

Dated _____ **2026**

(1) MONICA FIONA WILLIS, HELEN FIONA WILLIS AND RUTH NATASHA WILLIS

and

(2) THE COUNCIL OF THE BOROUGH OF KIRKLEES

PLANNING AGREEMENT

Pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land south of Leak Hall Barn, off Leak Hall Lane, Denby Dale, Huddersfield, HD8 8QU

Planning application reference: 2024/92168

2 Affordable Rented Dwellings and 1 Intermediate Dwellings/or 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 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 for the purpose of this Agreement housing that will be made available to people whose income is insufficient to enable them to afford housing locally on the open market as defined in Annex 2 of the National Planning Policy Framework (as may be updated or superseded);

“Affordable Housing Contribution”

means the payment to be made in lieu of the provision of on-Site Affordable Housing (or a full complement of) calculated as described in in the Affordable Housing and Housing Mix SPD;

“Affordable Rent”

means an affordable rent where the following conditions are met (i) that is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable), (ii) the Landlord is a Registered Provider, (iii) includes provisions to remain an affordable price for future eligible households as defined in Annex 2 of the National Planning Policy Framework

(or any future guidance or initiative that replaces or supplements it);

“Affordable Rented Dwellings”

means 2 of the Affordable Dwellings provided on plots to be agreed in writing between the Council and the Owner from time to time to be constructed in accordance with the Planning Permission to be made available at an Affordable Rent and reference to "**Affordable Rented Dwelling**" shall be construed accordingly;

“Application”

means the outline planning application received by the Council on 31 July 2024 and validated by the Council on 12 August 2024 and given planning reference number 2024/92168 for the erection of residential development of 13 dwellings;

“Application Site”

means the land which is the subject of the Application, as edged red on the Plan;

“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 applies;

“Biodiversity Gain Plan”

means the plan to be submitted to and approved in writing by the Council pursuant to the statutory condition imposed by Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021);

“Biodiversity Net Gain Contribution”

means the sum to be calculated at Reserved Matters stage upon submission of a Biodiversity Gain Plan pursuant to the

statutory conditions and based on the level of on-site provision at that time and agreed in writing by the Council and only payable where a biodiversity net gain of 10% cannot be achieved as part of the Development

“CIL Regulations”

means the Community Infrastructure Levy Regulations 2010 and all amendments thereto;

“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, erection of contractors' work compound, erection of site office, 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 Biodiversity Net Gain Contribution, and the Off-Site POS Contribution;

“Design and Quality Standards”

means any standard as Homes England may require

“Default Interest Rate”

means 4% per annum above the base rate from time to time of the Bank of England;

“Development”

means the development of the Site in pursuance of the Planning Permission;

“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;

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| “Dwelling” | means a residential unit may be built on the Site as part of the Development and reference to shall be construed accordingly; |
| “Ecological Feature Works” | means those works of habitat creation and/or enhancement provided on-site that are required to contribute towards the required on-site features pursuant to the Biodiversity Gain Plan; |
| “Expert” | means an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society; |
| “First Homes” | means 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 |

2.5.2.1 (vi) of the First Schedule and to be paid by the First Homes Owner;

“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 meet 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, or annulment or dissolution of the marriage or civil partnership or the making of 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 Owner”

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

- (a) the Owner
- (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 Homes 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 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 or such other amount as may be published from time to time by the Secretary of State;

“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;

“Footpath Link”

means the footpath link to be provided within the Site between the estate road serving the Development and Public Footpath DEN/61/10 with the precise location to be confirmed at Reserved Matters stage;

“Homes England”

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

“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:

£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 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 and reference to **"Index Linked"** shall be construed accordingly;

“Intermediate Housing”

means housing to be provided for sale or rent or rent provided at a cost above social rent but below market levels, for those whose needs are not met by the market as defined under “Discount market sales housing’ and “Other affordable routes to home ownership” in Annex 2 of the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it) and can include shared equity (shared ownership and equity loans), rent to buy or discounted sale;

“Locality”

means the administrative Area of the Council as at the date of this Agreement;

“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 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 On-Site Drainage Works, Ecological Feature Works, estate roads and street trees 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 On-Site Drainage Works and maintain the Ecological Feature Works, estate roads and street trees;

“Market Dwelling”

means those dwellings within the Development excluding the Affordable Dwellings and Affordable Rented Dwellings and First Home 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 web- site or any other similar organisation promoting intermediate market housing;

“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;

“Occupation”

means the beneficial occupation under a sale lease license or other arrangement for the purpose for means the beneficial occupation under a sale lease license 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;

"Off-Site Public Open Space Contribution" means the sum to be calculated at the Reserved Matters stage based on the Council's Open Space SPD (June 2021) or any document modifying or replacing it from time to time together with the Council's Open Space SPD updated financial contribution rates such sum (if any) being required to provide improvements to publicly accessible open space within the vicinity of the Development, the need for which is to mitigate the effects of the Development and agreed in writing by the Council;

"On-Site Drainage Management and Maintenance Plan" means a detailed management plan setting out measures to be undertaken to ensure the On-Site Drainage Works are properly maintained and managed;

"On-Site Drainage Works" means a surface water attenuation tank, together with associated infrastructure, to be installed within the Site in accordance with a condition(s) to the Planning Permission;

"Planning Obligations" 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 by the Council pursuant to the Application;

“Plan”

means the Drawing titled “(24301)4_s106 Plan” hereto at Annex 1 showing both the Application Site and the Site;

“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
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling;
or
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 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 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; and

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

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

“Reserved Matters”

means details of appearance, landscaping, layout and scale (as defined by the Town and Country Planning (General Development Management) (England) Procedure Order

2015) which are to be reserved by the Planning Permission for subsequent determination and approval;

“Site”

means the land south of Leak Hall Barn, off Leak Hall Lane, Denby Dale, Huddersfield, HD8 8QU which forms part of the Application Site, is bound by this Agreement and is shown edged blue on the Plan;

“Water Company”

means Yorkshire Water or such other licenced water company that is regulated by The Water Services Regulation Authority (OFWAT);

“Working Day”

means any day except Saturdays Sundays or bank holidays and reference to **“Working Days”** shall be construed accordingly.

- 1.1 Clause headings are for reference only and shall not affect the construction of this Agreement.
- 1.2 Where more than one person is included in the expressions "the Council" and "the Owner" 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.
- 1.3 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.
- 1.4 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.5 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.

- 1.6 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 and clause 2.7 the Owner covenants with the Council to observe the restrictions and perform the obligations contained in 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" 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 an occupier or a tenant of any of the Affordable Rented Dwelling 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 (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

2.6.4 an occupier or tenant or a purchaser of a site or sites required for statutory infrastructure purposes in relation to the Development.

2.7 This Agreement shall not become effective until the following conditions are satisfied:

2.7.1 the Planning Permission has been granted; and

2.7.2 the Commencement of Development has occurred (except where otherwise specifically stated in this Agreement)

2.8 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.

2.9 Nothing in this Agreement 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 (whether or not on appeal) after the date of this Agreement.

2.10 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.

- 2.11 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.
- 2.12 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.
- 2.13 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.

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 at Legal Governance and Commissioning Legal Services, 2nd Floor, High Street Buildings, High Street, Huddersfield HD1 2ND quoting the Application reference number 2024/92168.

5.1.2 To the Owner: 32 New Lane, Huntington, York, YO32 9NT quoting the Application reference number 2024/92168.

6 DISPUTES

6.1 Any dispute arising between the Parties as to their respective rights, duties or obligations as to the failure of the Council 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, the new planning permission granted pursuant to Section

73 or 73B 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:**

- 9.2 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
- 9.3 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.

FIRST SCHEDULE

(Owner's Planning Obligations)

The Owner covenants with the Council as follows: -

1 AFFORDABLE HOUSING

- 1.1 To construct and deliver the Affordable 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, Reserved Matters and approved plans unless otherwise agreed with the Registered Provider or the Alternative Registered Provider as the case may be.
- 1.2 Not cause or permit the Occupation of more than 50% (fifty per cent) of the Market Dwellings (or such other number of Market Dwellings that may be agreed in writing by the Council from time to time) until all of the Affordable Dwellings have been constructed in accordance with paragraph 1.1 and are ready for Occupation and made available for sale as Affordable Dwellings in accordance with paragraph 1.3.
- 1.3 The Owner will enter into negotiations with the Registered Provider(s) to dispose of the Affordable Dwellings (excluding any First Home which is not proposed to be acquired by a Registered Provider) to the Registered Provider(s) at the Affordable Dwelling Price and inform the Council when it has offered the Affordable Dwellings to a Registered Provider(s) at the Affordable Dwelling Price, together with providing details of the Registered Provider(s) to whom the Affordable Dwellings have been offered.
- 1.4 If the Registered Provider shall not confirm in writing to the Owner its willingness subject to contract to accept the Affordable Dwellings at the Affordable Dwelling Price within 12 (twelve) calendar months from the commencement of negotiations with the Registered Provider(s) pursuant to paragraph 1.3 (provided that the Council is notified with evidence of the commencement of negotiations with the Registered Provider(s) or the Commencement of Development (whichever is the later date) then the Council upon receipt of notice in writing to the Owner to that effect shall as soon as reasonably practicable nominate an Alternative Registered Provider and this provision may be repeated as often as is necessary (subject to clause 1.5 below) until such time as one

of the nominated Registered Providers shall have confirmed its willingness subject to contract to purchase the Affordable Dwellings.

1.5 If neither the Registered Provider(s) nor the Alternative Registered Provider shall have confirmed in writing to the Owner its willingness subject to contract to accept the Affordable Dwellings at the Affordable Dwelling Price within 24 (twenty four) calendar months from the commencement of negotiations with the Registered Provider(s) pursuant to paragraph 1.3 or the Commencement of Development (whichever is the later date) or such other period agreed between the Owner and the Council and the Owner shall have produced evidence in writing to the reasonable satisfaction of the Council that it has made reasonable but commercially prudent endeavours to secure acceptance of the Affordable Dwellings by an Alternative Registered Provider then the Owner shall be free to offer such Dwellings for sale on the open market but the provisions of clauses 1.9 shall apply.

1.6 If the Registered Provider or the Alternative Registered Provider as the case may be after confirming its willingness to purchase the Affordable Dwellings at the Affordable Dwellings Price does not then contract to buy the Affordable Dwellings at the Affordable Dwellings 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:

1.6.1 if a period of 24 (twenty four) calendar months from the commencement of negotiations with the Registered Provider(s) pursuant to paragraph 1.3 or the Commencement of Development (whichever is the later date) has expired the Owner will be free to offer the Affordable Dwellings on the Site for sale on the open market but the provisions of paragraph 1.9 of this Schedule shall apply; and

1.6.2 in any other circumstances the provisions of paragraphs 1.5 and 1.6 of this Schedule shall continue to apply.

1.7 Save where the Owner is entitled to dispose of the Affordable Dwellings or an individual Affordable Dwelling as the case may be on the open market pursuant to paragraph 1.5 or 1.6.1 of this Schedule, the Affordable Dwellings shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

1.7.1 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

1.7.2 any chargee exercising a power of sale nor any successors in title thereto and their mortgagees and charges

1.8 In the event that the Owner is free to offer some or all of the Affordable 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, the Owner shall serve a written notice on the Council confirming that they intend to sell some or all of the Affordable Dwellings on the open market (the "Owner's Notice"). The Owner shall within 28 (twenty eight) Working Days of the date of the Owner's Notice pay to the Council the relevant Affordable Housing Contribution and the Administration Charge **PROVIDED THAT** it is agreed that in the event that only a proportion of the Affordable 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 Contribution that relates to the Affordable Dwellings that are disposed of on the open market.

1.9 The Open Market Value of the Affordable Dwellings shall be determined in the first instance between the Owner and the Council and in default of such deed shall be the average of two (2) valuations provided by two (2) valuers who are members of the Royal Institute of Chartered Surveyors and one of which shall be selected by the Owner and the other by the Council and the parties shall each bear their own costs in respect of such valuations.

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 Affordable Housing Dwellings that are to be provided as **First** Homes in accordance with the approved Affordable Housing Plan other than in accordance with paragraphs 2.3 to 2.7 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.

2.4 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:

2.4.1 the Eligibility Criteria (National); and

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

2.5 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 2.4 of this Schedule shall cease to apply.

2.5.1 Subject to paragraphs 2.5.4 to 2.5.9 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.

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

2.5.2.1 The Council has been provided with evidence that:

(a) the intended purchaser meets the First Homes Eligibility Criteria (National) and unless paragraph 2.5 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 2.4 to 2.5.7 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 and (2) Monica Fiona Willis, Helen Fiona Willis and Ruth Natasha Willis;"

(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);

2.5.2.2 The Council here by covenants that it shall issue:

- 2.5.2.3 The Authority to Proceed within 15 (fifteen) Working Days of being provided with the relevant information pursuant to paragraph 2.5.2.1 of this Schedule;
- 2.5.2.4 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 2.5.1 and 2.5.2.1 of this Schedule have been met;
- 2.5.3 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, HDJ 1WG or a conveyancer that the provisions of paragraph 2 of Schedule 1 (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 ”.*
- 2.5.4 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:
- 2.5.4.1 the Dwelling has been actively marketed as a First Home for 6 (six) months in accordance with paragraphs 2.4 and 2.5 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 2.5.1 and 2.5.2.1 of this schedule; or

2.5.4.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 2.5.4.1 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.

2.5.5 Upon receipt of an application served in accordance with paragraph 2.5.4 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.

2.5.6 If the Council is satisfied that either of the grounds in paragraph 2.5.4 of this Schedule have been made out it shall confirm¹ 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:

2.5.6.1 to the Council at the First Home Sale Price; or

2.5.6.2 (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 2.5.8 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.

2.5.7 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 2.5.4 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 2.5.4 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 2.5.4 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.

2.5.8 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 2.5.6 or 2.5.7 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.

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

2.5.9.1 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 2.5.3 of this Schedule where such restriction has previously been registered against the relevant title;

2.5.9.2 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.

2.5.9.3 Any person who purchases a First Home free of the restrictions in this First Schedule pursuant to the provisions in paragraphs 2.5.7 and 2.5.8 of this Schedule shall not be liable to pay the Additional First Homes Contribution to the Council.

2.6 **First Homes - Use**

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

letting shall be permitted in accordance with paragraphs 2.6.1 - 2.6.3 of this Schedule:

2.6.2 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.

2.6.3 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of the circumstances in paragraphs 2.5.2.1 to 2.5.2.4 of this Schedule:

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

2.6.3.2 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;

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

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

2.6.3.5 the First Homes Owner reasonably requires to live elsewhere for

the duration of the letting or sub-letting as a result of redundancy;
and

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

2.6.3.7 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.

2.6.4 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.

2.7 **First Homes - First Homes Mortgagee Exclusion**

2.7.1 The obligations in paragraphs 2.1 to 2.6 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:**

2.7.2 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

2.7.3 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 2.7.4 of this Schedule;

2.7.4 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;

2.7.5 following receipt of notification of the Disposal of the relevant First Horne the Council shall:

2.7.5.1 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 2.5.3 of this Schedule; and

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

3 OFF-SITE PUBLIC OPEN SPACE CONTRIBUTION

3.1 To pay the Off-Site Public Open Space Contribution prior to Occupation of more than 30% (thirty per cent) of the Market Dwellings.

3.2 Not to allow or permit the Occupation of more than 30% (thirty per cent) of the Market Dwellings until the Off-Site Public Open Space Contribution has been paid to the Council.

4 BIODIVERSITY NET GAIN CONTRIBUTION

4.1 To pay the Biodiversity Net Gain Contribution prior to Occupation of more than 50% (fifty per cent) of the Market Dwellings.

4.2 Not to allow or permit the Occupation of more than 50% (fifty per cent) of the Market Dwellings until the Biodiversity Net Gain Contribution has been paid to the Council.

5 DRAINAGE MANAGEMENT AND MAINTENANCE

5.1 On Site Drainage Maintenance and Management Plan

5.1.1 To provide the On-Site Drainage Works in accordance with the Planning Permission and condition(s) thereto to the reasonable satisfaction of the Council.

5.1.2 Not to Commence Development until the On-Site Drainage Management and Maintenance Plan has been submitted to the Council for approval.

5.1.3 The On-Site Drainage Management and Maintenance Plan will include detailed measures setting out how the On-Site Drainage Works will be maintained and managed to include:

5.1.3.1 details and a programme for the long term management and maintenance to cover all aspects of the On-Site Drainage Works;

5.1.3.2 detailed maintenance schedules which must include details of the frequency of all actions and routine maintenance activities, the timings of all inspections (including annual inspections) and the timing of management works arising from inspections;

5.1.3.3 details of the maintenance regime that will be adopted during the construction phase up until the point that the On-Site Drainage Works are signed off as complete in accordance with the approved design;

5.1.3.4 details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of the On-Site Drainage Works; and

5.1.3.5 a submission of risk assessments and method statements concerning access to and into confined spaces and carrying out of defined maintenance and management operations associated with surface water sewerage, as sanctioned by the Principal Designer under CDM Regulations 2015.

5.1.4 In the event that the Council considers (acting reasonably) that it is unable to approve the submitted version of the On-Site Drainage Management and Maintenance Plan then the Owner shall submit a revised version to the Council taking into account any reasonable comments that the Council has provided, for their approval, and this procedure shall be repeated as often as is necessary until the Council approves the On- Site Drainage Management and Maintenance Plan

5.1.5 Unless otherwise first agreed in writing by the Council, not to carry out any above ground works comprised in the Development unless and until the On-Site Drainage Management and Maintenance Plan has been approved by the Council.

5.1.6 The approved On-Site Drainage Management and Maintenance Plan shall only be

varied or amended with the written approval of the Council.

5.2 Maintenance and Management of the On-Site Drainage Works

- 5.2.1 To fully comply with the approved On-Site Drainage Management and Maintenance Plan from the date that it is approved by the Council in accordance with paragraph of this Schedule and at all times thereafter to manage and maintain the On-Site Drainage Works in accordance with the details set out in the approved On-Site Drainage Management and Maintenance Plan until the earlier of the date that the On-Site Drainage Works are transferred to a Management Company and the date that the On-Site Drainage Works have been adopted by a Water Company.
- 5.2.2 Until such time as the On-Site Drainage Works are adopted by a Water Company the Council may upon reasonable notice enter the Site in order to check and monitor compliance with the approved On-Site Drainage Management and Maintenance Plan.
- 5.2.3 In the event that the Council considers (acting reasonably) that the requirements of the approved On-Site Drainage Management and Maintenance Plan are not being complied with and unless the On-Site Drainage Works have been adopted by a Water Company then the Council may serve a notice on the Owner or the Management Company (as the case may be) requiring the Owner or the Management Company (as appropriate) to undertake such remedial steps as are specified in the notice.
- 5.2.4 The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 5.2.3 of this Schedule within 20 (twenty) 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.
- 5.2.5 No part of the Site upon which the On-Site Drainage Works are located shall be transferred or leased to any Management Company (as apart from a Water Company in which case any transfer or lease may proceed without the approval of the Council) unless the identity of that Management Company has been approved by the Council (acting reasonably) in writing.

5.2.6 In seeking approval from the Council to any Management Company to whom the Owner intend to transfer or lease the On-Site Drainage Works they shall provide the Council with details of the assets, how the ongoing maintenance and management works will be funded, structure, voting rights and such other information as the Council (acting reasonably) shall require.

5.2.7 The Owner shall ensure that the Council is provided with up to date contact details (including a contact name, address, telephone number and e-mail address) of any third party or person who is engaged or contracted to carry out any maintenance or management works in respect of the On-Site Drainage Works.

5.3 **Adoption by a Water Company**

5.3.1 Upon receipt by the Council of satisfactory evidence that the On-Site Drainage Works have been transferred to a Water Company the obligations in paragraphs 5.2.1 to 5.2.7 (inclusive) of this Schedule shall thereafter cease and not be applicable

6 **ECOLOGICAL FEATURE MANAGEMENT AND MAINTENANCE**

6.1 Prior to Occupation of more than 50% (fifty per cent) of the Market Dwellings to obtain certification from the Council that the Ecological Feature Works have been satisfactorily completed and transferred to the Management Company to maintain and manage for a period of no less than 30 years from the date the Ecological Feature Works are completed pursuant to paragraphs 6.1 and 6.2.

6.2 Not to allow or permit the Occupation of more than 50% (fifty per cent) of the Market Dwellings prior to obtaining written certification from the Council that the Ecological Feature Works have been satisfactorily completed and transferred to the Management Company to maintain and manage for a period of no less than 30 years from the date that the Council certifies that the Ecological Feature Works are complete pursuant to paragraphs 6.1 and 6.2.

7 ESTATE ROADS AND STREET TREES

- 7.1 Prior to the Occupation of any Dwellings the Owner shall secure the future management and maintenance by the Management Company of any land not within private curtilages or adopted by other parties, of infrastructure (including estate roads until adopted) and of street trees (if planted on land not adopted) in perpetuity.
- 7.2 Not to allow Occupation of any Dwellings until the Owner has secured the future management and maintenance by the Management Company of any land not within private curtilages or adopted by other parties, of infrastructure (including estate roads until adopted) and of street trees (if planted on land not adopted) in perpetuity.
- 7.3 The Owner may transfer any such land to allow for such future management and maintenance.

8 FOOTPATH LINK

- 8.1 Prior to Occupation of more than 50% (fifty per cent) of the Market Dwellings the Owner shall at its own cost and expense construct lay out and substantially complete the Footpath Link in a proper and workmanlike manner with sound and good quality materials in accordance with the Planning Permission and any other approved plans.
- 8.2 Upon completion of the Footpath Link in accordance with the Planning Permission and any approved plans thereto to the satisfaction of the Council the Owner shall elect to either maintain the Footpath Link or secure the future maintenance thereof by a Management Company which shall take over maintenance of the same and the Owner may transfer the Footpath Link to the Management Company to secure such maintenance.
- 8.3 The Owner shall permit the Footpath Link to be connected in perpetuity to Public Footpath DEN/61/10 and shall make no charge of any description whatsoever for permitting such connection.
- 8.4 The Owner will procure that public access is allowed over the Footpath Link but subject to the following provisions:
- 8.4.1 access shall be subject to other 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 managements PROVIDED THAT such requirements shall not be imposed without the Council's prior written approved; and

- 8.4.2 access may be denied by the Owner for and during maintenance, repair, cleansing or renewal of the Footpath Link or for and during the construction of any building or land abutting it subject to the Council's prior approval.

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 have been fulfilled issue written confirmation thereof and/or at any reasonable time after all of the Planning Obligations 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.
- 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 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 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 or any part or parts thereof are not expended within 10 (ten) years of the date of final payment of the relevant sum 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.

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

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

Assistant Director: Legal and Governance /
Authorised Signatory

**SIGNED as a DEED by
MONICA FIONA WILLIS**
in the presence of:

.....

Witness' Signature:
Witness' Name:
Witness' Address:

**SIGNED as a DEED by
HELEN FIONA WILLIS**
in the presence of:

.....

Witness' Signature:
Witness' Name:
Witness' Address:

**SIGNED as a DEED by
RUTH NATASHA WILLIS**
in the presence of:

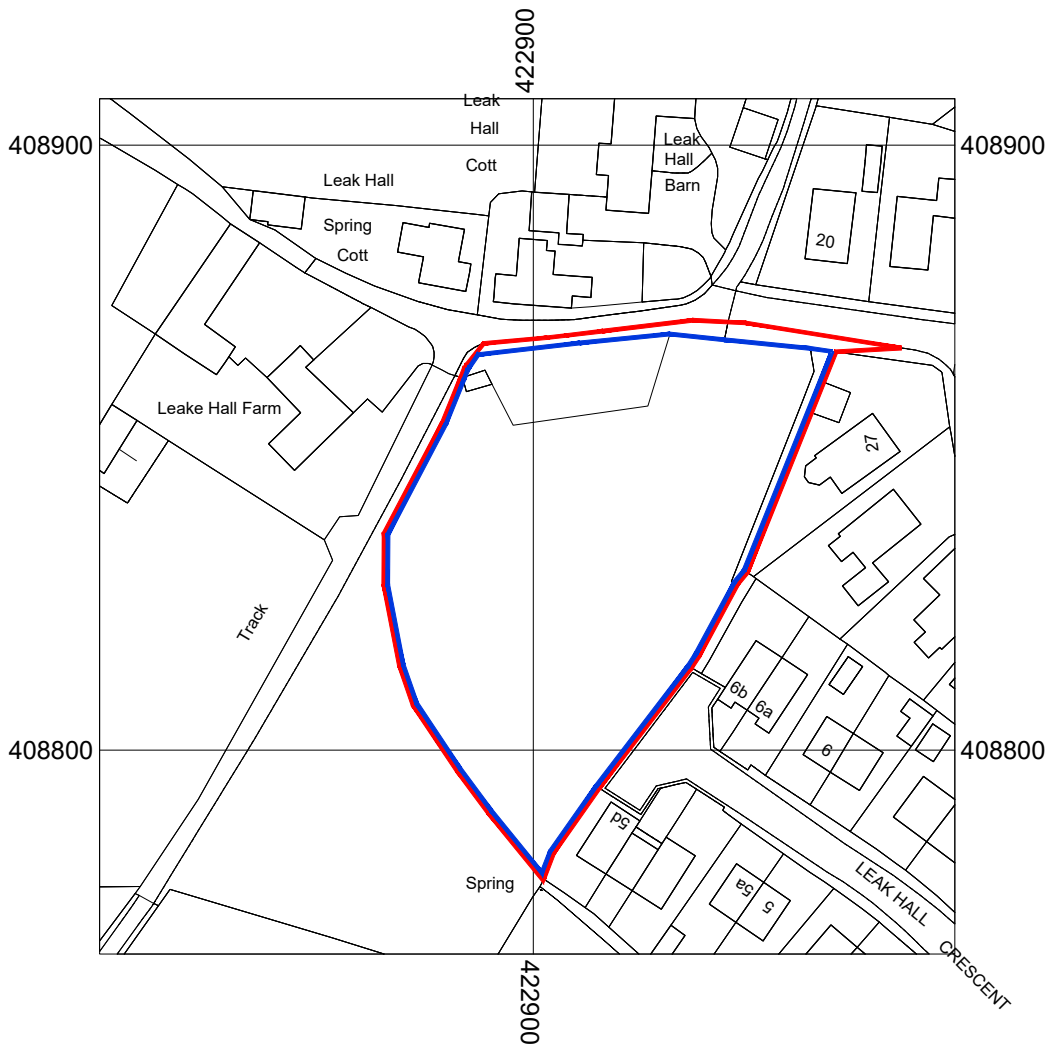
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Witness' Signature:

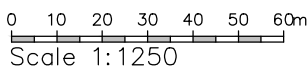
Witness' Name:

Witness' Address:

**Annex 1 –
Plan**



Drawings based on Ordnance Survey
(Streetwise License No 100047474)



| | |
|-----------|---|
| Project | Proposed residential development at Leak Hall Lane, Denby Dale |
| Client | Robert Halstead Chartered Surveyors & Town Planners, Bridge Mills HD9 3TW |
| Dwg Title | (24301)4_s106 Plan |
| Scale | 1: 1250 @ A4 |
| Date | Nov 25 |