinafter called “the **Developer**”) of the third part;

together the "**Parties**" and reference to "**Party**" shall be construed accordingly.

WHEREAS

1. The Council is the local planning authority for the Kirklees District within which the Site is situated and by whom the planning obligations within this Agreement are enforceable.
2. The Owner owns the freehold estate in the Site being registered with title absolute in respect of title number YY101917.
3. The Developer has an interest in the Site by way of a deed of novation agreement, dated 2nd March 2023, and made between (1) Berkeley De Veer Limited ((Company No. 08859036) whose registered office is at Avant House 6 And 9 Tallys End, Barlborough, Chesterfield, England, S43 4WP) and (2) the Developer, in relation to a conditional contract for sale, dated 3rd May 2018, and made between (1) the Owner and (2) Berkeley De Veer Limited.
4. The Developer has submitted the Application to the Council for planning permission in relation to the Development.
5. The Council resolved on 24th April 2025 to refuse the Planning Permission for the Development and the Appeal has been lodged on behalf of the Developer.
6. By the provisions of Section 106 of the 1990 Act any person interested in land in the area of a local planning authority may by agreement or otherwise enter into a planning obligation in respect of the land.

NOW IT IS HEREBY AGREED as follows:

1. **INTERPRETATION**

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this clause:

“1990 Act” means the Town and Country Planning Act 1990 (as amended);

“Additional First Homes Contribution” means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 2.1.8, 2.1.9 or 2.3 of the First Schedule, the lower of the following two amounts:

- (a) 30% (thirty percent) of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the First Homes Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home;

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;

“Affordable Dwelling Price” means the price to be paid by the Registered Provider or the Alternative Registered Provider to the Owner for the Affordable Rented Dwellings and the Shared Ownership Dwellings to be agreed at a price that is based upon the

transfer values set out in the Affordable Housing and Housing Mix SPD dated March 2023 or such other policy concerning affordable housing which shall supersede or modify this document;

- “Affordable Housing”** means housing provided to eligible households whose needs are not met in accordance with the definition in Annex 2 of the National Planning Policy Framework;
- “Affordable Housing Commuted Sum”** means if applicable the payment to be made in lieu of the provision of on-site Affordable Rented Dwellings and/or the Shared Ownership Dwellings calculated as described in the Kirklees Interim Affordable Housing Policy 2016 or such other policy concerning affordable housing which shall supersede or modify this document;
- “Affordable Housing Plan”** means Drawing No. Z159.100 attached hereto at Annex 2;
- “Affordable Rent”** means an affordable rent that is subject to rent controls that require a rent of no more than 80% (eighty percent) of the local market rent (including service charges, where applicable), calculated using RICS approved valuation methods;
- “Affordable Rented Dwellings”** means 5 (five) Dwellings of Affordable Housing (plots 13, 15, 19, 21 and 24) as shown on the Affordable Housing Plan provided in accordance with the following conditions (i) that the units be made available at an Affordable Rent or at a Social Rent (ii) that the landlord is a Registered Provider and (iii) compliance with the definition of ‘Affordable Housing for Rent’ in Annex 2 of the National Planning Policy Framework;
- “Alternative Registered Provider”** means such other Registered Provider as shall be agreed by the Council under paragraph 1.5 of the First Schedule;

- “Appeal”** means the appeal PINS Reference No. [**T.B.C.**] lodged on behalf of the Owner against the Council’s refusal the Planning Permission for the Development;
- “Application”** means the planning application received by the Council on 30th April 2024 and validated by the Council on 10th May 2024 and registered by the Council under reference number 2024/62/91242/E for the erection of residential development (50 dwellings) with associated access, parking, public open space, landscaping and infrastructure;
- “Areas of POS and Incidental Landscaping”** means those areas of public open space/green space and incidental landscaping, together with the LAP, which are to be included within the Site and laid out and landscaped in accordance with a condition(s) to the Planning Permission and which are not within private curtilages or otherwise adopted by other parties as shown shaded purple, green and yellow on Plan 2 attached hereto at Annex 3;
- "Areas of POS and Incidental Landscaping Inspection Fee"** means a sum of £1,000.00 (one thousand pounds) to be paid to the Council by the Owner as a contribution towards the cost of the Council inspecting the Areas of POS and Incidental Landscaping in accordance with this Agreement;
- “Areas of POS and Incidental Landscaping Management Scheme”** means a scheme for the future maintenance and management of the Areas of POS and Incidental Landscaping to be submitted by the Owner in accordance with the provisions of paragraph 5.5 of the First Schedule and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council);
- “Areas of POS and Incidental Landscaping Notice”** has the meaning given in paragraph 5.1 of the First Schedule;

- “Armed Services Member”** means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the 5 (five) years prior to the purchase of the First Home, or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;
- “Authority to Exchange”** means a notice served by the Council to the Owner (which for the purpose of this definition shall include any First Homes Owner) in the form set out by the Council or such other form as the Council may from time to time reasonably require, providing the Council’s consent to exchange contracts on the First Home such notice to be issued after:
- (a) an Authority to Proceed has been issued; and
 - (b) the 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;
- “Authority to Proceed”** means a notice served by the Council to the Owner (which for the purposes of this definition shall include any First Homes Owner) in the form set out by the Council or such other form as the Council may from time to time reasonably require, notifying the Owner following receipt of the Owner’s application form that the intended purchaser meets the Eligibility Criteria (National) and Eligibility Criteria (Local) unless paragraph 2.3.2 of the First Schedule applies;
- “Biodiversity Enhancement Improvements”** means the improvements to be made in accordance with the Biodiversity Enhancement Scheme within the On-Site Biodiversity Enhancement Land;

“Biodiversity Enhancement Scheme”

means a scheme to be submitted to and approved by the Council in accordance with a condition to the Planning Permission, and in accordance with the report prepared by SLR Consulting Limited (dated 24th April 2024) and titled 'Ecological Impact Assessment and Biodiversity Net Gain Assessment' and to include any updates to the report as may be required in accordance with the scheme, in relation to securing landscape, ecological and biodiversity/habitat creation/management within the On-Site Biodiversity Enhancement Land in order to achieve the On-Site Biodiversity Net Gain, together with setting out:

- (a) the precise locations within the On-Site Biodiversity Enhancement Land on which the Biodiversity Enhancement Improvements will be implemented;
- (b) the ecological management to be undertaken within the On-Site Biodiversity Enhancement Land for the Biodiversity Management Period;
- (c) a mechanism for the joint periodical review by the Owner and the Council of the ecological management to be undertaken and for amendments to be agreed in respect of the remaining part of the Biodiversity Management Period;

“Biodiversity Management Period”

means a period of 30 (thirty) years from the date of Occupation of the 45th (forty-fifth) Dwelling (or such other number of Dwellings that may be first agreed in writing by the Council) in accordance with paragraph 3.1 of the First Schedule;

“Chargee”

means any mortgagee or chargee of the Registered Provider or an Alternative Registered Provider as the case may be or of an individual Affordable Rented Dwelling

or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

“CIL Regulations”

means the Community Infrastructure Levy Regulations 2010 (as amended);

“Close Family”

means a spouse, civil partner, partner, son, daughter, sibling, grandparent;

“Commencement of Development”

means the actual date upon which the Development is begun by the carrying out on the Site of any material operation as defined by Section 56(4) of the 1990 Act save that the term "*material operation*" shall not for the purpose of this Agreement include operations in connection with any work of or associated with demolition, remediation works, environmental investigation, site and soil surveys, construction of access road, erection of contractors' work compound, erection of site office, construction of access road, erection of fencing to site boundary and reference to **“Commence Development”** shall be construed accordingly;

“Compliance Certificate”

means 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 2.3.2 of the First Schedule applies the Eligibility Criteria (Local) and the cost of any subsequent Compliance Certificate that may arise on subsequent disposal of a Dwelling as a First Home will be borne by the owner of that Dwelling (Owner in respect of the first disposal and the First Homes Owner in respect of subsequent disposals);

“Contributions”

means the Education Contribution, the Public Open Space Contribution, Sustainable Travel Fund Contribution and the Travel Plan Monitoring Fee and reference to **“Contribution”** shall be construed accordingly;

- “Decision Letter”** means the letter issued by the Inspector or the Secretary of State determining the Appeal;
- “Default Interest Rate”** means 4% (four percent) per annum above the base rate from time to time of the Bank of England;
- “Design and Quality Standards”** means the Housing Corporation’s Scheme Development Standards or Homes England Design and Quality Standards document (April 2007) for Affordable Housing and any subsequent standard as Homes England may reasonably require;
- “Development”** means the development of the Site in pursuance of the Planning Permission;
- “Dwelling”** means a residential unit that may be built on the Site as part of the Development and reference to **“Dwellings”** shall be construed accordingly;
- “Education Contribution”** means the sum of £25,681.00 (twenty-five thousand six hundred and eighty-one pounds) Index Linked to be paid to the Council by the Owner in accordance with paragraph 4 of the First Schedule and applied by the Council towards the cost of providing, expanding and/or improving educational facilities within the Locality as required as a result of the Development;
- “First Homes Disposal”** means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:
- (a) a letting or sub-letting in accordance with paragraph 2.4 of the First Schedule;
 - (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner;

- (c) a First Homes Exempt Disposal;

and reference to “**Disposed**” shall be construed accordingly;

**“First Homes Eligibility
Criteria (Local)”**

means criteria published by the Council in the document entitled “First Homes Provision Statement Kirklees Council December 2021” (or any subsequent updating/replacing documentation at the date of the relevant disposal of a First Home) which are met in respect of a disposal of a First Home if:

- (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) and (ii) 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 Local Connection Criteria); and/or
- (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member;

**“First Homes Eligibility
Criteria (National)”**

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’

joint annual gross income) does not exceed the Income Cap (National);

“First Homes Exempt Disposal”

means the Disposal of a First Home 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 2.5 of the First Schedule 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 2.4 of the First Schedule;

“First Homes”

means 3 (three) Dwellings of Affordable Housing (plots 18, 20 and 25) as shown on the Affordable Housing Plan or in such other locations that may be agreed in writing between the Council and the Owner to be provided as first homes as defined in the Department for Levelling Up, Housing and Communities 'First Homes' guidance published in May 2021 (or any future guidance or initiative that replaces or supplements it) and which may be disposed of as a freehold or (in the case of flats only)

as a leasehold property to a First Time Buyer at the First Home Sale Price and which on its first Disposal does not exceed the Price Cap and reference to “**First Home**” shall be construed accordingly;

“First Homes Administration Charge”

means the reasonable and proper costs incurred by the Council in consideration of the evidence provided to it pursuant to paragraph 2.3.4.1 of the First Schedule and to be paid by the First Homes Owner;

“First Homes Mortgagee”

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home;

“First Homes Owner”

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold owner or a tenant or sub-tenant of a permitted letting under paragraph 2.4 of the First Schedule;

“First Home Sale Price”

means a sum which is the Open Market Value discounted by at least 30% (thirty percent) which will apply to the First Home in perpetuity unless otherwise set out in this Agreement;

- “First Homes Qualifying Person”** means a person who meets the First Homes Eligibility Criteria (National) and (unless paragraph 2.3.2 of the First Schedule applies) the Eligibility Criteria (Local);
- “First Time Buyer”** means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 and reference to **“First Time Buyers”** shall be construed accordingly;
- “Homes England”** means the Homes and Communities Agency trading as Homes England or any bodies undertaking the existing functions of Homes England 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);
- “Income Cap (Local)”** means the local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement the Council has not set an Income Cap (Local);
- “Income Cap (National)”** means:
- (a) in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London) – £90,000.00 (ninety thousand pounds); and
 - (b) in the case of any other First Home – £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 Home;
- “Independent Surveyor”** means an independent chartered surveyor qualified to act as an expert in relation to a dispute relating to or arising out of the terms of this Agreement having no less than 10 (ten) years post qualification experience unconnected to

either of the Parties hereto and experienced in residential development matters who shall be appointed at the Owner's cost but first approved by the Council;

“Index Linked”

means an increase or decrease to the Contributions on an annual basis or pro rata per diem from the date of this Agreement to the date of payment (or calculation as the case may be) in accordance with the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if the All In Tender Price Index ceases to exist such index as the Council reasonably nominates;

“Inspector”

means an inspector appointed by the Secretary of State to determine the Appeal pursuant to Schedule 6, of the 1990 Act;

“LAP”

means a ‘local area of play’ as defined by Fields in Trust (or such successor body or organisation whose primary objectives are protecting and improving outdoor sports and play spaces) including play equipment predominantly for children aged 6 (six) years or under with seating for accompanying adults;

“Locality”

means the Kirklees District;

“Local Connection Criteria”

means a person or a member of their household having a connection to the Locality by reason of the following:

- (a) currently lives in the Locality as their primary residence and has done so for the past 3 (three) years;
- (b) previously lived in the Locality as the primary residence for at least 5 (five) years cumulatively in the past 10 (ten) years;

- (c) has Close Family ordinarily resident in the Locality and that Close Family has been ordinarily resident in the Locality for the past 3 (three) years;
- (d) need to move to the Locality to receive or provide care or support;
- (e) is employed 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 employment in the Locality;
- (f) needs to move to the Locality to be close to local facilities because of a specific identified need;
- (g) has some other connection to the Locality as approved by the Council in writing;

OR

Such other local connection criteria as may be published by the Council from time to time as its “First Homes Local Connection Criteria” (or equivalently so titled) and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall apply to that Disposal;

"Management Company"

means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owner for the purposes carrying out future maintenance of the Areas of POS and Incidental Landscaping in accordance with paragraph 5 of the First Schedule and:

- (a) which is incorporated in England and Wales or Scotland;

- (b) which has its registered office in England or Scotland; and
- (c) whose primary objects permit it to maintain and renew the Areas of POS and Incidental Landscaping;

“Market Dwellings”

means those dwellings within the Development excluding the Affordable Rented Dwellings and the First Homes and reference to **“Market Dwelling”** shall be construed accordingly;

“Marketing Strategy”

means the strategy to be approved by the Council pursuant to paragraph 2.3 of the First Schedule and to detail the marketing measures to be undertaken to dispose of the First Home to a First Homes Qualifying Person upon a first disposal to include advertising for sale on one national property website and the Owner's regional website or any other similar organisation promoting intermediate market housing;

“National Planning Policy Framework”

means the National Planning Policy Framework published by the Ministry of Housing, Communities and Local Government in December 2024 (or any future guidance or initiative that replaces or supplements it);

“Occupation”

means the beneficial occupation under a sale lease licence or other arrangement for the purpose for which the Dwelling was granted planning permission but shall exclude occupation for the purposes of fit out or marketing or security and reference to **“Occupied”** and **“Occupy”** shall be construed accordingly;

“On-Site Biodiversity Enhancement Land”

means the areas within the Areas of POS and Incidental Landscaping as shown shaded green, yellow and purple on Plan 2 within which Biodiversity Enhancement Improvements will be implemented in accordance with a condition(s) annexed to the Planning Permission;

“On-Site Biodiversity Net Gain”

means 6.97 (six point nine seven) habitat units to be provided within the On-Site Biodiversity Enhancement Land;

“Open Market Value”

means 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 a First Home as the case may be, and for the avoidance of doubt shall not take into account the 30% (thirty percent) in the valuation of a First Home, at which the sale of an interest in the property would have been completed unconditionally for cash consideration on the date of the valuation assuming;

- (a) a willing seller;
- (b) that any restrictions imposed on the Dwelling by reason of this Agreement are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the First Home or to whom a transfer or lease may be granted or assigned; and
- (d) that both parties to the transaction had acted knowledgeably prudently and without compulsion;

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;

“Owner’s Notice”

has the meaning given in paragraph 1.9.1 of the First Schedule;

“Plan 1”

means the plan so marked and attached hereto at Annex 1 (showing the "Site");

“Plan 2”

means the plan so marked and attached hereto at Annex 3 (showing the “Areas of POS and Incidental

Landscaping” and the On-Site Biodiversity Enhancement Land);

- “Planning Obligation”** means the obligations, conditions and stipulations set out in the First Schedule and **“Planning Obligation”** shall be construed accordingly;
- “Planning Permission”** means a planning permission which may be granted pursuant to the Application and the Appeal by an Inspector or the Secretary of State;
- “Practical Completion”** means the stage when a First Home has been constructed and fitted out and is ready for physical Occupation;
- “First Homes Price Cap”** means the amount for which the First Home is sold after the application of the First Home Sale Price which on its first Disposal shall not exceed £250,000.00 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State;
- “Protected Tenant”** means any tenant or person who:
- (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 right) in respect of a particular Affordable Rented Dwelling or Shared Ownership Dwelling; or
 - (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling or Shared Ownership Dwelling; or
 - (c) has been granted a shared ownership lease by the Registered Provider or an Alternative Registered Provider as the case may be (or similar arrangement where a share of the Affordable Rented Dwelling or the Shared

Ownership Dwelling is owned by the tenant and a share is owned by the Registered Provider or an Alternative Registered Provider as the case may be) in respect of a particular Affordable Rented Dwelling or Shared Ownership Dwelling and the tenant has subsequently purchased from the Registered Provider or an Alternative Registered Provider as the case may be all the remaining shares so that the tenant owns the entire Affordable Rented Dwelling or Shared Ownership Dwelling; and

- (d) any successor in title to any of (a) (b) or (c) above;

“Public Open Space Contribution”

means the sum of £[**T.B.C.**] Index Linked to be paid to the Council by the Owner in accordance with paragraph 6 of the First Schedule and applied by the Council towards improvements to publicly accessible open space within the [**Kirkburton**] Ward the need for which is to mitigate the effects of the Development;

“Reasonable Endeavours”

means that it is agreed by the Parties that the Party under such an obligation will not be required to take proceedings (including any appeal) in any court, public inquiry, or other hearing (unless specified to the contrary) but subject to these and to other terms of this Agreement such Party will be bound to attempt 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;

Registered Provider

means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body

approved by Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Council;

- “SDLT”** means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
- “Secretary of State”** means the Secretary of State for Housing, Communities and Local Government or any substitute or any Inspector appointed by him;
- “Shared Ownership Dwellings”** means 2 (two) Dwellings of Affordable Housing (plots 14 and 16) as shown on the Affordable Housing Plan or in such other locations that may be agreed in writing between the Council and the Owner to be constructed in accordance with the Planning Permission and occupied on the basis of a Shared Ownership Lease or such other housing as approved in writing by the Council that provides a subsidised route to home ownership and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within Annex 2 of the National Planning Policy Framework;
- “Shared Ownership Lease”** means the Homes England model lease current at the date of this Agreement;
- “Site”** means the land northeast of, Shepley Road, Stocksmoor, Huddersfield HD4 6XW which is shown edged red on Plan 1;
- “Sustainable Travel Fund Contribution”** means the sum of £41,618.50 (forty one thousand six hundred and eighteen pounds) Index Linked [*based on £832.37 per Dwelling*] to be paid to the Council by the Owner in accordance with paragraph 7 of the First Schedule and applied by the Council towards the Sustainable Travel Fund the need for which is to mitigate the effects of the Development;

- “Sustainable Travel Fund”** means a fund to be applied by the Council for the purpose of providing Residential MCards for occupants of the Development or other such measures to encourage and enable the use of sustainable methods of transport as shall be agreed in writing by the Council;
- “Travel Plan”** means a travel plan containing measures aimed at encouraging occupants of the Development to take alternative sustainable means of travel instead of the car and substantially in the form of the travel plan prepared by Andrew Moseley Associates dated April 2024 attached as the Third Schedule;
- “Travel Plan Monitoring Fee”** means an initial payment in the sum of £2,000.00 (two thousand pounds) and then 4 (four) subsequent payments of £2,000.00 (two thousand pounds) (for the avoidance of doubt this will involve 5 (five) payments in total) to be paid to the Council by the Owner in accordance with the provisions of paragraph 8.2 of the First Schedule and used by the Council towards monitoring the Travel Plan in order to address impacts which directly arises from the Development;
- “Valuer”** means a Member of Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the Affordable Housing owner and acting in an independent capacity;
- "Working Day"** means any day except Saturdays Sundays or bank holidays and reference to **"Working Days"** shall be construed accordingly.

1.2 Clause headings are for reference only and shall not affect the construction of this Agreement.

1.3 Where more than one person is included in the expressions "the Council" and "the Owner" and "the Developer" agreements and obligations expressed to be made or assumed by such Party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.

- 1.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.
- 1.5 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.6 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it which is for the time being in force.
- 1.7 A reference to a clause or schedule or paragraph is a reference to a clause or schedule or paragraph contained in this Agreement and does not affect the interpretation or construction of this Agreement.

2. **GENERAL**

- 2.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 Subject to clause 2.5 the Owner covenants with the Council to observe the restrictions and perform the obligations contained in paragraphs 1 to 8 (inclusive) of the First Schedule with the intent that those restrictions and obligations shall bind the Owner and each and every part of the Site.
- 2.3 The Council covenants with the Owner to observe the restrictions and perform the obligations contained in the Second Schedule and where applicable in the First Schedule.
- 2.4 The expressions "the Owner" and "the Developer" shall include their successors in title and assigns and the expression "the Council" shall include its respective successor authority.
- 2.5 No person shall be bound by the terms of this Agreement or shall be liable for breach of any covenants, restrictions, duties, provisions or obligations contained in this Agreement after he or it shall have parted with his or its interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 2.6 This Agreement shall not be binding upon:

- 2.6.1 a purchaser an occupier or a tenant of individual Dwellings or if it shall be a mortgagee and/or chargee and/or their respective successors in title and/or receiver appointed by the mortgagee and/or chargee of a Dwelling; or
- 2.6.2 with regard to paragraphs 2 to 8 (inclusive) of the First Schedule if he or she shall be an occupier or a tenant of any of the Affordable Rented Dwelling or the Shared Ownership Dwellings or a Registered Provider or the Chargee of a Registered Provider and/or in the event of default under a mortgage or charge or upon any receiver appointed by them its successors in title to such Chargee; or
- 2.6.3 with regard to paragraphs 1 and 3 to 8 (inclusive) of the First Schedule if he or she shall be a purchaser an occupier or a tenant of any of the First Homes or a purchaser of an individual First Home or in the event of default under a mortgage or charge or upon any receiver appointed by them its successors in title to such mortgagee, chargee or receiver; or
- 2.6.4 (save for the provisions of paragraph 5 of the First Schedule) if it shall be a Management Company or the mortgagee and/or chargee of a Management Company and/or in the event of default under a mortgage or charge or upon any receiver appointed by them its successors in title to such mortgagee, chargee or receiver; or
- 2.6.5 an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.
- 2.7 Paragraphs 2.1 and 2.2 of the First Schedule apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner.
- 2.8 This Agreement shall not become effective until the following conditions are satisfied:
- 2.8.1 the Planning Permission has been granted; and
- 2.8.2 the Commencement of Development has occurred
- (except where otherwise specifically stated in this Agreement).
- 2.9 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner or its successors in title this Agreement shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but

without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any Party prior to such date.

- 2.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Agreement.
- 2.11 This Agreement is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such on completion.
- 2.12 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 2.13 Wherever this Agreement requires the approval agreement determination or consent of the Council such approval agreement determination or consent shall be provided in writing and is not to be unreasonably withheld or delayed.
- 2.14 Unless otherwise stated this Agreement is governed by and interpreted with the law of England.
- 2.15 It is agreed that any mortgagee and/or chargee and/or their respective successors in title and/or receiver appointed by the mortgagee and/or chargee of the Owner or the Owner's successors in title shall have no liability under this Agreement unless and until it becomes a mortgagee in possession of the Site or the part of the Site in relation which its charge relates in which case it too will be bound by the obligations as if it were a person deriving title from the Owner or the Owner's successors in title as the case may be.
- 2.16 The Owner shall pay the Council's reasonable legal costs incurred in the preparation of this Agreement.
- 2.17 If an Inspector or the Secretary of State in its Decision Letter concludes that any of the Planning Obligations are incompatible with Regulation 122 of the CIL Regulations and expressly states in its Decision Letter that they attach no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation shall from the date of the Decision Letter immediately cease to have effect and the Owner shall be under no obligation to comply with that Planning Obligation but the remaining Planning Obligations shall remain in full force and effect.

3 **VAT**

- 3.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable.

4 **WAIVER**

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

5 **NOTICES**

- 5.1 All notices, requests and demands or other written communications to or upon the Parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the Party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this Clause 5.1):

5.1.1 To the Council: Service Director: Legal Governance and Commissioning Legal Services, 2nd Floor, High Street Buildings, High Street, Huddersfield HD1 2ND quoting "Stocksmoor" and the Application reference number 2024/62/91242/E.

5.1.2 To the Owner: care of Sarah Jane Kucera at the address stated above at page 2 quoting at the address stated above at page 2 quoting "Stocksmoor" and the Application reference number 2024/62/91242/E.

5.1.3 To the Developer: care of Mr W Newett at the address stated above at page 2 quoting "Stocksmoor" and the Application reference number 2024/62/91242/E.

6 **DISPUTES**

- 6.1 Any dispute arising between the Parties as to their respective rights, duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with Clause 6.2 below to the determination of an Independent Surveyor.

6.2 Any reference to an Independent Surveyor in accordance with Clause 6.1 above shall be to a reputable Independent Surveyor unconnected to any of the Parties hereto and experienced in developments of this nature who shall be agreed between the Parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy and the decision of such Independent Surveyor shall be final and binding upon the Parties to the dispute and the Parties hereby agree to act in accordance with the decision (save for manifest error) and if the Parties to the dispute shall agree in writing such reference shall be deemed to be a reference to an expert (and not an arbitrator) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and if any Independent Surveyor shall act as an expert pursuant to the terms of this Clause 6.2 then each of the Parties to the dispute shall be entitled to submit to him representations and cross representations with such supporting evidence as they shall consider necessary and he shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the Parties to the dispute or the Independent Surveyor himself) shall be paid.

7 INTEREST ON LATE PAYMENTS

7.1 Any amount due from the Owner to the Council under the terms of this Agreement which is not paid on or prior to the date due shall accrue interest at the Default Interest Rate accruing from the date such payment was due to the date of actual payment.

8 SEVERABILITY

8.1 If any provision in this Agreement 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 Agreement and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

9 FUTURE PERMISSIONS

9.1 In the event that an application is made pursuant to Section 73 or Section 73B 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:

9.1.1 References to “Application”, “Planning Permission” and “Development” in this Agreement shall thereafter be deemed to include and the application made pursuant to Sections 73 or 73B of the 1990 Act, the new planning permission

granted pursuant to Section 73 or 73B of the 1990 Act of the 1990 Act and the development permitted by that permission respectively; and

- 9.1.2 This Agreement 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.

In each case **PROVIDED THAT:**

- 9.1.3 Nothing in this Clause 9 shall fetter the discretion of the Council in determining any application(s) under Section 73 or 73B 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
- 9.1.4 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 or 73B of the 1990 Act.

10 **JURISDICTION**

- 10.1 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

11 **DELIVERY**

- 11.1 The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

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

FIRST SCHEDULE
(Owner's Planning Obligations)

The Owner covenants with the Council as follows:

1. Affordable Rented Dwellings & Shared Ownership Dwellings

- 1.1. To construct the Affordable Rented Dwellings and the Shared Ownership Dwellings to Design and Quality Standards (or such other standards as may be agreed between the Owner and the Registered Provider or the Alternative Registered Provider as the case may be) in accordance with the Planning Permission and approved plans unless otherwise agreed with the Registered Provider or the Alternative Registered Provider as the case may be.
- 1.2. Not to cause or permit the Occupation of more than:
 - 1.2.1. 20 (twenty) of the Market Dwellings (or such other number of Market Dwellings that may be agreed in writing by the Council) until 4 (four) of the Affordable Rented Dwellings and Shared Ownership Dwellings have been constructed and are ready for Occupation.
 - 1.2.2. 35 (thirty-five) of the Market Dwellings (or such other number of Market Dwellings that may be agreed in writing by the Council) all of the Affordable Rented Dwellings and Shared Ownership Dwellings have been constructed and are ready for Occupation.
- 1.3. To inform the Council when it has offered the Affordable Rented Dwellings and the Shared Ownership Dwellings to a Registered Provider(s) at the Affordable Dwelling Price, together with providing details of the Registered Provider(s) to whom the Affordable Rented Dwellings and the Shared Ownership Dwellings have been offered.
- 1.4. The Owner will enter into negotiations with the Registered Provider(s) and use Reasonable Endeavours to dispose of the Affordable Rented Dwellings and the Shared Ownership Dwellings to the Registered Provider(s) at the Affordable Dwelling Price.
- 1.5. If the Registered Provider(s) shall not confirm in writing to the Owner its willingness subject to contract to accept the Affordable Rented Dwellings and/or the Shared Ownership Dwellings at the Affordable Dwelling Price within 12 (twelve) calendar months of the Commencement of Development (or within such shorter period of time that may be agreed in writing by the Council from time to time) then the Owner shall as soon as reasonably practicable offer the Affordable Rented Dwellings and the Shared Ownership Dwellings to an Alternative Registered

Provider(s) and this provision may be repeated as often as is necessary (subject to paragraph 1.6 of this Schedule) until such time as one of the Alternative Registered Providers shall have confirmed its willingness subject to contract to purchase the Affordable Rented Dwellings and the Shared Ownership Dwellings at the Affordable Dwelling Price.

- 1.6. If neither the Registered Provider nor any Alternative Registered Provider shall have confirmed its willingness subject to contract to purchase the Affordable Rented Dwellings and the Shared Ownership Dwellings at the Affordable Dwelling Price within a period of 24 (twenty four) calendar months from the Commencement of Development (or within such shorter period of time that may be agreed in writing by the Council from time to time) and the Owner shall have produced evidence in writing to the reasonable satisfaction of the Council that it has used Reasonable Endeavours to secure acceptance of the Affordable Rented Dwellings and the Shared Ownership Dwellings at the Affordable Dwelling Price by a Registered Provider or an Alternative Registered Provider then the Owner will be free to offer such dwellings for sale on the open market but the provisions of paragraph 1.9 of this Schedule shall apply.
- 1.7. If the Registered Provider or the Alternative Registered Provider as the case may be after confirming its willingness to purchase the Affordable Rented Dwellings and the Shared Ownership Dwellings at the Affordable Dwelling Price does not then contract to buy the Affordable Rented Dwellings and the Shared Ownership Dwellings at the Affordable Dwelling Price within 6 (six) months from the delivery of the complete package of contract documentation to the Registered Provider's solicitor or the solicitor of the Alternative Registered Provider then:
 - 1.7.1. if a period of 24 (twenty-four) calendar months from the Commencement of Development (or within such shorter period of time that may have been agreed in writing by the Council) has expired the Owner will be free to offer the Affordable Rented Dwellings and the Shared Ownership Dwellings on the Site for sale on the open market but the provisions of paragraph 1.9 of this Schedule shall apply; and
 - 1.7.2. in any other circumstances the provisions of paragraphs 1.5 and 1.6 of this Schedule shall continue to apply.
- 1.8. Save where the Owner is entitled to dispose of the Affordable Rented Dwellings and/or the Shared Ownership Dwellings or an individual Affordable Rented Dwelling and/or Shared Ownership Dwelling as the case may be on the open market pursuant to paragraph 1.6 or 1.7.1 of this Schedule, the Affordable Rented Dwellings and/or the Shared Ownership Dwellings as the case may be shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

- 1.8.1. any Protected Tenant or any mortgagee or charge 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; or
 - 1.8.2. any Chargee exercising a power of sale nor any successors in title thereto and their mortgagees and chargees.
- 1.9. In the event that the Owner is free to offer some or all of the Affordable Rented Dwellings and/or the Shared Ownership Dwellings on the Site for sale on the open market pursuant to the provisions of paragraphs 1.6 or 1.7.1 of this Schedule:
- 1.9.1. the Owner shall serve a written notice on the Council confirming that they intend to sell some or all of the Affordable Rented Dwellings on the open market (“**Owner’s Notice**”);
 - 1.9.2. the Owner shall within 25 (twenty five) Working Days of the date of the Owner’s Notice pay to the Council the relevant Affordable Housing Commuted Sum **PROVIDED THAT** it is agreed that in the event that only a proportion of the Affordable Rented Dwellings are disposed of in accordance with paragraphs 1.6 or 1.7.1 of this Schedule then the Owner will pay to the Council the proportion of the Affordable Housing Commuted Sum that relates to the Affordable Rented Dwellings and/or the Shared Ownership Dwellings that are disposed of on the open market.
- 1.10. Following confirmation by the Council of receipt of the Affordable Housing Commuted Sum, the Owner may dispose of such Affordable Rented Dwelling(s) and/or Shared Ownership Dwelling(s) as the case may be on the open market free of the provisions of this Schedule.

2. **First Homes**

2.1. **First Homes – Delivery Mechanism**

- 2.2. The Owner (which for the purposes of this clause shall include any First Homes Owner) shall not Dispose of or Occupy any First Homes other than in accordance with paragraphs 2.3 and 2.4 of this Schedule.

- 2.3. Within 3 months of Commencement of Development the Owner shall submit to the Council the Marketing Strategy for the Council’s approval and the Owner shall not enter into a contract for the disposal of any of the First Homes unless and until such marketing strategy has been approved by the Council and thereafter the First Homes shall be disposed of according to the terms of the Marketing Strategy **PROVIDED THAT** it is agreed that if the Council does not

notify the Owner of its approval or proposed amendments to the Marketing Strategy within 25 (twenty five) Working Days (or such longer period as may be reasonably required by the Council and agreed in writing between the Council and the Owner within the said 25 (twenty five) Working Days) it shall be deemed that the Council has approved the Marketing Strategy submitted by the Owner.

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

2.3.1.1. the Eligibility Criteria (National); and

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

2.3.2. If after a First Home 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 2.3.1.2 of this Schedule shall cease to apply.

2.3.3. Subject to paragraphs 2.3.6 to 2.3.10 of this Schedule, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty percent) of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee.

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

2.3.4.1. The Council has been provided with evidence that:

- (a) the intended purchaser meets the First Homes Eligibility Criteria (National) and unless paragraph 2.3.2 of this Schedule applies meets the First Homes Eligibility Criteria (Local) (if any);
- (b) the Dwelling is being Disposed of as a First Home at the First Home Sale Price; and
- (c) the transfer of the First Home includes:
 - (i) a definition of the “Council” which shall be “The Council of the Borough of Kirklees”;

- (ii) a definition of "First Homes Provisions" in the following terms:

“means the provisions set out in paragraphs 2.3.1 to 2.3.9 of the First Schedule to the Section 106 Agreement;”

- (iii) 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 [] made between (1) The Council of the Borough of Kirklees; (2) Sandra Elizabeth Mellor, Richard Edward Antony Mellor and Sarah Jane Kucera; and (3) Newett Homes Limited;”

- (iv) a provision that the First Home 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 Home or any part of it other than in accordance with the First Homes Provisions;

- (v) a copy of the First Homes Provisions in an Annexure to the transfer.

- (vi) The First Homes Administration Charge has been paid to the Council by the seller (Owner in respect of the first disposal and the First Homes Owner in respect of subsequent disposal);

2.3.4.2. The Council here by covenants that it shall issue:

- (a) The Authority to Proceed within 15 (fifteen) Working Days of being provided with the relevant information pursuant to paragraph 2.3.4.1 of this Schedule;
- (b) 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 requirement of paragraphs 2.3.3 and 2.3.4.1 of this Schedule have been met.

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

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by The Council of the Borough of Kirklees of Civic Centre, 3, Market Street, Huddersfield, HD1 1WG or a conveyancer that the provisions of clause [XX] (the First Homes Provision) of the Transfer dated _____ referred to in the Charges Register have been complied with or that they do not apply to the disposition".

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

2.3.6.1. the Dwelling has been actively marketed as a First Home for 6 (six) months in accordance with paragraphs 2.3.1 and 2.3.2 of this Schedule (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 2.3.3 and 2.3.4.1 of this Schedule; or

2.3.6.2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 2.3.6.1 of this Schedule before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

- 2.3.7. Upon receipt of an application served in accordance with paragraph 2.3.6 of this Schedule the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Home Sale Price.

2.3.8. If the Council is satisfied that either of the grounds in paragraph 2.3.6 of this Schedule have been made out it shall confirm in writing within 28 (twenty-eight) days of receipt of the written request made in accordance with paragraph 2.3.6 of this Schedule that the relevant Dwelling may be Disposed of:

2.3.8.1. to the Council at the First Home Sale Price; or

2.3.8.2. (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 Agreement which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 2.3.10 of this Schedule which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

2.3.9. If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied acting reasonably that either of the grounds in paragraph 2.3.6 of this Schedule have been made out then it shall within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 2.3.6 of this Schedule serve notice on the Owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than 6 (six) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 2.3.6 of this Schedule following which the Council must within 28 (twenty-eight) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

2.3.10. Where a Dwelling is Disposed of other than as a First Home or to the Council at the First Home Sale Price in accordance with paragraphs 2.3.8 or 2.3.9 of this Schedule the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

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

2.3.11.1. within 28 (twenty-eight) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 2.3.5 of this Schedule where such restriction has previously been registered against the relevant title;

2.3.11.2. apply all monies received as Local Housing Authority for the provision and enabling of housing accommodation pursuant to the Housing Act 1985 the Housing Act 1988 the Housing Act 1989 (or as any of the same may be subsequently amended) and all other enabling powers the nature of such payments being within the absolute discretion of the Council.

2.3.12. Any person who purchases a First Home free of the restrictions in this First Schedule pursuant to the provisions in paragraphs 2.3.9 and 2.3.10 of this Schedule shall not be liable to pay the Additional First Homes Contribution to the Council.

2.4. **First Homes – Use**

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Agreement **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with paragraphs 2.4.1 – 2.4.3 of this Schedule:

2.4.1. A First Homes Owner may let or sub-let their First Home 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 Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed 2 (two) years.

2.4.2. A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of the circumstances in paragraphs 2.4.2.1 to 2.4.2.6 of this Schedule:

2.4.2.1. 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;

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

2.4.2.3. 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;

- 2.4.2.4. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
 - 2.4.2.5. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
 - 2.4.2.6. 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.
 - 2.4.2.7. A letting or sub-letting permitted pursuant to paragraph 2.4.1 or 2.4.2 of this Schedule must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting
- 2.4.3. Nothing in this paragraph 2.4 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

2.5. **First Homes – First Homes Mortgagee Exclusion**

The obligations in paragraphs 2.1 to 2.4 of this Schedule in relation to First Homes shall not apply to any First Homes Mortgagee or any receiver (including an administrative receiver appointed by such First Homes Mortgagee or any other person appointed under any security documentation to enable such First Homes Mortgagee to realise its security or any administrator (howsoever appointed (**each a Receiver**)) of any individual First Home or any persons or bodies deriving title through such First Homes Mortgagee or Receiver **PROVIDED THAT**:

- 2.5.1. such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and
- 2.5.2. once notice of intention to Dispose of the relevant First Home has been given by the First Homes Mortgagee or Receiver to the Council the First Homes Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 2.5.3 of this Schedule;
- 2.5.3. following the Disposal of the relevant First Home the First Homes Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and

reasonable costs and expenses pay to the Council the Additional First Homes Contribution;

2.5.4. following receipt of notification of the Disposal of the relevant First Home the Council shall:

2.5.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 2.3.5 of this Schedule; and

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

3. **Biodiversity Net Gain**

3.1. Prior to the Occupation of more than 45 (forty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) the Owner shall implement and provide the Biodiversity Enhancement Improvements in accordance with the Biodiversity Enhancement Scheme approved in accordance with a condition to the Planning Permission (subject to any variations that may be agreed in writing between the Council the Owner from time to time) and not Occupy more than 45 (forty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the Biodiversity Enhancement Improvements have been implemented and provided.

3.2. The Owner will:

3.2.1. procure the carrying out of an annual review and monitoring in accordance with the requirements of the Biodiversity Enhancement Scheme to ensure that the Biodiversity Enhancement Scheme is meeting its landscape and biodiversity objectives; and

3.2.2. review the Biodiversity Enhancement Scheme, in relation to both its landscape and biodiversity requirements, on the 5th (fifth) anniversary of the Occupation of the 45th (forty-fifth) Dwelling (or such other number of Dwellings that may be first agreed in writing by the Council) and then on each subsequent 5th (fifth) anniversary of the previous Biodiversity Enhancement Scheme review for the Biodiversity Management Period and submit the results of each such review to the Council within 10 (ten) Working Days (or within such other period of time that may first be agreed in writing by the Council).

- 3.3. Following discussions with the Council following an Biodiversity Enhancement Scheme review referred to in paragraph 3.2.2 of this Schedule, the Owner shall have regard to any reasonable recommendations made by the Council in relation to each 5 (five) year Biodiversity Enhancement Scheme review and incorporate, where reasonable, such relevant revisions to the Biodiversity Enhancement Scheme and/or to the management structure set out in the Biodiversity Enhancement Scheme for the ensuing 5 (five) year period in accordance with those recommendations. The Owner shall comply with all reasonable recommendations following each review and procure the execution of any steps thereby reasonably necessitated within 20 (twenty) Working Days (or within such other period of time that may first be agreed in writing by the Council) of the conclusion of the review, unless or to the extent otherwise agreed by the Council.
- 3.4. In the event of any failure by the Owner to manage and maintain the On-Site Biodiversity Enhancement Land (including any failure to carry out any remedial works required to address any defaults) in accordance with the provisions of the Biodiversity Enhancement Scheme, the Council may in its absolute discretion be entitled to serve notice of such default to the Owner specifying a reasonable period within which the Owner must remedy those defects and may thereafter enter and remain on the On-Site Biodiversity Enhancement Land (by its employees or by contractor or otherwise) and carry out such works and/or implement such measures as the Council considers reasonably necessary **PROVIDED THAT** where a dispute has been raised in accordance with clause 16 of this Agreement the Parties will adhere to such timetable and determination as may be directed by the appointed expert.
- 3.5. The Owner shall pay to the Council the reasonable costs incurred by the Council in carrying out any works and/or implementing any measures required pursuant to paragraph 3.4 of this Schedule, with such costs to be paid to the Council within 10 (ten) Working Days of receipt of an invoice for the same and to be registrable as a charge over the On-Site Biodiversity Enhancement Land **PROVIDED ALWAYS** that the Council shall not be entitled to take action under paragraph 3.4 of this Schedule nor recover reimbursement unless the Council shall have given written notice to the Owner stating the nature of the breach, the steps required to remedy the breach and a reasonable time period for remedying the breach and shall afford the Owner the opportunity to remedy the breach in accordance with the steps and time period in the written notice **AND PROVIDED FURTHER THAT** in the event of dispute which is determined by an expert the costs of the Council shall only be paid where the expert directs payment to be made.
- 3.6. The Owner hereby grants to the Developer at no charge or cost all rights easements consents and licences that may be reasonably required to enable the Developer its employees contractors

or otherwise to enter onto into and/or over the BNG Land in order for the Developer to comply with any obligations that it may be required to comply with in paragraphs 3.1 to 3.6 (inclusive) of this Schedule in relation to implementing and providing the Biodiversity Enhancement Improvements in accordance with the Biodiversity Enhancement Scheme.

4. **Education Contribution**

- 4.1. To pay the Education Contribution Index Linked to the Council in the phased instalments and before the deadlines specified in paragraphs 4.2 and 4.3 of this Schedule.
- 4.2. To pay £12,840.50 (twelve thousand eight hundred and forty pounds and fifty pence) of the Education Contribution Index Linked to the Council prior to the Occupation of any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) and not to Occupy any of the Dwellings of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until £12,840.50 (twelve thousand eight hundred and forty pounds and fifty pence) of the Education Contribution Index Linked has been paid to the Council.
- 4.3. To pay the remaining balance of £12,840.50 (twelve thousand eight hundred and forty pounds and fifty pence) of the Education Contribution Index Linked to the Council prior to the Occupation of more than 25 (twenty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) and not to Occupy more than 25 (twenty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the remaining balance of £12,840.50 (twelve thousand eight hundred and forty pounds and fifty pence) of the Education Contribution Index Linked has been paid to the Council.

5. **Areas of POS and Incidental Landscaping**

Maintenance & Management

- 5.1. To provide the Areas of POS and Incidental Landscaping in accordance with the Planning Permission and condition(s) thereto and shall notify (“**Areas of POS and Incidental Landscaping Notice**”) the Council in writing when the Areas of POS and Incidental Landscaping works have been completed.
- 5.2. To undertake the works in relation to the construction and laying out of the Areas of POS and Incidental Landscaping in a proper and workmanlike manner with sound and good quality

planting and materials in accordance with good horticultural and ecological practice to adoptable standards and to the reasonable satisfaction of the Council.

- 5.3. Within 1 (one) month of the Council receiving the notice pursuant to paragraph 5.1 (or paragraph 5.4.2 as the case may be) of this Schedule the Council shall inspect the Areas of POS and Incidental Landscaping and if the Areas of POS and Incidental Landscaping have been provided to its reasonable satisfaction the Council shall confirm as such in writing to the Owner within two weeks of inspection.
- 5.4. If following the inspection pursuant to paragraph 5.3 of this Schedule the Council consider (acting reasonably) the Areas of POS and Incidental Landscaping as carried out by the Owner has not been provided to its satisfaction:
- 5.4.1. it shall notify the Owner within two weeks of the inspection specifying the measures necessary to complete the Areas of POS and Incidental Landscaping to its reasonable satisfaction; and
- 5.4.2. the Owner shall as soon as reasonably practicable carry out those works and notify the Council (and the procedure in paragraphs 5.3 and 5.4 shall be repeated as often as is necessary until such time as the Council confirms completion of those works to its reasonable satisfaction).
- 5.5. Not to Occupy any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until it has submitted for the written approval of the Council a draft Areas of POS and Incidental Landscaping Management Scheme for the future maintenance and management of the Areas of POS and Incidental Landscaping.
- 5.6. Within 3 (three) months (or within such other period of time that may be agreed in writing by the Council) of the Areas of POS and Incidental Landscaping having been provided in accordance with the Planning Permission and condition(s) thereto the Owner shall transfer the Areas of POS and Incidental Landscaping to a Management Company **PROVIDED THAT** it is agreed that the transfer shall contain a covenant so as to bind the Areas of POS and Incidental Landscaping into whomsoever hands the same may be transferred to maintain the Areas of POS and Incidental Landscaping in accordance with the approved Areas of POS and Incidental Landscaping Management Scheme **PROVIDED FURTHER THAT** it is agreed that the Owner will maintain the Areas of POS and Incidental Landscaping in accordance with the approved Areas of POS and Incidental Landscaping Management Scheme until such time as those areas shall be transferred to a Management Company.

- 5.7. The name and contact details of the Management Company to whom the Areas of POS and Incidental Landscaping are transferred to pursuant to paragraph 5.6 shall be provided to the Council prior to such transfer occurring.
- 5.8. In the event that the Management Company should cease to exist or should transfer the Areas of POS and Incidental Landscaping to another Management Company the details provided to the Council pursuant paragraph 5.7 of this Schedule shall be updated within five working days of these changes.
- 5.9. To allow the Council upon reasonable notice to enter the Site in order to check and monitor compliance with the Areas of POS and Incidental Landscaping Management Scheme.
- 5.10. In the event that the Council should serve a notice on the Owner (or the Management Company as appropriate) following an inspection undertaken pursuant to paragraph 5.9 of this Schedule which details that the Areas of POS and Incidental Landscaping Management Scheme is not being fully complied with, to undertake to complete such remedial steps as specified in the notice within 28 (twenty eight) days of service of the notice.
- 5.11. Not to close the Areas of POS and Incidental Landscaping save for 1 (one) day in each calendar year to avoid public rights of way or common rights coming into being **PROVIDED THAT** this shall not prevent:
- 5.11.1. the temporary closure in the event of emergency;
 - 5.11.2. the exclusion of members of the public who in the opinion of the Owner or the Management Company as the case may be should be excluded in the interests of safety, peace, prudent building management or security;
 - 5.11.3. the temporary closure for the purposes of carrying out maintenance, repair, cleansing or renewal of the Areas of POS and Incidental Landscaping **PROVIDED THAT** the period of closure is reasonable and commensurate with the activity being undertaken and prior written notice is provided to the Council;
 - 5.11.4. the temporary closure of all or any part of the Areas of POS and Incidental Landscaping for the holding of events with the prior written consent of the Council;
 - 5.11.5. the access being subject to such other requirements and regulations as may from time to time be imposed by the Owner or the Management Company as the case may be having regard to overriding reasons of safety, security, anti-social behaviour and

prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior written approval.

Areas of POS and Incidental Landscaping Inspection Fee

- 5.12. To pay the Areas of POS and Incidental Landscaping Inspection Fee to the Council prior to or at the same time as giving the Areas of POS and Incidental Landscaping Notice required under paragraph 5.1 of this Schedule and not to Occupy any Dwellings or further Dwellings as the case may be after giving the Areas of POS and Incidental Landscaping Notice in accordance with paragraph 5.1 of this Schedule until the Areas of POS and Incidental Landscaping Inspection Fee has been paid to the Council.

6. Public Open Space Contribution

- 6.1. To pay the Public Open Space Contribution Index Linked to the Council in the phased instalments and before the deadlines specified in paragraphs 6.2 and 6.3 of this Schedule.
- 6.2. To pay £[**T.B.C.**] of the Public Open Space Contribution Index Linked to the Council prior to the Occupation of any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) and not to Occupy any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until £[**T.B.C.**] of the Public Open Space Contribution Index Linked has been paid to the Council.
- 6.3. To pay the remaining balance of £[**T.B.C.**] of the Public Open Space Contribution Index Linked to the Council prior to the Occupation of more than 25 (twenty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) and not to Occupy more than 25 (twenty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the remaining balance of £[**T.B.C.**] of the Public Open Space Contribution Index Linked has been paid to the Council.

7. Sustainable Travel Fund Contribution

- 7.1. To pay the Sustainable Travel Fund Contribution Index Linked to the Council prior to the Occupation of more than 25 (twenty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) and not to occupy the more than 25 (twenty five) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the Sustainable Travel Fund Contribution Index Linked has been paid to the Council.

8. Travel Plan

- 8.1. The Owner shall implement the Travel Plan in accordance with the timetable contained therein, or in the absence of a timetable, using its Reasonable Endeavours within a reasonable time period and will continue to observe and perform any requirements of the approved Travel Plan unless otherwise agreed in writing by the Council.
- 8.2. For a period of 5 (five) years to pay the Travel Plan Monitoring Fee Index Linked to the Council with the 5 (five) year period to commence and the first payment to be made prior to the Occupation of any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) and not to occupy any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the first payment of the Travel Plan Monitoring Fee Index Linked has been paid to the Council and each subsequent payment shall be made on or around the 12 (twelve) month anniversary following the preceding payment.

SECOND SCHEDULE
(Council's Covenants)

The Council hereby covenants with the Owner:

General

1. That on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and/or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the register of local land charges.

Contributions

2. To issue a receipt on request in writing for the Contributions and if applicable the Affordable Housing Commuted Sum and the Additional First Homes Contribution.
3. Upon receipt to place the sums referred to in paragraph 2 of this Schedule in an interest-bearing account or in separate accounts as the Council shall in its discretion decide.
4. To apply the Contributions and if applicable the Affordable Housing Commuted Sum and the Additional First Homes Contribution and any interest accrued towards the purposes specified in this Agreement in order to address impacts which directly arises from the Development and not to apply the Contributions and if applicable the Affordable Housing Commuted Sum and the Additional First Homes Contribution for any other purposes and the Council shall (on the reasonable written request of the payee or the payee's nominee) provide evidence that the Contributions have been so applied.

Repayment

5. That in the event the Contributions (save for the Travel Plan Monitoring Fee) and if applicable the Affordable Housing Commuted Sum and the Additional First Homes Contribution or any part or parts thereof are not expended within 10 (ten) years of the date of final payment of the relevant Contribution and if applicable the Affordable Housing Commuted Sum and the Additional First Homes Contribution then the sum or sums not expended plus interest accrued (if applicable) will be repaid to the person who paid the sum or sums or its nominee.

THIRD SCHEDULE
(Travel Plan)

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereunto affixed)
but not delivered until the date hereof))
In the presence of: -)

Director: Legal and Governance and Monitoring

.....
Authorised Signatory

EXECUTED as a **DEED** (but not delivered)
until the date hereof) by)
SANDRA ELIZABETH MELLOR)
in the presence of:) Signature

Signature witness:
Name of witness:
Address:
.....
.....
Occupation:

EXECUTED as a **DEED** (but not delivered)
until the date hereof) by)
RICHARD EDWARD ANTONY MELLOR)
in the presence of:) Signature

Signature witness:
Name of witness:
Address:
.....
.....
Occupation:

EXECUTED as a **DEED** (but not delivered)
 until the date hereof) by)
SARAH JANE KUCERA)
 in the presence of:) Signature

Signature witness:
 Name of witness:
 Address:

 Occupation:

EXECUTED as a **DEED** on behalf of)
NEWETT HOMES LIMITED)
 acting by a director)
 in the presence of:) Director's Signature

.....
 Director's Name (Print)

Witness signature:
 Witness name:
 Witness address:

Annex 1
(Plan 1 – Site)

Annex 2

(Affordable Housing Plan – Drawing No. Z159.100)

Annex 3

(Plan 2 – Areas of POS and Incidental Landscaping & On-Site Biodiversity Enhancement Land)