

2020

Deed of Agreement made pursuant to Section 106 of the Town and
Country Planning Act 1990
relating to
Land Off Wakefield Road, Town End, Pontefract

The Council of the City of Wakefield ⁽¹⁾
Andrew Charles Davies, Damien Duffy and Patrick Duffy ⁽²⁾
Frontline Estates (Pontefract) Limited ⁽³⁾

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DATE

PARTIES

- (1) **The Council of the City of Wakefield** of Town Hall, Wood Street, Wakefield, West Yorkshire, WF1 2HQ (**Council**)
- (2) **Andrew Charles Davies, Damien Duffy and Patrick Duffy** each care of 2 Westwinds, Ackworth WF7 7RP (**Owners**)
- (3) **Frontline Estates (Pontefract) Limited** (Company Registration Number 11417849) of Unit 1 Lakeside, Calder Island Way, Wakefield WF2 7AW (**Developer**).

BACKGROUND

- (A) By virtue of section 1 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 hereby created are enforceable.
- (B) The Owners are the proprietors of the freehold title to the Site which is registered at the Land Registry under Title Numbers WYK204102 and YY16829.
- (C) The Developer has an interest in the Site by way of a contract for sale dated 9 October 2018 and made between the Owners and the Developer.
- (D) The Developer has submitted the Application to the Council for planning permission for the Development.
- (E) The Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.
- (F) The Owners 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.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

1990 Act	the Town and Country Planning Act 1990.
Affordable Housing	affordable housing as defined in Annex 2 of the National Planning Policy Framework, February 2019 (or as redefined by any amendment, replacement or re-enactment thereof).
Affordable Housing Contribution	the sum of £13,000.00 (thirteen thousand pounds) to be paid by the Owners to the Council for the purposes of providing off-site Affordable Housing provision within the Council's administrative area.
Application	the application for planning permission for the Development which was submitted to the Council on behalf of the Developer and which was validated by the Council on 9 October 2019 under reference number 19/02277/OUT.
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 SAVE THAT for the purposes of this Deed the term "material operation" shall not

include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and **Commence Development** shall be construed accordingly.

Default Interest Rate	4% per annum above the base rate from time to time of the Bank of England.
Development	the erection upon the Site of twenty two (22) dwellings including associated works (outline including access and layout).
Dwelling	a residential unit that may be built on the Site pursuant to the Planning Permission and the term Dwellings shall be construed accordingly;
Expert	a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
Index Linked	increased in accordance with the following formula: <ul style="list-style-type: none"> (a) Amount payable = the payment specified in this Deed x (A/B) where: (b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and (c) B = the figure for the Retail Price Index published by the Office for National Statistics that applied when that index was last published prior to the date of this Deed.
Occupation	occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration, marketing, display or security operations and the term Occupy and Occupied shall be construed accordingly.
Plan	drawing reference 3132-1-000 appended hereto at Schedule 1.
Planning Permission	a planning permission permitting the Development granted by Council pursuant to the Application.
Site	all that land known as Land Off Wakefield Road, Town End, Pontefract shown edged red on the Plan.
Statutory Undertaker	any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking.
Working Day	any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

- 1.2 Reference in this Deed 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.

- 1.3 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.
- 1.4 Any words denoting natural persons shall include legal persons and vice versa.
- 1.5 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.
- 1.6 The expression "**the Owners**" shall include their successors in title and assigns.
- 1.7 The expression "**the Council**" shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8 Where a party includes more than one person any obligations of that party shall be joint and several.
- 1.9 Clause headings shall not affect the construction of this Deed.
- 1.10 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. STATUTORY BASIS

- 2.1 This Deed secures planning obligations made pursuant to section 106 of the 1990 Act and is enforceable pursuant to section 106(3) of the 1990 Act against the Owners and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owners as if that person had been an original covenanting party to this Deed.
- 2.2 This Deed 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 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3. CONDITIONS PRECEDENT

- 3.1 This Deed is conditional upon and does not become effective unless and until the Planning Permission is granted.
- 3.2 Clause 4 of this Deed is further conditional upon and does not become effective unless and until the Commencement of Development.

4. COVENANTS & DECLARATIONS

- 4.1 The Owners covenant with the Council to comply with the obligations in Schedule 2.
- 4.2 The Council covenants with the Owner to comply with the obligations in Schedule 3.
- 4.3 The Developer hereby acknowledges that its interest in the Site is subject to the covenants, restrictions and obligations in this Deed.

5. EXCLUSIONS AND RELEASE

- 5.1 No party shall be bound by the terms of this Deed or be liable for the 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 subsisting breach prior to parting with such interest);
 - 5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
 - 5.1.3 if that party is an owner or occupier of an individual Dwelling.
- 5.2 If the Planning Permission:
- 5.2.1 expires before the Commencement of Development; or
 - 5.2.2 is at any time revoked or modified (without the consent of the Owner) pursuant to Part IV of the 1990 Act

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 over 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 shall 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 shall be registered as such by the Council.
- 6.2 Following either:
- 6.2.1 the performance and satisfaction of all the obligations contained in Schedule 3 of this Deed; or
 - 6.2.2 the determination of this Deed in accordance with Clause 5.2;

the Council shall upon the written request of the Owners effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7. NON-FETTER AND 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. SECTION 73 OF THE 1990 ACT

If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a **S73 Application**) then in the event that the Council is minded to approve such S73 Application:

- (a) if the Council considers that the planning obligations contained in this Deed are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to **Planning Permission** in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act unless the Council requires otherwise; or
- (b) if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 8 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 8(a) shall be disregarded.

9. INTEREST

If any sum or amount has not been paid to the Council by the date it is due then the sum payable shall attract interest on that sum or amount at the Default Interest Rate and such interest shall accrue on a daily basis for the period from the due date to and including the actual date of payment.

10. INDEXATION

10.1 The Affordable Housing Contribution shall be Index Linked.

10.2 Where reference is made in this Deed to an index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owner in writing.

11. VAT

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

12. SEVERANCE

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 or enforceability of the remaining provisions of this Deed.

13. CHANGE OF OWNERSHIP

The Owner agrees with the Council to give the Council written notice within 10 Working Days of any change in proprietorship 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 Disposal of an individual Dwelling.

14. NOTIFICATION

14.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

14.1.1 delivered by hand; or

14.1.2 sent by pre-paid first class post or other next working day delivery service.

14.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:

14.2.1 to the Council at Town Hall, Wood Street, Wakefield, WF1 2HQ marked for the attention of the Chief Legal Officer;

14.2.2 to the Owners at 2 Westwinds, Ackworth WF7 7RP marked for the attention of Mr D Duffy;

14.2.3 to the Developer at Unit 1 Lakeside, Calder Island Way, Wakefield WF2 7AW marked for the attention of Mr R Weatherhead.

or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 14.

14.3 Any notice, request, demand or other written communication given or served in accordance with Clause 14.1 or Clause 14.2 shall be deemed to have been received:

14.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day; or

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

14.4 A notice, request, demand or other written communication given under this deed shall not be validly given if sent by e-mail.

14.5 This Clause 14 does not apply to the service of any proceedings or other documents in any legal action.

15. DISPUTE RESOLUTION

15.1 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

15.2 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 whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.

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

15.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 15.2 above, shall be appointed or identified by the following persons:

(a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

15.3.2 the Expert shall act as an expert and not as an arbitrator

- 15.3.3 the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:
- (a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;
 - (b) the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;
 - (c) the Expert shall disregard any representations made out of this time; and
 - (d) 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;
 - (e) to the extent not provided for by this clause the Expert may in their 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
- 15.3.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
- 15.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and
- 15.3.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 15.4 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:
- 15.4.1 either party may apply to the relevant body as per Clause 15.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
 - 15.4.2 Clause 15.3 shall apply to the new Expert as if they were the first Expert appointed.

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 or becomes vested in law including successors in title to the Site.

17. COSTS

The Developer shall on (or prior to) the date hereof pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of £750.00.

18. COUNTERPARTS

- 18.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 18.2 Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) in PDF, JPEG or other agreed format shall take effect as delivery of an executed counterpart of this Deed. If such method of delivery is adopted, without prejudice to the validity of

the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

19. JURISDICTION

This Deed 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.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Plan

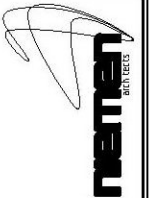
Wakefield Road, **PONTEFRAC**

DO NOT SCALE - ALL DIMENSIONS & LEVELS TO BE CHECKED ON SITE - THIS DRAWING IS COPYRIGHT



PLANNING

REV	CON	DATE	CONTENT	NOTES
PROJECT				
PROPOSED RESIDENTIAL DEVELOPMENT WAKEFIELD ROAD, PONTEFRAC				
CLIENT				
MR DUFFY, MR DUFFY & MR DAVIES				
TITLE				
SITE LOCATION PLAN				
DATE	02.05.19	SCALE	1:1250@A3	DRAWN
				OB
DRAWING NUMBER	3132-1-000	CHECKED		



Niemen Architects
Deck 2 The Waterscape
42 Leeds & Bradford Road
Kirkstall Leeds LS5 3EG
Tel: 0113 239 5400
Fax: 0113 239 5401
office@niemen.co.uk
www.niemen.co.uk

SCHEDULE 2

Owners' Covenant

1. AFFORDABLE HOUSING CONTRIBUTION

The Owner shall not Occupy or allow the Occupation of more than five (5) Dwellings unless and until it has paid the Affordable Housing Contribution to the Council.

SCHEDULE 3

Council's Covenants

1. The Council shall issue a receipt on request for the Affordable Housing Contribution paid to it under this Deed;
2. The Council shall place the Affordable Housing Contribution in an interest bearing account or in separate accounts as the Council shall at its discretion decide.
3. The Council shall not apply the Affordable Housing Contribution for any purpose other than for the purpose set out within Clause 1.1 of this Deed; and
4. In the event that the Affordable Housing Contribution (or any part or parts thereof) is not expended or committed within 5 (five) years of the date of payment then the sum or sums not expended or committed plus interest accrued shall be repaid to the party that paid it or their nominee.

The **COMMON SEAL** of the **COUNCIL OF THE CITY OF WAKEFIELD** was hereunto affixed in the presence of:

.....
Signature

.....
Print Name

Signed as a deed by **Andrew Charles Davies** in the presence of:

.....
Signature

Signature (Witness)

Print Name

Address

.....

Occupation

Signed as a deed by **Damien Duffy** in the presence of:

.....
Signature

Signature (Witness)

Print Name

Address

.....

Occupation

Signed as a deed by **Patrick Duffy** in the presence of:

.....
Signature

Signature (Witness)

Print Name

Address

.....

Occupation

Executed as a deed by

Frontline Estates (Pontefract) Limited

.....
Director

acting by **Richard Weatherhead**, a director, and
by **Rachel Weatherhead**, a director.

.....
Director