

**DATED** \_\_\_\_\_ **2026**

**THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)**

**and**

**ORION HOMES LIMITED (2)**

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**Section 106 of the Town and Country Planning Act 1990 (as amended)**

**SUPPLEMENTAL AGREEMENT AND PLANNING OBLIGATION**

**Land at Bankfield Drive, Holmbridge, Holmfirth, HD9 2PH**

Application Reference No. 2023/91212/W

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**WALKER MORRIS LLP**

33 Wellington Street

LEEDS

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Ref: JYK/EWC/ORI06549.1



<b>"1990 Act"</b>	means the Town and Country Planning Act 1990;
<b>"Agreement"</b>	means this Agreement;
<b>"Contributions"</b>	means the Off-Site Highways Contribution (and <b>Contribution</b> shall be construed accordingly);
<b>"Default Interest Rate"</b>	means 4% per annum above the base rate from time to time of the Bank of England;
<b>"Development"</b>	means the development of the Site in accordance with the Planning Permission;
<b>"Dwelling"</b>	means a residential unit that may be built on the Site in accordance with the Planning Permission and reference to <b>"Dwellings"</b> shall be construed accordingly;
<b>"Expert"</b>	means an independent person of at least 10 (ten) years standing in the area of expertise relevant to the dispute to be agreed between the parties to this Agreement 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 of England and Wales;
<b>"Index"</b>	The BCIS All-In Tender Price Index
<b>"Index Linked"</b>	Increased in accordance with the following formula:  <b>Amount payable</b> = the figure specified in this Deed x (A/B) where:  <b>A</b> = the figure for the Index that applied immediately preceding the Due Date or the date paid if earlier; and  <b>B</b> = the figure for the Index that applied when that index was last published prior to the date of the Planning
<b>"Occupy"</b>	to occupy for the purposes permitted by the Planning

Permission but not including occupation by personnel engaged in construction, fitting out or decoration, marketing, display or security of the Development and 'Occupied' shall be construed accordingly;

**"Off-Site Highways Contribution"**

means the sum of £114,664.12 (one hundred and fourteen thousand six hundred and sixty-four pounds and twelve pence) (Index Linked) to be paid by the Owner to the Council in accordance with Schedule 1 of this Agreement towards the delivery of the Off-site Highways Improvements;

**"Off-Site Highways Improvements"**

means the off-site highways works shown on Plan 2;

**"Plan 1"**

means the plan Appended to this Agreement at Annex 1 and labelled with reference 2021.01.003 Rev X showing the Site and marked 'Plan 1';

**"Plan 2"**

means the plan Appended to this Agreement at Annex 2 and labelled with reference 22027/GA/01 Rev D showing the Off-Site Highways Improvements and marked 'Plan 2';

**"Plan 3"**

means the plan Appended to this Agreement at Annex 3 and labelled with reference 2405-03-007 Proposed Road Marking Improvements (17.04.26) marked 'Plan 3' and showing the intended road marking works, to be implemented in accordance with the Road Marking Improvements plan;

**"Planning Obligations"**

means the obligations, conditions and stipulations set out in Schedule 1;

**"Planning Permission"**

means the planning permission granted by the Council under reference 2023/62/91212/W for the erection of 21

dwellings with access from Laithe Avenue;

- "Principal Agreement"** means the deed dated 6 March 2025 entered into pursuant to section 106 of the 1990 Act and made between (1) the Council and (2) the Owner;
- "Road Marking Improvements"** means the white line works at the Bankfield Drive, Dobb Top Road, Smithy Lane junction shown on Plan 3;
- "Site"** means the Land at Bankfield Drive, Holmbridge, Holmfirth shown edged red on Plan 1;
- "Statutory Undertaker"** means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;
- "Working Day"** means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday and the term **"Working Days"** shall be construed accordingly.

1.2. Where the context so requires:

- 1.2.1. Reference in this Agreement to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed 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.
- 1.2.2. 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.
- 1.2.3. Any words denoting natural person shall include legal persons and vice versa.
- 1.2.4. References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement.
- 1.2.5. The expression the "Owner" shall include their successors in title and assigns.

- 1.2.6. The expression "the Council" shall include any successor authority to its statutory functions under the 1990 Act.
- 1.2.7. Where a covenant, restriction or requirement is expressed to be given by more than one Party, or where a Party is comprised of more than one person, liability for such covenant, restriction or requirement shall be joint and several.
- 1.2.8. 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.
- 1.2.9. Clause headings shall not affect the construction of this Agreement.
- 1.2.10. Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. STATUTORY BASIS**

- 2.1. This Agreement 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 by the Council 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 Agreement.
- 2.2. This Agreement is enforceable by the Council as local planning authority for the purposes of the 1990 Act.
- 2.3. To the extent that the covenants, restrictions and requirements in this Agreement 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. CONDITION PRECEDENT**

- 3.1. This Agreement shall take effect immediately upon the date of completion.

## **4. COVENANTS & DECLARATIONS**

- 4.1. The Owner covenants with the Council to comply with the Planning Obligations in Schedule 1 of this Agreement.

- 4.2. The Council covenants with the Owner to comply with the obligations on its part in Schedule 2 of this Agreement.

## **5. EXCLUSIONS & RELEASE**

- 5.1. No Party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement:

5.1.1. occurring prior to he or it acquiring an interest in the Site or the part in respect of which such breach occurs;

5.1.2. occurring after he or it has 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);

5.1.3. if he she or it shall be an individual owner, individual occupier or individual lessee 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

5.1.4. if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking.

- 5.2. If the Planning Permission is revoked or otherwise withdrawn or modified without the consent of the Owner or their 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.

- 5.3. No obligation in this Agreement 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 charge, 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 Agreement as if it were a person deriving title from an original covenanting party.

**6. REGISTRATION**

6.1. This Agreement 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 Agreement; or

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

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

**7. NON-FETTER & WAIVER**

7.1. Nothing in this Agreement 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 Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7.3. 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 or specified in a section 73 application to which Clause 15 applies) granted before or after the date of this Agreement.

**8. VAT**

All payments given in accordance with this Agreement shall be exclusive of any value added tax properly payable.

**9. SEVERENCE**

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 or enforceability of the remaining provisions of this Agreement.

**10. CHANGE OF OWNERSHIP**

The Owner agrees with the Council to give written notice to the Council within 20 (twenty) Working Days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement 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. THIRD PARTY RIGHTS**

No person who is not a Party to this Agreement 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 Agreement has been lawfully assigned or becomes vested in law including successors in title to the Site.

**12. COSTS**

12.1. The Council acknowledges that the Owner has prior to the date hereof paid the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Agreement.

**13. DISPUTE RESOLUTION**

13.1. Any dispute arising between the parties relating to any matter contained in this Agreement may be referred to the Expert by any Party.

13.2. The Expert will act as an expert and not as an arbitrator.

13.3. Each Party will bear its own costs and the Expert's costs will be paid as determined by him.

13.4. The Expert will be required to give notice to each of the Parties, inviting each of them to submit to him written representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision.

- 13.5. The Expert's decision will be given in writing as expeditiously as possible with reasons and in the absence of manifest error or fraud will be final and binding on the Parties.

#### **14. FUTURE PERMISSIONS**

- 14.1. In the event that the description of Development or a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

- 14.2. In the event that any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act (as amended) and unless otherwise agreed in writing between the parties:

14.2.1. The obligations in this Agreement shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself and this Agreement shall apply to and bind the Owner in respect of that subsequent planning permission; and

14.2.2. The definitions of Application, Development and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions;

**PROVIDED THAT** nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new deed or supplemental deed pursuant to Section 106 of the 1990 Act.

#### **15. INDEXATION**

- 15.1. The Contributions payable to the Council shall be Index Linked.
- 15.2. 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.

**16. INTEREST**

If any sum or amount has not been paid to the Council by the date it is due the Owner shall pay interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

**17. NOTICES**

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

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

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

17.2.2. if sent by pre-paid first-class post or other next working day delivery service at 9:00am 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. JURISDICTION**

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.

**19. DELIVERY**

Subject to clause 3 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.

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

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**SCHEDULE 1**  
**(Owner's Planning Obligations)**

The Owner hereby covenants with the Council as follows:

**1 OFF-SITE HIGHWAYS CONTRIBUTION**

1.1 To pay the Off-Site Highways Contribution to the Council on completion of this Agreement **FOR THE AVOIDANCE OF DOUBT**

1.1.1 upon payment of the Off-Site Highways Contribution condition 10 of the Planning Permission is deemed discharged; and

1.1.2 the Owner is not required to carry out the Off-Site Highways Works.

**2 ROAD MARKING IMPROVEMENTS**

2.1 To use reasonable endeavours to carry out the Road Marking Improvements by 1 July 2026.

**SCHEDULE 2**  
**(Council's Covenants)**

**1 RECEIPT OF CONTRIBUTIONS**

- 1.1 The Council shall issue separate receipts on request for any Contributions paid to it pursuant to this Agreement.
- 1.2 The Council will place all sums received pursuant to this Agreement in an interest bearing account (or separate interest bearing accounts as the Council shall at its discretion decide).
- 1.3 The Council will use the Off-site Highways Contribution towards carrying out the Off-Site Highways Improvements.
- 1.4 The Council will not apply any sums received pursuant to this Agreement for any purpose other than described in this Agreement.
- 1.5 The Council shall on reasonable request by the Owner provide details of the sums collected and retained, the interest accrued, the sums expected 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 any contributions or parts thereof paid to it under this Agreement (plus any actual interest accrued) to the person who made the payment if not committed by the contract or expended within 5 (five) years from the date of payment.

**2 DISCHARGE OF CONDITION 10**

- 2.1 The Council shall within 10 Working Days of receipt of the Off-Site Highways Contribution pursuant to paragraph 1.1 of Schedule 1 provide written notice to the Owner confirming that Condition 10 of the Planning Permission has been discharged.

**3 PERFORMANCE**

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

- 3.2 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.

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**EXECUTED** as a Deed (but not )  
delivered until dated) by affixing )  
the Common Seal of )  
**THE COUNCIL OF THE BOROUGH OF** )  
**KIRKLEES** in the presence of:- )

Name

Signature

Job Title

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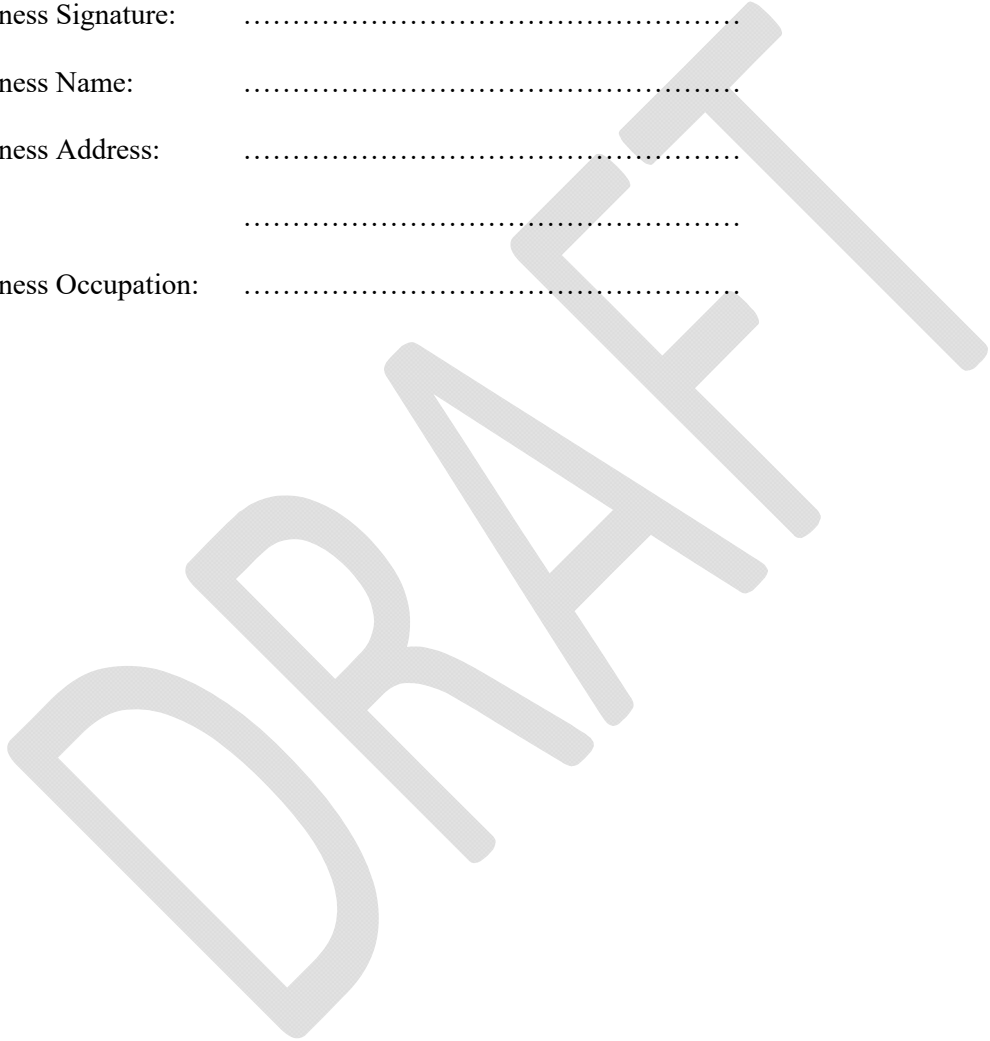
**EXECUTED** as a **DEED** (but not delivered until the date hereof) by **ORION HOMES LIMITED** acting by a Director in the presence of:

Witness Signature: .....

Witness Name: .....

Witness Address: .....

Witness Occupation: .....



**ANNEX 1**

**PLAN 1 – SITE PLAN**

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**ANNEX 2**

**PLAN 2 – OFF-SITE HIGHWAYS IMPROVEMENTS**

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**ANNEX 3**

**PLAN 3 – ROAD MARKING IMPROVEMENTS**

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