

Dated 7th July 2025

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THE COUNCIL OF THE BOROUGH OF KIRKLEES

and

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

Land on the South side of Whitehall Road West, Birkenshaw, Bradford

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THIS DEED is made

*The day of July*

2025

**BETWEEN**

- (1) **ORION HOMES LIMITED** (Company Registration Number 01428718) whose registered office is at 5 Benton Office Park, Bennet Avenue, Benton Hill, Horbury, Wakefield, WF 5RA (**the Owner**); and
- (2) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Town Hall, Huddersfield, West Yorkshire, HD1 2TA (**the Council**).

**BACKGROUND**

- (A) For the purposes of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations in this Deed are enforceable.
- (B) The Owner has an interest in the Site as set out in Part 1 of Schedule 1.
- (C) The Owner has submitted the Application to the Council seeking planning permission for the Development.
- (D) The Council has determined that if Planning Permission is granted pursuant to the Application the Development should be subject to the requirements of this Deed.
- (E) The parties by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

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

<b>Expression</b>	<b>Meaning</b>
<b>1990 Act</b>	the Town and Country Planning Act 1990.
<b>Additional First Homes Contribution</b>	the lowest of: <ul style="list-style-type: none"><li>(a) 30% of the net proceeds of sale after deduction of any SDLT payable by the First Home Owner as a result of</li></ul>

**Expression****Meaning**

Authority to Exchange

the disposal of the First Home and the reasonable cost of selling; and

(b) the proceeds of sale less the amount due and outstanding to any First Homes Mortgagee of the First Home under relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Home 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 as a result of the disposal of the First Home other than as a First Home.

Authority to Proceed

**Affordable Housing**

as defined in Annex 2 of the National Planning Policy Framework (December 2024 but as may be updated or superseded from time to time) that will be made available to people whose income is insufficient to enable them to afford housing locally on the open market.

**Affordable Housing Unit(s)**

the five (5) Dwellings to be provided as Affordable Housing comprising three (3) Discount Market Sale Dwellings and two (2) First Homes.

**Application**

the application for full planning permission for the Development validated by the Council on 12 August 2024 and allocated reference number 2024/92281.

**Armed Services Member**

- (a) a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force;
- (b) a former member of (a) above who was a member within the 5 (five) years prior to the purchase of the First Home;
- (c) a divorced or separated spouse or civil partner of (a) above;
- (d) a spouse or civil partner of a deceased member or former member of (a) above whose death was caused wholly or partly by their service.

Close Family

Development of  
Investment

**Expression**

**Meaning**

**Authority to Exchange**

a notice served by the Council to the Owner (which for the purposes of this definition shall include the Owner and any First Homes Owner) providing the Council's consent to exchange contracts on the First 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 a contract having been agreed between the Owner and the intended purchaser.

**Authority to Proceed**

a notice from the Council to the Owner (which for the purposes of this definition shall include the Owner and any First Homes Owner) notifying the Owner that the intended purchaser meets the Eligibility Criteria (National) and/or the Eligibility Criteria (Local) unless paragraph 3.10 of Part 3 of Schedule 5 applies.

**Chargee**

any mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the Affordable Housing Unit(s) or any part thereof or any persons or bodies deriving title through such mortgagee or chargee or Receiver.

**Close Family**

a spouse, civil partner, partner, parent, son, daughter, sibling, grandparent.

**Commencement of Development**

the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act (whether or not the carrying out of that material operation constitutes a lawful beginning of the

**Expression**

**Meaning**

Development) **SAVE THAT** for the purposes of this Deed a material operation shall not include any operations undertaken in connection with or associated with:

- demolition;
- site clearance;
- archaeological investigations;
- ecology survey or works;
- investigations for the purpose of assessing ground conditions and any resultant remediation works;
- environmental investigation;
- site and soil surveys;
- erection of a contractor's work compound;
- erection of a site office;
- erection of fencing to the site boundary;

the temporary display of site notices or advertisements and

**Commence Development and Commencement of Development** or any similar derivation of this term shall be construed accordingly.

**Contributions**

the Off-Site POS Contribution and if payable in accordance with this Deed the Discount Market Sale Commuted Sum and or the Additional First Homes Contribution (and **Contribution** shall mean any one of them as applicable).

**Default Interest Rate**

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

**Development**

the development of the Site comprising the erection of 23 dwellings with access from Whitehall Road West as described in the Application.

**Discount Market Sale Administration Charge**

£379 (three hundred and seventy nine pounds) (or the figure as may be updated by the Council annually) per first sale and the sum of £428 (or the figure as may be updated by the Council annually) on second and subsequent sales being the reasonable and proper costs incurred by the Council in consideration of the evidence provided to it

**Expression**

**Meaning**

pursuant to Part 2 of Schedule 5 of this Deed which is to be paid by the Owner in respect of the first sale of a DMS Dwelling and the seller in respect of all subsequent sales of the DMS Dwelling.

**Discount Market Sale Commuted Sum**

in the event that paragraph 9 of Part 2 of Schedule 5 of this Deed is applicable, the sum to be paid by the Owner to the Council in lieu of the provision of the Discounted Market Sale Dwelling on the Site and which shall be calculated at 20% of the Open Market Value of the relevant Discount Market Sale Dwelling as at the date this Discount Market Sale Commuted Sum may be due. The Discounted Market Sale Dwelling commuted sum shall, if payable, be applied by the Council for the provision of, or improvements to existing Affordable Housing elsewhere in the Council's area

**Discount Market Sale Dwelling (and DMS Dwelling)**

an affordable Dwelling as defined in Annex 2 para c) of the National Planning Policy Framework (December 2024 but as may be updated or superseded from time to time) that will be made available to people whose income is insufficient to enable them to afford housing locally on the open market and which are to be sold at a Discounted Market Sale Price 20% (twenty percent) of the Market Value of the Dwelling and for the purposes of this Deed the relevant DMS Dwelling is identified on the Plan as plot numbers 2, 18 and 19 or such other location as may be agreed in writing between the Council and the Owner to be provided as a DMS Dwelling.

**Discounted Market Sale Price**

80% (eighty per cent) of the Market Value which on its first Disposal only shall not exceed £250,000 (two hundred and fifty thousand pounds).

**Discount Market Sale Qualifying Person(s)**

an individual who is:

- (a) a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer)

**Expression**

**Meaning**

(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 £80,000 (eighty thousand pounds) per annum; and

(c) will occupy a Discount Market Sale Dwelling as their sole or main residence

**Disposal**

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 4 of Part 3 of Schedule 5;
- 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 Home Owner; or
- c) an Exempt Disposal,

and **Disposed of** and **Disposing** shall be construed accordingly.

**Due Date**

the latest date that any Contribution is to be paid in accordance with this Deed.

**Dwelling**

a house flat maisonette or other unit of accommodation intended for residential use that may be built or provided on the Site pursuant to the Planning Permission.

**Eligibility Criteria (Local)**

the criteria published by the Council in the document entitled "First Homes Provision Statement Kirklees Council December 2021" (or any subsequent updating/replacing documentation) at the date of the relevant Disposal of a First 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

## Expression

## Meaning

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

## Eligibility Criteria (National)

criteria which are met in respect of a purchase of the 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).

## Exempt Disposal

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 Home 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 Home Owner;

**Expression****Meaning**

- (c) Disposal to a former spouse or former civil partner of a First Home 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 5 of Part 3 of Schedule 5, shall apply to such sale);

PROVIDED THAT in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 4 of Schedule 5.

**Expert**

a person appointed in accordance with clause 11 to determine a dispute.

**First Homes/First Home**

a dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the First Homes Discount Market Price and which on its first Disposal does not exceed the First Homes Price Cap identified as plots 3 and 4 on the Plan.

**First Homes Administration Charge**

£379 (three hundred and seventy nine pounds) (or the figure as may be updated by the Council annually) per first sale and the sum of £428 (or the figure as may be updated by the Council annually) on second and subsequent sales being the reasonable and proper costs incurred by the Council in consideration of the evidence provided to it pursuant to paragraph 3.6.1.3.6 of Schedule 5 and the provision of the First Homes Compliance Certificate and to be paid by the First Homes Owner.

**First Home Compliance Certificate**

written confirmation from the Council in accordance with paragraph 3.6.2.2 of Part 3 of Schedule 5 authorising the

**Expression**

**Meaning**

transfer of a First Home to a named individual or individuals who will become First Home Owners.

**First Home Discount Market Price**

(f) needs to move to this Locality to be close to local  
a sum which is the Market Value of a First Home discounted by at least 30% which will apply to the First Home in perpetuity unless otherwise set out in this Deed.

**First Homes Owner**

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

- (a) the party named herein as '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) a tenant or sub-tenant of a permitted letting under paragraph 4 of Part 3 of Schedule 5.

**First Homes Local Connection Criteria**

the one or more criteria in (a) to (g) below which are to be met by a person for them to be a Qualifying Person:

- (a) currently lives in the Locality as their primary residence and has done so for the past 3 years;
- (b) previously lived in the Locality as their primary residence for at least 5 years cumulatively within the past 10 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 years;
- (d) needs to move to the Locality to receive or provide care or support;
- (e) is employed full time on a permanent basis for more than 16 hours per week in the Locality or is about to

**Expression**

**Meaning**

Income Cap (National)

take up an offer of permanent full-time 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.

**First Homes Mortgagee**

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 Time Buyer**

a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.

**Homes England**

means the Homes and Communities Agency (which trades as Homes England) being a body corporate created by Section 1 of the Housing and Regeneration Act 2008 or its successor to the functions relevant to this Schedule. *Deal w 71*

**Income Cap (Local)**

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 Deed the Council has not set an Income Cap (Local).

<b>Expression</b>	<b>Meaning</b>
<b>Income Cap (National)</b>	£80,000.00 (eighty thousand pounds) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home.
<b>Index</b>	the BCIS All-In Tender Price Index issued by the Royal Institution of Chartered Surveyors or any successor organisation.
<b>Index Linked</b>	<p>increased in accordance with the following formula:</p> <p><b>Amount payable</b> = the figure specified in this Deed x (A/B)</p> <p>where:</p> <p><b>A</b> = the figure for the Index that applied immediately preceding the Due Date or the date paid if earlier; and</p> <p><b>B</b> = the figure for the Index that applied when that index was last published prior to the date of the Planning Permission (or prior to the date of calculation where this Deed provides for a figure to be calculated at a different point in time).</p>
<b>Initial Disposal</b>	<p>the first Disposal of (as applicable)</p> <p>(a) each First Home following Practical Completion; or</p> <p>(b) each Discounted Market Dwelling following Practical Completion.</p>
<b>Key Worker</b>	such categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and 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 "Key Worker" criteria which shall apply to that Disposal it being acknowledged that at the date of this Deed the Council has not designated any categories of employment as Key Worker.
<b>Locality</b>	the Council's administrative area.

<b>Expression</b>	<b>Meaning</b>
<b>Managed Areas</b>	those areas of the Site identified in the Managed Areas Scheme approved pursuant to paragraph 1 of Schedule 3.
<b>Managed Areas Inspection Fee</b>	the sum of £250.00 (two hundred and fifty pounds) payable to the Council as its costs incurred in inspecting the Managed Areas and confirming that the same have been completed in accordance with the Planning Permission.
<b>Managed Areas Scheme</b>	a written scheme for the management of the Managed Areas, which shall include the information set out in paragraph 1 of Schedule 3 to this Deed, or such plan as may be agreed in writing with the Council from time to time.
<b>Management Company</b>	a limited company or companies at Companies House (including a residents management company) which may already be in existence or which may be formed by the Owner for the purposes of the management of the Development and/or the Managed Areas and/or SuDS serving the Development in accordance with the provisions of Schedule 3 and/or Schedule 4 of this Deed and: <ul style="list-style-type: none"> <li>(a) which is/are incorporated in England and Wales or Scotland; and</li> <li>(b) which has/have its/their registered office in England, Wales, or Scotland; and</li> <li>(c) whose primary objects permit it/them to maintain and renew the Managed Areas.</li> </ul>
<b>Market Dwelling</b>	each of the Dwellings that are not Affordable Housing Units.
<b>Marketing Strategy</b>	the strategy approved by the Council detailing the marketing measures to be undertaken to Dispose of: <ul style="list-style-type: none"> <li>(a) a First Home to a Qualifying Person prior to the Initial Disposal; or</li> <li>(b) a Discount Market Sale Dwelling to a Discount Market Sale Qualifying Person prior to the Initial Disposal.</li> </ul> <p>(as the case may be)</p>

**Expression**

**Meaning**

**Market Value**

the open market value as assessed by a Valuer in accordance with the RICS Valuation - Professional Standards (as applicable at the date of assessment or any such replacement guidance issued by the Royal Institution of Chartered Surveyors) and agreed between the Council and the Owner as being the open market value of an Affordable Housing Unit at which the sale of an interest in the Affordable Housing Unit would have been completed unconditionally for cash consideration on the date of the valuation assuming:

- (a) a willing seller and a willing buyer;
- (b) that any restrictions imposed on the Affordable Housing Unit by reason of Schedule 5 to this Deed are disregarded;
- (c) that there are no restrictions as to the persons who may occupy the Affordable Housing Unit 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.

**Mineral Rights**

rights to exploit, mine, or produce minerals and other extractive resources lying below the surface of the Site.

**Occupy**

to occupy for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development and 'Occupied', 'Occupation' and like expressions shall be construed accordingly.

**Off-Site POS Contribution**

the sum of £61,260 (sixty one thousand and two hundred and sixty pounds) to be paid by the Owner to the Council for the purposes set out in Schedule 6.

**Plan**

the plan titled "Whitehall Road Birkenshaw reference 2306/02/S106" submitted as part of the Application a

**Expression**

**Meaning**

SuDS

reduced copy of which is attached to this Deed at Part 2 of Schedule 1.

**Planning Obligations**

Management Plan

the obligations, restrictions, conditions and stipulations on the part of the Owner set out in Schedule 2 to Schedule 5 of this Deed.

**Planning Permission**

a planning permission granted by the Council pursuant to the Application.

**Practical Completion**

SuDS Management Company

the point when the construction of any Dwelling is sufficiently complete that, a certificate of practical completion can be issued and a Dwelling can be Occupied.

Valuer

**Price Cap**

the amount for which a First Home is sold after the application of the First Homes Discount Market 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.

Working Day

**Qualifying Person**

a person who meets the First Homes Eligibility Criteria (National) and the Eligibility Criteria (Local).

**SDLT**

Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect.

**Secretary of State**

the Secretary of State for Housing and Communities and Local Government from time to time appointed and includes any successor in function.

**Site**

the land described in Part 1 of Schedule 1 which is shown edged red on the Plan.

**Statutory Undertaker**

any company corporation board or authority at the date of this Deed that is authorised by statute to carry on an undertaking for the supply of telephone or television or other electronic communications, electricity, gas, water, or drainage or other public services and any other body authorised to carry out such undertaking.

<b>Expression</b>	<b>Meaning</b>
<b>SuDS</b>	the sustainable urban drainage systems to be provided by the Owner as part of the Development.
<b>SuDS Maintenance and Management Plan</b>	a detailed management plan or plans setting out measures to be undertaken to ensure SuDS are properly maintained and managed, which shall include the information set out in paragraph 1.1 of Schedule 3 to this Deed, or such plan as may be agreed in writing with the Council from time to time. <span style="float: right;">JMK</span>
<b>SuDS Management Company</b>	the Management Company set up to maintain the SuDS in accordance with Schedule 3. <span style="float: right;">JMK</span>
<b>Valuer</b>	a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity.
<b>Working Day</b>	any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

## 2. STATUTORY BASIS

- 1.2. Unless specified to the contrary, any reference in this Deed to an enactment shall be construed as being a reference to that enactment as amended, extended, or re-enacted by or under any other enactment, and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3. References to clauses, paragraphs, Parts Annexes and Schedules are references to clauses, paragraphs, parts, annexes and schedules in this Deed.
- 1.4. References to paragraphs within specific Parts of the Schedules are references to the corresponding paragraphs within that Part of the Schedule unless specified otherwise.
- 1.5. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.6. Any words denoting natural person shall include legal persons and vice versa.
- 1.7. The expression "the Owner" shall include its successors in title and assigns.

- 1.8. The expression "the Council" shall include any successor authority to its statutory functions under the 1990 Act.
- 1.9. Where a covenant, restriction or requirement is expressed to be given by more than one party, or where (from time to time) a party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.
- 1.10. Clause headings and the contents list shall not affect the construction of this Deed.
- 1.11. Any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.12. Any covenant by the Owner or the Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.13. Where any details, scheme, strategy or plan is required to be submitted for approval under this Deed and such approval is obtained, unless expressly stated otherwise nothing in this Deed shall prevent such details, scheme, strategy or plan from being resubmitted or amended by agreement between the Owner and the Council.

## 2. **STATUTORY BASIS**

- 2.1. This Deed is made pursuant to section 106 of the 1990 Act and binds the Site and as such is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this Deed subject to the terms of this Deed.
- 2.2. This Deed is enforceable by the Council as the local planning authority for the purposes of the 1990 Act.
- 2.3. To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

## 3. **CONDITIONS PRECEDENT**

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

#### 4. **COVENANTS & DECLARATIONS**

- 4.1. The Owner covenants with the Council to comply with the Planning Obligations.
- 4.2. The Council covenants with the Owner to comply with the obligations on its part in Schedule 2 to Schedule 6 of this Deed.

#### 5. **EXCLUSIONS & RELEASE**

- 5.1. No party shall be bound by the terms of this Deed or be liable for a breach of any Planning Obligation:
  - 5.1.1. after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any breach occurring prior to parting with such interest and subsisting thereafter);
  - 5.1.2. if its interest in the Site or relevant part thereof is solely as the owner of the subsoil of adopted highway and/or of Mineral Rights;
  - 5.1.3. if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
  - 5.1.4. if that party is an owner or occupier of an individual Dwelling save for the provisions of Schedule 5 which shall bind a First Home Owner as regards the First Home occupied by that party.
- 5.2. If the Planning Permission expires before the Commencement of Development or is at any time modified (without the consent of the Owner), quashed or revoked this Deed shall determine and cease to have effect.
- 5.3. No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or on any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it will also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

#### 6. **REGISTRATION**

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

6.2. Following either:

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

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

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

7. **NON-FETTER & WAIVER**

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

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

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

8. **VAT**

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

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

9. **SEVERABILITY**

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

10. **CHANGE OF OWNERSHIP**

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

11. **DISPUTES**

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

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

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

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

11.2.1.2. in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

11.2.1.3. in the case of any other dispute the President of the Law Society;

11.2.2. the Expert shall act as an expert and not as an arbitrator;

11.2.3. the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:

11.2.3.1. if any party to the dispute wishes to make written submissions to the Expert such submissions shall be sent to the Expert and all

- 11.5. Notwithstanding the other parties to the dispute within 20 Working Days of receipt of the Expert's Notice;
- 11.2.3.2. the parties shall have 20 Working Days from the receipt of original written submissions (or such extended period as the Expert shall allow) to respond;
- 11.2.3.3. the Expert shall disregard any representations made out of this time;
- 11.2.3.4. the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time; and
- 11.2.3.5. to the extent not provided for by this clause the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination;
- 11.2.4. the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written submissions;
- 11.2.5. the Expert's decision shall be in writing and shall give reasons for the decision; and
- 11.2.6. each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 11.3. The decision of the Expert shall be binding on the parties save in the case of manifest error and/or fraud.
- 11.4. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 11.4.1. any party may apply to the relevant body as per Clause 11.2.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
- 11.4.2. Clause 11.2 shall apply to the new Expert as if they were the first Expert appointed.

11.5. Notwithstanding the above any dispute between the parties as to the meaning or interpretation of any provision of this Deed or as regards the enforceability of any provision shall only be determined by a Court.

12. **FUTURE PERMISSIONS**

12.1. In the event that an application is made pursuant to Section 73 or Section 73B or Section 96A of the 1990 Act for an amendment to the Planning Permission and planning permission is granted by the Council in respect of that application then:

12.1.1. references to "Application", "Planning Permission" and "Development" in this Deed shall thereafter be deemed to include the application made pursuant to Sections 73 or 73B or Section 96A, the new planning permission granted pursuant to Section 73 or 73B of the 1990 Act and the development permitted by that permission or as changed pursuant to Section 96A respectively; and

12.1.2. this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act unless required to do so by the Council,

but in each case **PROVIDED THAT:**

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

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

13. **DUTY TO ACT REASONABLY**

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

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

#### 14. **INDEXATION**

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

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

#### 15. **INTEREST ON LATE PAYMENTS**

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

#### 16. **THIRD PARTY RIGHTS**

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

#### 17. **NOTICES**

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

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

17.2.1. if delivered by hand, at the time the notice is left at the proper address (unless received after 5.00pm or on a non-Working Day in which case it shall be deemed received and served on 9.00am on the next Working Day); or

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

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

18. **COSTS**

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

19. **JURISDICTION**

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

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

JC

**SCHEDULE 1**  
**TITLE AND PLANS**

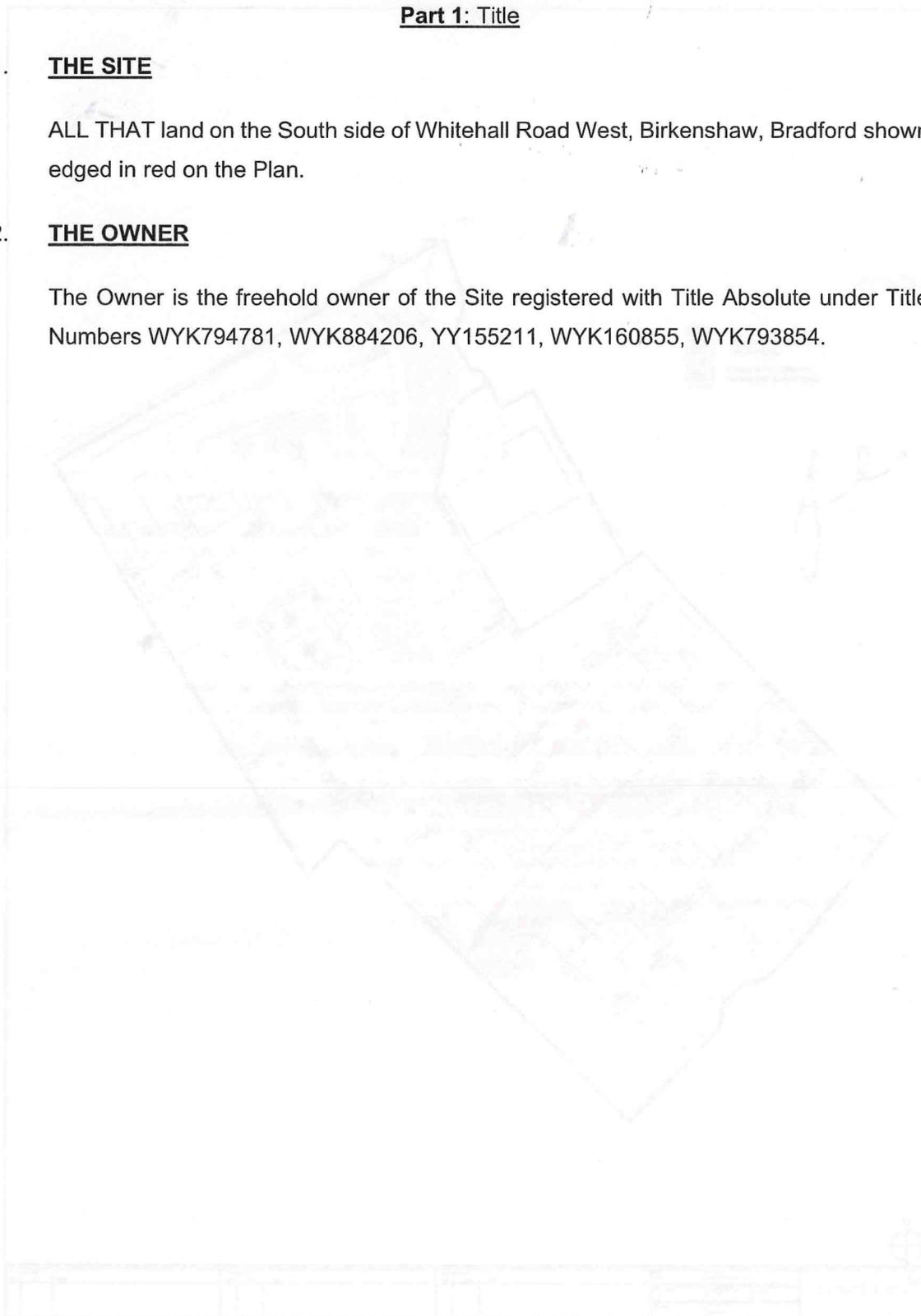
**Part 1: Title**

1. **THE SITE**

ALL THAT land on the South side of Whitehall Road West, Birkenshaw, Bradford shown edged in red on the Plan.

2. **THE OWNER**

The Owner is the freehold owner of the Site registered with Title Absolute under Title Numbers WYK794781, WYK884206, YY155211, WYK160855, WYK793854.



Handwritten initials or signature at the top right of the page.

**Part 2: the Plan**



**SCHEDULE 2**

**FINANCIAL CONTRIBUTIONS**

The Owner covenants as follows:

1. **OFF-SITE POS CONTRIBUTION**

1.1. To pay the Off-Site POS Contribution to the Council, as follows:

- 1.1.1. 50% of the Off-Site POS Contribution before the Occupation of 9 (nine) Dwellings.
- 1.1.2. the remainder of the Off-Site POS Contribution before the Occupation of more than 15 (fifteen) Dwellings.

1.2. Not to Occupy or cause or permit Occupation of:

- 1.2.1. more than 8 (eight) Dwellings until 50% of the Off-Site POS Contribution has been paid; and
- 1.2.2. more than 14 (fourteen) Dwellings until the remainder of the Off-Site POS Contribution has been paid.

### SCHEDULE 3

#### MANAGED AREAS

##### 1. MANAGED AREAS SCHEME

1.1. The Development shall not be Commenced until the Owner has:

1.1.1. submitted a draft Managed Areas Scheme to the Council for approval that includes:

1.1.1.1. a plan that identifies all areas of the Site to be subject to the regime of maintenance and control approved pursuant to this paragraph that includes

1.1.1.1.1. all areas of soft and hard landscaping;

1.1.1.1.2. any recreational or amenity areas to be provided for the benefit of the residents of the Dwellings and/or the public;

1.1.1.1.3. all estate roads and connections to other public rights of way;

1.1.1.2. proposal for the ongoing maintenance operations in respect of the Managed Areas, specifically identifying the management objective, task and the timing and frequency of the operation for all the features including any play features and/or street furniture within the Managed Areas;

1.1.1.3. the identity of the Management Company which is to be responsible for the ongoing management and maintenance of the Managed Areas;

1.1.1.4. the arrangements and timing for the transfer of the responsibility for the management and maintenance of the Managed Areas from the Owner to the Management Company;

1.1.1.5. the funding arrangements for the management and maintenance of the Managed Areas; and

- 1.1.2. paid to the Council the Management Area Inspection Fee.
- 1.2. The Owner shall invite the Council to (within 25 Working Days of the date of receipt of the draft Managed Areas Scheme from the Owner) review the draft Managed Areas Scheme and thereafter notify the Owner in writing of its approval (acting reasonably) to the draft Managed Areas Scheme or provide in writing its proposed amendments to the draft Managed Areas Scheme pursuant to which the Owner shall submit a revised draft Managed Areas Scheme incorporating those amendments as are accepted **PROVIDED THAT** if the Council does not notify the Owner of its approval or proposed amendments to the draft Managed Areas Scheme within the 25 working days referred to above it shall be deemed that the Council has approved the draft Managed Areas Scheme submitted by the Owner.
- 1.3. In the event that (after a period of not less than 25 working days following receipt from the Owner of a revised draft Managed Areas Scheme (submitted pursuant to Paragraph 1.2 above) the Council serves further written notice upon the Owner stating that the Council does not approve the revised Managed Areas Scheme:
- 1.3.1. The Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owners of a further revised draft Managed Areas scheme; and/or
- 1.3.2. Either the Owner or the Council may invoke the provisions of clause 11 of this Deed in respect of the acceptability or otherwise of the relevant revised draft Managed Areas scheme.
- 1.4. The Owner covenants that it shall not permit the Occupation of any of the Dwellings until it has received the Council's approval or deemed approval of the Managed Areas Scheme pursuant to Paragraph 1.2 or Paragraph 1.3 of this Schedule (or until the receipt of an Expert's determination in relation to the acceptability of the same).

## 2. **MANAGEMENT AND MAINTENANCE OF THE MANAGED AREAS**

- 2.1. The Owner covenants that it shall not permit the Occupation of more than 19 (nineteen) Dwellings until:
- 2.1.1. the Managed Areas have been constructed in accordance with the Planning Permission; and

2.1.2. the Council has been notified of the completion thereof and has certified that it is satisfied that those works are complete,

PROVIDED THAT if the Council shall notify the Owner that it is not satisfied with those works and supplies its reasons for that opinion the Owner shall carry out such further works as may be necessary having regard to the reasons given by the Council and thereafter again notify the Council in accordance with sub-paragraph 2.1.2 above.

2.2. Upon the Council notifying the Owner that it is satisfied that the Managed Areas have been constructed in accordance with the Planning Permission the Owner shall as soon as practicable but in any event in accordance with the timescales detailed in the approved Managed Areas Scheme transfer title for the Managed Areas to a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) and thereafter all further maintenance shall be carried out by the Management Company.

2.3. After the transfer to the Management Company, the Management Company shall be obliged to:

2.3.1. maintain and manage in perpetuity the Managed Areas in accordance with the Managed Areas Scheme or any variations that may be agreed in writing from time to time unless or until the Managed Areas or any part thereof are adopted as highway maintainable at public expense or a public body takes on their management and maintenance;

2.3.2. permit public access to the Managed Areas on the same terms as those set out in paragraph 2.4 below.

2.4. For the avoidance of doubt the Owner shall manage and maintain the Managed Areas in accordance with the approved Managed Areas Scheme until such time as it shall be transferred to a Management Company or any part thereof is adopted as highway maintainable at public expense or a public body takes on their management and maintenance.

2.5. No part of the Managed Areas shall be transferred or leased to any Management Company other than in accordance with an approved Managed Areas Scheme.

2.6. Responsibility for the maintenance of the Managed Areas shall not at any time be transferred to an alternative management company unless the Council has been given a minimum of 28 (twenty eight) Working Days written notice that such a transfer is to

take place and has issued its approval in writing thereto, or the Expert has approved it after a referral pursuant to Clause 11.

3. **DEFAULT BY MANAGEMENT COMPANY**

3.1. Unless and until such time as any part of the Managed Areas are adopted by the Council or another Statutory Undertaker the Council may upon reasonable notice to any party then with an interest in the Managed Areas enter the Site in order to check and monitor compliance with the Managed Areas Scheme.

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

3.3. The Owner or the Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 2.5 above within 14 days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.

3.4. If the Owner or the Management Company (as appropriate) shall fail to comply with the notice referred to in paragraph 3.3 above the Council may enter the Managed Areas and carry out such works as it considers necessary to ensure compliance with the Managed Areas Scheme and may recover from the Owner or Management Company (as applicable) the costs incurred in doing so.

**SCHEDULE 4**  
**SUSTAINABLE URBAN DRAINAGE SYSTEMS**

**1. PROVISION OF SUSTAINABLE DRAINAGE SYSTEMS**

- 1.1. The Development shall not Commence until the Owner has submitted to the Council for approval a draft SuDS Maintenance and Management Plan such SuDS Maintenance and Management Plan to contain the following:
- 1.1.1. Details and a programme for the long term management and maintenance works to cover all aspects of the SuDS to include:
    - 1.1.1.1. a detailed maintenance schedule and methodology for all individual SuDS components to maintain the functionality of the SuDS, water storage and treatment;
    - 1.1.1.2. a detailed schedule and methodology for the inspection, maintenance and replacement as required of engineering features including inlet and outlet structures, flow controls tanks and channels;
    - 1.1.1.3. a detailed schedule and methodology for the inspection, maintenance and replacement as required of any other SuDS features;
    - 1.1.1.4. a detailed schedule and methodology for litter and debris removal, landscape and grass cutting, weeding and sediment removal;
  - 1.1.2. Details of the procedure in place for dealing with extreme rainfall events (both prior and post event);
  - 1.1.3. Plans at 1:200 scale which show the extent of the SuDS features, the extent of the landscape features, details of connections to Yorkshire Water sewers and details of whether the SuDS feature is a designated asset under the Flood & Water Management Act 2010;
  - 1.1.4. Details of the maintenance of the shared surface water drainage network, connected to the SuDS, and the shared foul drainage network within the Site as part of the Development prior to their adoption by Yorkshire Water;
  - 1.1.5. Detailed maintenance schedules which shall include details of the frequency of all actions and routine maintenance activities, the timing of all inspections

2.2. The Owner (including annual inspections) and the timing of management works arising from inspections;

1.1.6. Details of the maintenance regime that will be adopted during the construction phase up until the point that the SuDS is signed off as complete in accordance with the approved design; and

1.1.7. Details of vehicular and pedestrian access arrangements relating to the inspection and maintenance of the SuDS.

1.2. In the event that the Council considers that it is unable to approve the submitted draft SuDS Maintenance and Management Plan the Owner shall submit a revised version to the Council, taking into account any comments that the Council has provided for their approval (acting reasonably, and without delay).

1.3. In the event that the Council serves further written notice upon the Owner stating that the Council does not approve the revised draft SuDS Maintenance and Management Plan:

1.3.1. the Owner may collaboratively seek to agree a timetable with the Council for the resubmission by the Owners of a further revised draft SuDS Maintenance and Management Plan; and/or

1.3.2. either the Owner or the Council may invoke the provisions of clause 11 of this Deed in respect of the acceptability or otherwise of the relevant revised draft SuDS Maintenance and Management Plan.

1.4. The Owner covenants that it shall not permit the Occupation of any of the Dwellings until it has received the Council's approval of the SuDS Maintenance and Management Plan pursuant to Paragraph 1.2 or Paragraph 1.3 above of this Schedule (or until the receipt of an Expert's determination in relation to the acceptability of the same).

## **2. MANAGEMENT OF SUSTAINABLE DRAINAGE SYSTEMS**

2.1. The Owner covenants to fully comply with the relevant approved SuDS Maintenance and Management Plan and at all times thereafter to manage and maintain the SuDS in accordance with the details set out in the relevant SuDS Maintenance and Management Plan unless and until the SuDS have been adopted by a statutory undertaker or transferred to a SuDS Management Company.

2.2. The Owner shall not Occupy nor permit the Occupation of any Dwelling until the SuDS have been adopted by a statutory undertaker or transferred to the SuDS Management Company or a Statutory Undertaker has been given by the SuDS Management Company and thereafter the SuDS Management Company shall maintain and manage those SuDS in accordance with the relevant SuDS Maintenance and Management Plan in perpetuity SAVE THAT this obligation shall not apply where the SuDS in question has been adopted by a statutory undertaker.

2.3. No part of the SuDS shall be transferred or leased to any SuDS Management Company until details of:

2.3.1. the assets of the proposed SuDS Management Company;

2.3.2. how the ongoing maintenance and management works will be funded;

2.3.3. the structure of the SuDS Management Company, voting rights and such other information as the Council shall reasonably require,

have been provided to the Council and the Council has approved (such approval not to be unreasonably withheld or delayed) the appointment of the SuDS Management Company.

2.4. The approved SuDS Maintenance and Management Plan shall only be varied or amended with the prior written approval of the Council (such approval not to be unreasonably withheld or delayed).

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

### **3. DEFAULT BY SUDS MANAGEMENT COMPANY**

3.1. Unless and until such time as any part of the SuDS are adopted by a Statutory Undertaker the Council may upon reasonable notice to any party then with an interest in the SuDS enter the Site in order to check and monitor compliance with the relevant SuDS Maintenance and Management Plan.

3.2. In the event that the Council considers that the requirements of the relevant SuDS Maintenance and Management Plan are not being complied with then the Council may

serve a notice on the Owner or the SuDS Management Company as applicable requiring the Owner or the SuDS Management Company (as applicable) to undertake such remedial steps as are specified in the notice.

The Owner covenants with the Council as follows:

3.3. The Owner or the SuDS Management Company (as appropriate) shall comply with the terms of any notice served by the Council pursuant to paragraph 3.2 above within 14 days of the date of service by the Council of the said notice or within such other fair and reasonable period that may be agreed by the Council in writing.

3.4. If the Owner or the SuDS Management Company (as appropriate) shall fail to comply with the notice referred to in paragraph 3.2 above the Council may enter the Site and carry out such works as it considers necessary to ensure compliance with the SuDS Maintenance and Management Plan and may recover from the Owner or SuDS Management Company the costs incurred in doing so.

start of site completion shall be deemed to be the date when the Council is requested

4. The Owner shall not (unless otherwise agreed by the Council in writing) carry out any permitted development or other works that have the effect of increasing the number of Affordable Housing Units beyond the total number of

Nothing in this Schedule shall prevent any of the Affordable Housing Units being voluntarily provided as Affordable Housing in addition to the Affordable Housing Units and it shall be a condition of the grant of any such development that the Owner shall be responsible for the cost of any such changes and any work carried out in connection with the development for the purposes of this Deed

Part 2 - AFFORDABLE HOUSING MARKET SALE DETERMINED

1. The following provisions of this Part 2 shall apply to the Affordable Housing Units that are to be provided as a Discount Market Sale Dwelling:
2. The Owner shall provide the Council with written notice of this relevant date not less than 5 (five) weeks prior to the date upon which the Council is to acquire the Discounted Market Sale Dwelling by purchase.
3. Prior to the first disposal of a Discounted Market Sale Dwelling, the Owner shall submit to the Council a report containing details of the Owner's Market Sale Dwelling's Market Value and the Discount Market Sale Price and not less than 10% of the Discounted Market Sale Dwelling's Market Value and the Discount Market Sale Price shall be applied to the

**SCHEDULE 5**  
**AFFORDABLE HOUSING**

The Owner covenants with the Council as follows:

**Part 1 – GENERAL AFFORDABLE HOUSING**

1. To provide the Affordable Housing in accordance with the Plan and in accordance with the Planning Permission.
2. The Owner shall notify the Council of the Practical Completion of each Affordable Housing Unit within 14 (fourteen) days thereof.
3. In order to enable the Council to comply with its obligations in relation to monitoring Affordable Housing for the Government the Owner shall provide information regarding start of site, completion and sale of each Affordable Housing Unit to the Council when requested.
4. The Owner shall not (unless otherwise agreed by the Council in writing) cause or permit the Occupation of more than nine (9) of the Market Dwellings until the final Affordable Housing Unit has reached Practical Completion.
5. Nothing in this Schedule shall prevent any of the Market Dwellings from being voluntarily provided as Affordable Housing in addition to the Affordable Housing Units and in such case such Market Dwellings the Owner will notify the Council in writing of any such change and any additional Affordable Housing Units shall not be an obligation for the purposes of this Deed.

**Part 2 – DISCOUNTED MARKET SALE DWELLINGS**

1. The following provisions of this Part 2 shall apply to the Affordable Housing Dwellings that are to be provided as a Discount Market Sale Dwellings .
2. The Owner shall provide the Council with written notice of sale release dates not less than 6 (six) weeks prior to the date upon which the Owner proposes to release each Discounted Market Sale Dwelling for disposal.
3. Prior to the first disposal of a Discount Market Sale Dwelling, the Owner shall submit to the Council for approval details of that Discount Market Sale Dwelling's Market Value and the Discount Market Sale Price and not to dispose of the Discount Market Sale Dwelling unless the Market Value and Discount Market Sale Price have been approved



- 7.1 Evidence that the intended purchaser(s) is a Discount Market Sale Qualifying Person(s);
- 7.2 The solicitor or licenced or other authorised conveyancer acting for the intended purchaser(s) has certified to the Council that any consideration expressed to be given for the Discount Market Sale Dwelling by the purchaser did not exceed the Discount Market Sale Price as evidence by a RICS Valuation given by a Valuer and which shall be valid for no more than 6 (six) months after the date upon which it is approved by the Council;
- 7.3 Payment of the Discount Market Sale Administration Charge incurred by the Council in considering the intended purchaser(s) application and provision of Land Registry Certificate to be paid by the Owner.
8. In the event that:
- 8.1 despite using its reasonable endeavours, the Discount Market Sale Dwelling has not been contracted for sale to a Discount Market Sale Qualifying Person within a period of 9 (nine) calendar months from the date the Discount Market Sale Dwelling was first offered for disposal; and
- 8.2 the Owner has produced evidence in writing to the reasonable satisfaction of the Council that it has used all reasonable endeavours throughout the 9 (nine) month period to dispose of the Discount Market Sale Dwelling in accordance with the Marketing Strategy , the Owner will be free to offer such dwellings for sale on the open market free from the restrictions in this schedule but the provisions of paragraph 9 of this Part 2 apply.
9. In the event that the Owner is free to Dispose of the Discount Market Sale Dwelling for sale on the open market pursuant to the provisions of paragraph 8.2 above:
- 9.1 the Owner shall serve a written notice on the Council confirming that they intend to sell the Discount Market Sale Dwelling on the open market ("**Owner's Notice**");
- 9.2 following confirmation by the Council of receipt of the Owner's Notice and confirmation that the requirements set out in this Schedule have been complied with, the Owner may dispose of the Discount Market Sale Dwelling on the open market free of the provisions of this Schedule;
- 9.3 the Owner shall within 28 (twenty eight) days of the date of the disposal of the dwelling pay to the Council the Discount Market Sale Commuted Sum.

10. Upon receipt of the Discount Market Sale Commuted Sum the Council shall:
- 10.1 within 20 (twenty) Working Days of such receipt, provide a complete application to enable the removal of the restriction on the title set out in paragraph 6 where such restriction has previously been registered against the relevant title
- 10.2 apply all monies towards the provision of Affordable Housing.
11. The Discount Market Sale Dwelling shall be used only as the main residence of the owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or subletting shall be permitted in accordance with paragraphs 11.1 to 11.4 below.
- 11.1 The owner may let or sub-let their Discount Market Sale Dwelling for a fixed term of no more than two (2) years, provided that the owner notifies the Council in writing before the Discount Market Sale Dwelling is Occupied by the prospective tenant or sub-tenant. An owner may let or sub-let their Discount Market Sale Dwelling pursuant to this paragraph more than once during that owner's period of ownership, but the aggregate of such lettings or sub-lettings during an owner's period of ownership may not exceed two (2) years.
- 11.2 An owner may let or sub-let their Discount Market Sale Dwelling for any period provided that the owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) - (f) below:
- (a) the owner is required to live in accommodation other than their Discount Market Sale Dwelling for the duration of the letting or sub-letting for the purposes of employment;
  - (b) the owner is an active Armed Services Member and is to be deployed elsewhere (domestically or internationally) for the for the duration of the letting or sub-letting;
  - (c) the owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - (d) the owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - (e) the owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

- (f) the 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.
- 11.3 A letting or sub-letting permitted pursuant to paragraph <sup>11</sup> 10.1 or <sup>11</sup> ~~10.2~~ <sup>11</sup> ~~10.2~~ <sup>11</sup> must be by way of a written lease or sub-lease (as the case may be) of the whole of the Discount Market Sale Dwelling on terms which expressly prohibit any further sub-letting. OK
- 11.4 Nothing in this Part 2 prevents an owner from renting a room within their Discount Market Sale Dwelling or from renting their Discount Market Sale Dwelling as temporary sleeping accommodation provided that the Discount Market Sale Dwelling remains at all times the owner's main residence.
12. The provision of the Paragraphs 1 to 11 above shall not apply to a Chargee of a Discount Market Sale Dwelling where the Chargee who seeks to Dispose of a Discount Market Sale Dwelling pursuant to any default under the terms of its mortgage or charge subject to complying with the following provisions:
- 12.1 The mortgagee or charge shall give not less than 20 (twenty) Working Days' notice to the Council of its intention to Dispose;
- 12.2 In the event of the Council's response within 20 (twenty) Working Days from receipt of the notice indicating the arrangements for the disposal of the Discount Market Sale Dwelling can be made such as to safeguard them as a Discount Market Sale Dwelling then the charge or mortgagee shall cooperate with such arrangements and use its reasonable commercial endeavours to secure such disposal;
- 12.3 If the Council does not serve its response to the notice served under this paragraph with 20 (twenty) Working Days then the Chargee shall be entitled to dispose of the Discount Market Sale Dwelling free from restrictions set out in this Part 2 of the First Schedule.

### **Part 3 – FIRST HOMES**

#### **1. OBLIGATIONS**

- 1.1. Subject always to Paragraph 5.1 of this Part 3, unless otherwise agreed in writing by the Council, the Owner covenants with the Council as below save that:
- 1.1.1. paragraph 2 of this Part 3 shall not apply to a First Homes Owner;
- 1.1.2. paragraphs 3 and 4 of this Part 3 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they

3.5 Subject shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner; and

1.1.3. paragraph 5 shall apply as set out therein.

## 2. FIRST HOMES STANDARDS

2.1. The First Homes shall not be visually distinguishable from the Market Dwellings based upon its external appearance.

2.2. The internal specification of the First Home shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Market Dwellings but (subject to that requirement) variations to the internal specifications of the First Home are permitted.

## 3. DELIVERY MECHANISM

3.1. The Owner (which for the purposes of this Schedule shall include the Owner and any First Homes Owner) shall not Dispose of or Occupy any First Home other than in accordance with this paragraph 3 and paragraph 4 of this Part 3.

3.2. Prior to the Commencement of Development of a First Home the Owner shall either submit to the Council a draft Marketing Strategy for the Council's approval or agree a Marketing Strategy with the Council and the Owner shall not Commencement of Development of a First Home unless and until such marketing strategy has been approved by the Council (or by the Expert pursuant to Clause 11) and thereafter each First Home shall only be Disposed of according to the terms of the Marketing Strategy.

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

3.3.1. the Eligibility Criteria (National); and

3.3.2. the Eligibility Criteria (Local).

3.4. If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 3.3.2.2 shall cease to apply.

- 3.5. Subject to paragraphs 3.8 to 3.12, the First Home shall not be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a First Homes Mortgagee.
- 3.6. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
- 3.6.1. the Council has been provided with evidence that:
- 3.6.1.1. the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.4 applies meets the Eligibility Criteria (Local) (if any);
- 3.6.1.2. the First Home is being Disposed of as a First Home at the First Homes Discount Market Price; and
- 3.6.1.3. the transfer of the First Home includes:
- 3.6.1.3.1. a definition of the "Council" which shall be "the Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire"
- 3.6.1.3.2. a definition of "First Homes Provisions" in the following terms:
- "means the provisions set out in paragraphs 3.1 – 3.11 of Part 3 of Schedule 5 of the Section 106 Agreement a copy of which is attached hereto as the Annexure."*
- 3.6.1.3.3. a definition of "Section 106 Agreement" in the following terms:
- "means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ DATE OF THIS DEED ] made between (1) Orion Homes Limited and (2) the Council of the Borough of Kirklees"*
- 3.6.1.3.4. 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

3.6.1. the First Home has otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions;

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

3.6.1.3.6. the First Homes Administration Charge has been paid to the Council by the Owner in respect of the Initial Disposal and the owner of the First Home on all subsequent disposals.

3.6.2. the Council has issued the Compliance Certificate in accordance with paragraph 3.6.2.2 of this Schedule. The Council hereby covenants that it shall issue:

3.6.2.1. the Authority to Proceed within fifteen (15) Working Days of being provided with the relevant information pursuant to paragraph 3.6.1.1 and 3.6.1.2 above;

3.6.2.2. the Authority to Exchange and First Homes Compliance Certificate within twenty (20) 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 3.5 and 3.6.1 have been met.

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

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by The Council of the Borough of Kirklees of Town Hall, Huddersfield, West Yorkshire or their conveyancer that the provisions of Paragraph 3.6 of Schedule 5 (the First Homes provision) of the agreement dated [ ] 2025 and made pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) Orion Homes Limited and (2) The Council of the Borough of Kirklees have been complied with or that they do not apply to the disposition"*

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

3.8.1. the First Home has been actively marketed as a First Home for six (6) months in accordance with paragraphs 3.3 and 3.4 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and 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 3.5 and 3.6<sup>WH</sup>;  
or

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3.8.2. requiring the First Home Owner to undertake active marketing for the period specified in paragraph 3.8.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship.

3.9. Upon receipt of an application served in accordance with paragraph 3.8 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 Discount Market Price.

3.10. If the Council is satisfied that either of the grounds in paragraph 3.8 above have been made out it shall confirm in writing within twenty eight (28) Working Days of receipt of the written request made in accordance with paragraph 3.8 that the relevant Dwelling may be Disposed of:

3.10.1. to the Council at the First Home Discount Market Price; or

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

and on the issue of that written confirmation the obligations in this Schedule which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.12 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.

3.11. If the Council does not wish to acquire the relevant First Home itself and is not satisfied that either of the grounds in paragraph 3.8 above have been made out then it shall within twenty eight (28) Working Days of receipt of the written request made in accordance with paragraph 3.8 serve notice on the owner of the First Home setting out the further steps it requires the owner to take to secure the Disposal of that Dwelling as a First Home and the timescale (which shall be no longer than six (6) months) **PROVIDED THAT** if at the end of that period the owner of the First Home has been unable to Dispose

of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 3.8 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

3.12. Where a First Home is Disposed of other than:

3.12.1. as a First Home; or

3.12.2. to the Council at the First Home Discount Market Price in accordance with paragraphs 3.10 or 3.11 above,

the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

3.13. Upon receipt of the Additional First Homes Contribution the Council shall within twenty (20) Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.6.2 where such restriction has previously been registered against the relevant title.

3.14. Any person who purchases a First Home free of the restrictions in this Schedule pursuant to the provisions in paragraphs 3.11 and 3.12 shall not be liable to pay the Additional First Homes Contribution to the Council.

#### 4. USE OF THE FIRST HOMES

4.1. Each First Home shall be used only as the main residence of the First Home Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed **PROVIDED THAT** letting or sub-letting shall be permitted in accordance with paragraphs 4.1.1 to 4.1.4 below inclusive:

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

- 4.1.2. In addition, a First Home Owner may let or sub-let their First Home for any period provided that the First Home Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting and in such case the Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances in paragraphs 4.1.2.1 to 4.1.2.6 below:
- 4.1.2.1. the First Home 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;
  - 4.1.2.2. the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - 4.1.2.3. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - 4.1.2.4. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - 4.1.2.5. the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - 4.1.2.6. the First Home 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.
- 4.1.3. A letting or sub-letting permitted pursuant to paragraph 4.1.1 or 4.1.2 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.
- 4.1.4. Nothing in this paragraph 4 above prevents a First Home 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.

## 5. EXCLUSIONS AND RELEASE

5.1. The obligations in paragraphs 1-4 of this Part 3 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:**

5.1.1. such First Homes Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home;

5.1.2. 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 5.1.3;

5.1.3. 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; and

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

5.1.4.1. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.6.2; and

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

## PERFORMANCE

2.1. The Council shall on reasonable request by the Owner of a First Home ensure that each Planning obligation has been performed

**SCHEDULE 6** of the Planning Obligations have been  
**COUNCIL'S COVENANTS** in the name of local

1. **RECEIPT OF CONTRIBUTIONS**

- 1.1. The Council shall issue separate receipts on request for any Contributions paid to it pursuant to this Deed.
- 1.2. The Council will place all sums received pursuant to this Deed in an interest bearing account (or in separate interest bearing accounts as the Council shall at its discretion decide).
- 1.3. The Council will use:
  - 1.3.1. The Discount Market Sale Commuted Sum for the provision of Affordable Housing within the Locality;
  - 1.3.2. the Additional First Homes Contribution for the provision of Affordable Housing within the Locality;
  - 1.3.3. the Off-Site POS Contribution to improve recreational facilities within the Birstall and Birkenshaw ward of the Council including but not limited to Turnpike Close, Birkenshaw Park and Birkenshaw Lane;
- 1.4. The Council will not apply any sums received pursuant to this Deed for any purpose other than as described in this Deed.
- 1.5. The Council shall on reasonable request by the Owner provide details of the sums collected and retained, the interest accrued, the sums expended and the purposes for which the sums have been expended **PROVIDED THAT** the Council shall not be obliged to comply with more than one such request within any 12 month period.
- 1.6. The Council shall upon written request repay the Off-Site POS Contribution or parts thereof paid to it under this Deed (plus any actual interest accrued) to the person who made the payment if not committed by contract or expended within 10 years from the date of payment.

2. **PERFORMANCE**

- 2.1. The Council shall on reasonable request by the Owner issue written confirmation that each Planning Obligation has been performed.

2.2. In the event that the Council is satisfied that all of the Planning Obligations have been performed, the Council will thereafter cancel all relevant entries in the register of local land charges.

EXECUTED AS A DEED (but not delivered)  
and the date of it by the affixing of THE  
COMMON SEAL of THE COUNCIL OF THE  
BOROUGH OF ... in the presence of



**EXECUTION**

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



Witness Signature: [Redacted]

Name of Witness: IMELDA BATEMAN

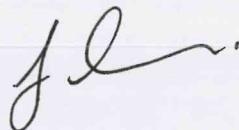
Address: [Redacted]

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



022253

Authorised Sealing Officer



JOHN CHAPMAN