

DATED 15th September 2021

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

-and-

RICHARD JASON ALEXANDER ELMHIRST (2)

-and-

DUCHY HOMES LIMITED (3)

-and-

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to land off Mount Vernon Road, Worsbrough, Barnsley, S70 4DN : 2021/0142

THIS AGREEMENT (signed as a deed) is made the **15th** day of **September** 2021

BETWEEN:

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Smithies Lane Depot, Smithies Lane, Barnsley S71 1NL ("**Council**") of the first part; and
- (2) **RICHARD JASON ALEXANDER ELMHIRST** of Oswaldkirk Hall, Oswaldkirk, York, YO62 5XT ("**the Owner**").of the second part; and
- (3) **DUCHY HOMES LIMITED** (registered number 07852681) whose registered office is at Middleton House, Westland Road, Leeds, West Yorkshire, LS11 5UH ("**Developer**") of the third part;
- (4) hereinafter called the "**Parties**" and reference to "**Party**" shall be construed accordingly.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

"**1990 Act**" means the Town and Country Planning Act 1990 as amended;

"**Affordable Housing**" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in the National Planning Policy Framework;

"**Affordable Housing Commuted Sum**" means if applicable a sum in respect of each Affordable Housing Unit calculated in accordance with section 13 (and other relevant paragraphs) of the SPD re Affordable Housing adopted May 2019 (or as may otherwise be agreed in writing by the Council and the Owner);

"**Affordable Housing Units**" means 4 (four) Dwellings of Affordable Housing shown on the attached Affordable Housing Plan comprising of three Affordable Housing for Rent

Dwellings and one Shared Ownership Dwelling to be provided in accordance with paragraph 1 of the First Schedule and reference to "**Affordable Housing Unit**" shall be construed accordingly;

"Affordable Housing Plan"

means Plan 1 of this Agreement

"Affordable Housing Unit Price"

means a price agreed between the Owner and the Registered Provider;

"Affordable Housing for Rent Dwellings"

has the same meaning as the term "affordable housing for rent" contained in paragraph (a) of Annex 2 of the National Planning Policy Framework such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy and reference to "**Affordable Housing for Rent Dwelling**" shall be construed accordingly;

"Affordable Rent"

means an affordable rent of no more than 80% of the Market Rent;

"Application"

means the application reference number 2021/0142 for residential development of 42 no. dwellings and associated works including provision of on site open space;

"Chargee"

means any mortgagee or chargee of the Registered Provider (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));

"Commencement of Development"

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That

the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys construction of any access roads erection of contractors work compound erection of site office erection of fencing to site boundary and reference to "**Commence the Development**" and "**Commenced**" shall be construed accordingly;

"Community Interest Company" means a business with primary social objectives whose surpluses are principally reinvested for that purpose in the community;

"Contributions" means collectively the Education Contribution, the Off-Site Open Space Contribution, the Sustainable Travel Contribution and if applicable the Affordable Housing Commuted Sum;

"Council's Approved List" means the following Registered Providers:

1. Berneslai Homes Limited;
2. South Yorkshire Housing Association Limited;
3. Yorkshire Housing Limited;
4. Guinness Northern Counties Limited;
5. Equity Housing Group Limited;
6. Leeds and Yorkshire Housing Association Limited;
7. Chevin Housing Association Limited; and
8. Wakefield and District Housing Limited;

or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time;

"Development"

means the development of the Land in accordance with the Planning Permission;

"Dwellings"

means the residential units that may be built on the Land as part of the Development and reference to "Dwelling" shall be construed accordingly;

"Education Contribution"

means the single sum of: £ 144,000 (one hundred and forty four thousand pounds) Index Linked to be paid by the Owner to the Council to be used by the Council towards the provision of and or improvement to primary educational facilities that serve the Development the need for which is required in order to mitigate impacts arising from the Development;

"Expert"

has the meaning given in clause 3.4.3;

"Head of Planning and Building Control"

means the Head of Planning and Building Control of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Agreement;

"Homes England"

means Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008;

"Independent Surveyor"

means a member of the Royal Institution of Chartered Surveyors appointed by the Owner at its own cost but first approved by the Council;

"Index"

means the 12 (twelve) month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest

of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;

"Index Linked"

means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it;

"Interest Rate"

means interest at 4 (four) per cent above the base lending rate of the Bank of England from time to time and in every case compounded on the first day of December in each year;

"Initial Registered Provider Transfer Terms"

has the meaning given in paragraph 1.8 of the First Schedule;

"Land"

means all that land off Mount Vernon Road, Worsbrough, Barnsley, S70 4DN the subject of the Application shown edged red on Plan 1;

"Local Plan"

means the Barnsley Local Plan adopted in January 2019;

"Market Rent"

means the open market value rent of the particular Dwelling in question pursuant to a letting between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion and where it is assumed for the purposes of the calculation of Market Rent that the particular Dwelling is free from all the provisions of this Deed;

"National Planning Policy Framework"

means the National Planning Policy Framework as published in February 2019 (as amended in June 2019) by The Ministry of Housing, Communities and Local Government (or any future guidance or initiative that replaces or supplements it);

"Occupation" and "Occupy" and "Occupied"

means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;

"Off-Site Open Space Contribution"

means the single sum of £66,409.54 (sixty six thousand, four hundred and nine pounds and fifty four pence) Index Linked which has been calculated in accordance with the following formula for each Dwelling permitted by the Planning Permission

Equipped children's play

2 bed dwellings x 12 x £503.51 = £ 6042.12

3 bed dwellings x 20 x £604.48 = £12,089.60

4 bed dwellings x 10 x £705.47 = £ 7,054.70

Subtotal £25,186.42

Formal recreation

2 bed dwellings x 12 x £824.41 = £ 9,892.92

3 bed dwellings x 20 x £989.01 = £19,780.20

4 bed dwellings x 10 x £1155.00 = £11,550.00

Subtotal £ 41,223.12

Total £66,409.54

calculated in accordance with Appendix 2 of the SPD
'Open Space Provision on New Housing

Developments' to be paid to the Council by the Owner and used by the Council in lieu of the provision of publicly accessible formal recreation open space on the Land for the provision of, or improvements to, public open space within 5 km of the boundary of the Land the need for which is required in order to mitigate impacts arising from the Development;

"Open Market Dwellings"

means the residential units that may be built on the Land as part of the Development excluding the Affordable Housing Units and reference to **"Open Market Dwelling"** shall be construed accordingly;

"Open Market Value"

means an amount for which the property or piece of land should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion as agreed between the Owner and the Council or in the absence of agreement as determined by an Independent Surveyor assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;

"Plan 1"

means the plan attached to this Agreement and marked "Plan 1" appended to this Agreement as Appendix 1;

"Planning Obligations"

means the obligations, conditions and stipulations set out in the Second Schedule and **"Planning Obligation"** shall be construed accordingly;

"Planning Permission"

means a planning permission that may be granted by the Council in pursuance of the Application;

"POS Management Scheme"

means a scheme for the future maintenance and management of the Public Open Space to be submitted by the Owner to the Council in accordance with the provisions of paragraph 6.2 of the First Schedule and

approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council) and the said POS Management Scheme shall include the following details:-

- (a) The schedule and program of maintenance works to be undertaken in relation to the Public Open Space.
- (b) The arrangements for ensuring that individual householders are given detailed breakdowns of the costs properly incurred and showing how the total cost is translated into their individual liability.
- (c) Any restrictions on year on year increases in any service charge and whether such restriction is to be fixed to a relevant cost index;

Where the Owner elects to use a management company in accordance with the First Schedule the POS Management Scheme will in addition to (a) to (c) inclusive include the following additional detail;

- (d) The identity of the management company proposed to be engaged to carry out the maintenance and management of the Public Open Space.
- (e) What if any interest in the Public Open Space is proposed to be granted to the management company
- (f) Any arrangements for ensuring that individual householders have a say or influence over the activities of the management company and whether this is to

be achieved via the householders being given membership of the management company or the management company being set up as a Community Interest Company.

"Practical Completion/Practically Completed" means either:

1. the issue of a certificate signed by a chartered architect which confirms that a specified Dwelling has been constructed in compliance with building regulations and is completed so as to be fit for habitation as a residential housing unit; or
2. the issue of buildmark cover note by the National House-Building Council (or similar warranty provider);

"Protected Tenant" means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares

so that the tenant owns the entire Affordable Housing Unit;

"Public Open Space"

means those parts of the Land to be laid out as open space in accordance with the Planning Permission as shown edged and hatched green on Plan 1 of this Agreement

"Public Open Space Works"

means the works to be carried out for the laying out of the Public Open Space in accordance with the condition(s) annexed to the Planning Permission

"Reasonable Endeavours"

means it is agreed by the Parties that the Party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable;

"Registered Provider"

means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by Homes England for receipt of social housing grant or any other person as may be proposed by the Owner and approved by the Council;

"Shared Ownership Dwellings"

means the Affordable Housing Unit to be made available on a Shared Ownership Lease to persons in accordance with the Registered Provider's policy or such other housing as approved in writing by the

Council that provides a subsidised route to home ownership and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within Annex 2 of the National Planning Policy Framework;

"Shared Ownership Lease"

means a relevant Homes England shared ownership lease current at the date of this Agreement;

"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 and any other person of a similar nature;

"Sustainable Travel Contribution"

means the single sum of £ 31,000 (thirty one thousand pounds) Index Linked which has been calculated in accordance with section 5 of the SPD 'Sustainable Travel' (November 2019) to be paid to the Council by the Owner and used by the Council towards purposes identified in the SPD 'Sustainable Travel' (November 2019) the need for which is required in order to mitigate impacts arising from the Development;

"Working Day"

means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year's Day excepted) and reference to "**Working Days**" shall be construed accordingly.

1.2 Where the context so requires:

- 1.2.1 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and words denoting an actual person include bodies companies charities corporates firms trusts and societies and all such words shall be construed as interchangeable;

- 1.2.2 References to any Party in this Agreement shall include the successors in title and assigns of that Party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act and reference to the Owner shall include any person deriving title to the Land (or part thereof) from the Owner;
- 1.2.3 Where a Party includes more than one person any obligations of that Party shall be joint and several;
- 1.2.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.5 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it;
- 1.2.6 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement; and
- 1.2.7 Clause headings are for reference only and shall not affect the construction of this Agreement.

2 RECITALS

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The Owner is the registered proprietor with absolute title of the freehold interest in the Land which has been given title number SYK522626 by HM Land Registry.
- 2.3 The Developer has an interest in the Land in the form of a conditional contract for sale dated 18 December 2020 and made between (1) the Owner and (2) the Developer and detailed in paragraphs 2 and 3 of the charges register to title SYK522626..
- 2.4 The Application was submitted to the Council by the Developer for planning permission for the Development.

2.5 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

2.6 The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

3 OPERATIVE PROVISIONS

3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

3.2 The planning obligations comprised in this Agreement shall not become effective until the following conditions are satisfied:

3.2.1 the Planning Permission has been granted; and

3.2.2 (except where stated otherwise in this Agreement) the Commencement of Development.

3.3 Subject to clause 3.2:

3.3.1 The Owner hereby covenants with the Council that the Land shall from the date hereof be bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule (subject always to the terms and conditions of this Agreement)

3.3.2 The Council covenants with the Owner to comply with its obligations in the Second Schedule and where applicable in the First Schedule.

3.4 It is agreed and declared as follows:

3.4.1 No person 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:

- (a) occurring after he or it has parted with his or its interest in the Land 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);
 - (b) if he shall be an occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling (or a mortgagee of an individual Dwelling lending money to such occupier purchaser or tenant);
 - (c) (save for the applicable provisions in paragraphs 1.2 and 1.1 of the First Schedule) if he shall be a Registered Provider (or a mortgagee of a Registered Provider)
 - (d) if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.
- 3.4.2 (Unless otherwise agreed in writing between the relevant parties to the dispute) save for issues relating to the interpretation of this Agreement and/or any others issues of law (which shall be matters for the courts) any dispute arising between the parties arising out of or connected with the subject matter of this Agreement may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person ("**Expert**").
- 3.4.3 Any reference to an Expert in accordance with clause 3.4.2 shall be to a reputable person unconnected to any of the parties hereto and experienced in matters to which the subject matter of the dispute relates and who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error, fraud and/or error of law).
- 3.4.4 Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.

- 3.4.5 Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2021/0142.
- 3.4.6 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) (other than under section 73 or 96A of the 1990 Act) or revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.8 The obligations hereby created shall be registered as a Local Land Charge.
- 3.4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right 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.
- 3.4.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Agreement.
- 3.4.11 The Owner shall forthwith pay to the Council its reasonable legal fees incurred in the preparation negotiation and completion of this Agreement.
- 3.4.12 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 3.4.13 The parties shall act reasonably and in good faith in relation to the obligations in this Agreement.

- 3.4.14 In the event that 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.
- 3.4.15 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall be to both the Planning Permission and any new planning permission(s) granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of such new planning permission(s) without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act PROVIDED ALWAYS that nothing in this clause 3.4.15 (and/or for the avoidance of any doubt 3.4.14) and/or its operation shall ever require the duplication of any of the obligations in this Agreement.
- 3.4.16 If the Council does not receive payment of any money due under this Agreement on the due date the Owner will pay interest on the money concerned to the Council at the Interest Rate from the due date until the date of actual receipt by the Council provided that this sub-clause shall not prejudice any other right or remedy of the Council for the recovery of any money due.
- 3.4.17 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

FIRST SCHEDULE
("the Owner's Covenants")

The Owner hereby covenants with the Council:

1. AFFORDABLE HOUSING

1.1 Any Affordable Housing for Rent Dwellings on the Land shall not be used or Occupied other than as Affordable Housing for Rent Dwellings and any Shared Ownership Dwellings on the Land shall not be used or Occupied other than as Shared Ownership Dwellings save that this obligation shall not be binding on:

1.1.1 any Protected Tenant or any mortgagee or chargee of any Protected Tenant; or

1.1.2 any Chargee of the whole or any part of the Affordable Housing Units (provided that the Chargee shall have first complied with the obligations at paragraph 1.2 of this Schedule); or

1.1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor; or

1.1.4 any person deriving title from any of the persons mentioned in paragraphs 1.1.1 to 1.1.3 (inclusive) directly above.

1.2 A Chargee shall prior to seeking to dispose of any Affordable Housing Unit(s) pursuant to any default under the terms of the relevant mortgage or charge or security documentation:

1.2.1 Shall first give written notice to the Council of its intention to dispose of the relevant Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of 3 months from the date of the written notice to complete a disposal of the relevant Affordable Housing Unit(s) to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

1.2.2 If such disposal has not completed within the 3 month period, the Chargee shall be entitled to dispose of the relevant Affordable Housing Unit(s) free from all the

provisions in paragraph 1 of this First Schedule which provisions shall determine absolutely.

- 1.3 The Affordable Housing Units shall consist of the 4 (four) two bedroom 873 sqft floor area plots shown as Affordable Housing on the Affordable Housing Plan attached hereto, 3 (three) of which (plots 28, 31 and 32) shall be Affordable Housing for Rent Dwellings and 1 (one) of which (plot 27) shall be a Shared Ownership Dwelling and the Affordable Housing Units shall be constructed in accordance with the Planning Permission. A summary table is provided below:

Number of Affordable Housing Units and number of bedrooms	4 (four) two bedroom houses
Plots	27, 28, 31 and 32
Tenure	Plots 28, 31 and 32 - Affordable Housing for Rent Dwellings Plot 27 – Shared Ownership Dwelling
Sqft of each Affordable Housing Unit	873 sqft floor area

Nb. All as shown on the Affordable Housing Plan attached hereto and such units to be constructed in accordance with the Planning Permission

- 1.4 Subject to paragraph 1.11 of this Schedule not to cause or permit more than 70% (27) of the Open Market Dwellings to be Occupied until the Affordable Housing Units have been Practically Completed in accordance with the Planning Permission
- 1.5 Any transfer of the Affordable Housing Units to a Registered Provider shall be to a Registered Provider appearing on the Council's Approved List.
- 1.6 Any Affordable Housing Units transferred to a Registered Provider shall be transferred with the benefit of the following:
- 1.6.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and
 - 1.6.2 full and free rights to passage of water soil electricity gas and other services through the pipes channels wires cables and conduits which shall be in the

adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains

- 1.7 The Owner shall provide the Council with written notice:
 - 1.7.1 of the date of Commencement of Development; and
 - 1.7.2 of the date of Occupation of the first Dwelling; and
 - 1.7.3 of the date of Practical Completion of the Affordable Housing Units; and
 - 1.7.4 of the date of Occupation of 27 (twenty seven) of the Open Market Dwellings.
- 1.8 The Owner shall use its Reasonable Endeavours to market the Affordable Housing Units at the Affordable Housing Unit Price to a Registered Provider (and which marketing may take place off-plan) appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider ("**Initial Registered Provider Transfer Terms**") **PROVIDED THAT** it is agreed for the avoidance of doubt that the Owner shall not transfer the Affordable Housing Units to a Registered Provider not appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time).
- 1.9 The Owner will thereafter use its Reasonable Endeavours to exchange contracts with the Registered Provider for the sale of the Affordable Housing Units at the Affordable Housing Unit Price and will keep the Council informed on the Owner's progress.
- 1.10 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use Reasonable Endeavours to exchange contracts with an alternative Registered Provider at the Affordable Housing Unit Price appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of the Owner's progress.
- 1.11 If any of the Affordable Housing Units have not been contracted for sale to a Registered Provider within 6 (six) calendar months of commencement of marketing by the Owner in accordance with paragraph 1.8 hereof then the Owner may (i) continue to use Reasonable Endeavours to enter into a contract for sale with a Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) at the Affordable

Housing Unit Price and will keep the Council informed as to the Owner's progress; or (ii) may (at any time) instead pay the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Housing Units not already transferred to a Registered Provider and upon such payment the Owner will be free to offer such Dwellings for sale on the open market free from obligations in this Schedule (which shall determine absolutely in respect of any such Dwellings) as Open Market Dwellings.

2. EDUCATION CONTRIBUTION

- 2.1 To pay the Education Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 2.2 to 2.3 (inclusive) of this Schedule.
- 2.2 To notify the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until £72,000.00 (seventy two thousand pounds) of the Education Contribution as Index Linked has been paid to the Council.
- 2.3 To notify the Council prior to the Occupation of more than 21 (twenty one) of the Dwellings and not to Occupy more than 21 (twenty one) of the Dwellings until the further £72,000.00 (seventy two thousand pounds) of the Education Contribution as Index Linked has been paid to the Council.

3. OFF-SITE OPEN SPACE CONTRIBUTION

- 3.1 To pay the Off-Site Open Space Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 3.2 to 3.3 (inclusive) of this Schedule.
- 3.2 To notify the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until 50% of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.
- 3.3 To notify the Council prior to the Occupation of more than 21 (twenty one) of the Dwellings and not to Occupy more than 21 (twenty one) of the Dwellings until the remaining 50% of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.

4 SUSTAINABLE TRAVEL CONTRIBUTION

- 4.1 To notify the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until the Sustainable Travel Contribution as Index Linked has been paid to the Council.

5. PUBLIC OPEN SPACE

- 5.1 To provide the Public Open Space in accordance with the Planning Permission to the reasonable satisfaction of the Council.
- 5.2 Not to Occupy more than 50% of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until it has submitted to the Council a POS Management Scheme for the future maintenance and management of the Public Open Space PROVIDED ALWAYS that when the Owner submits the POS Management Scheme it shall also inform the Council as to whether it is electing to use a management company or not and if it is, for the avoidance of any doubt, details of (a) to (f) inclusive as referred to in the definition of "POS Management Scheme" shall form part of the submission AND FURTHER PROVIDED THAT it is agreed that if the Council does not notify the Owner of its approval or proposed amendments to the POS Management Scheme within the 30 (thirty) Working Days of receipt of the same (or such other period of time that the Council may reasonably require and which may be agreed in writing between the Owner and the Council) it shall be deemed that the Council has approved the POS Management Scheme submitted by the Owner.
- 5.3 Following submission of the POS Management Scheme the Owner will use Reasonable Endeavours to obtain approval of it by the Council
- 5.4 To complete the Public Open Space within 3 (three) months of Practical Completion of the final Dwelling to be Practically Completed (or such longer period agreed between the Owner and the Council where necessary because of the planting season and/or other reasonable issue) and not to Occupy the Dwelling to be erected on plot 1 shown on Plan 1 until the Public Open Space is completed.
- 5.5 Following the completion of the Public Open Space Works or an individual element of the Public Open Space Works (as the case may be) the Owner shall manage and maintain (via a management company or otherwise) the Public Open Space to the reasonable satisfaction of the Council or (once approved in accordance with paragraph 6.3 hereof) in accordance with the P O S Management Scheme.
- 5.6 Subject to the following paragraphs of
- 5.7 this Schedule the Owner shall only allow the use of the Public Open Space for public access and recreation and for no other purpose
- 5.8 The Owner may elect to use a management company for the future management and maintenance of the Public Open Space provided it makes such election prior to the submission

of the POS Management Scheme and informs the Council of such election as part of the POS Management Scheme submission as referred to in paragraph 5.2 above

- 5.9 Where the Owner elects to use a management company for the future management and maintenance of the Public Open Space the Owner shall ensure and procure that the sale contract of each Dwelling contains a provision that requires the buyer of such Dwelling to covenant substantially in the following form (unless otherwise agreed in writing between the Owner and the Council):-

5.9.1 covenant to pay to the management company a proportion of the costs and expenses properly incurred by the management company in respect of its administration and of insuring and maintaining the Public Open Space; and

5.9.2 covenant that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 5.9.1 and 5.9.2.

- 5.10 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Public Open Space has not been dedicated to the public nor is any use by the public of any part of the Public Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.

- 5.11 The Owner will procure that public access is allowed to the Public Open Space following completion of it but subject to the following provisions:

5.11.1 access shall be subject to such requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management;

5.11.2 the Owner may erect notices on the Public Open Space and access to it will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being; and

5.11.3 access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the Public Open Space or for and during the construction of any building or land abutting it

- 5.12 The Owner may close the Public Open Space or any part thereof for reasonable periods by reason of:

Section 106 Agreement

- 5.12.1 emergency;
- 5.12.2 cleansing, maintenance and repair;
- 5.12.3 at the direction of the emergency services or other lawful authority; and / or
- 5.12.4 construction activities whilst the Development is being built if in the interests of health and safety.

SECOND SCHEDULE
(“the Council’s Covenants”)

The Council hereby covenants with the Owner:

General

- 1 The Council will on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.
- 2 To issue separate receipts on request for any sum or Contribution paid to the Council under this Agreement.

Contributions

- 3 To apply the Contributions towards the purposes specified in this Agreement and not to apply the Contributions for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.

Repayment

- 4 That in the event the Contributions or any part or parts thereof are not expended within 10 (ten) years of the date of payment (or the date of payment of the final instalment if applicable) then the sum or sums not expended plus interest accrued will be repaid to the person who paid it (or the payers specified nominee)

Appendix 1
(Plan 1)

Mount Vernon Rd, Worsborough



PLANNING LAYOUT KEY:

Boundary treatments

- Brick wall
- Boundary fence
- Estate railings

General

- Application red line.
- Block paving
- BCP Bin collection point (bin collection day only)
- Indicative electric charging point.
- Affordable
- Timber cycle store

Accommodation schedule								
Reference	Code	Floor Area (Sqft)	Floor Area (Sqm)	Storeys	Total	Total Sqft	Total Sqm	% of Mix
Private								
Stratford	STR-MS	873	81.1	2	8	6864	640	19.0
Stratford	STR-MS	873	81.1	2	8	6864	640	19.0
Thornbury	THO	982	91.2	2	8	7856	732.2	14.3
Windsor	WIN	1060	98.4	2.5	8	8480	787.2	15.0
Alderley	ALD	1062	98.6	2	8	8512	792	15.1
Affordable								
Oakwood	OAK	1136	105.9	2	3	3408	316.5	7.1
Harwood	HAR	1296	117.6	2	3	3780	352.5	7.1
Warwick	WAR	1274	117.6	2	5	6370	593.2	11.9
2 BEDS								
Type AFF	AFF-NSS	873	81.1	2	4	3492	324	9.5
Grand Total					42	34234	3168	100.0

House type	Bed	Person	Required NDS	Achieved NDS	Compliant (Y/N)
Type AFF	2 Bed	4p	79m2	81m2	Y
Stratford	2 Bed	4p	79m2	81m2	Y
Thornbury	3 Bed	4p	84m2	91m2	Y
Windsor	3 Bed	4p	84m2	98m2	Y
Alderley	3 Bed	4p	84m2	98m2	Y
Oakwood	4 Bed	5p	97m2	105m2	Y
Harwood	4 Bed	5p	97m2	117m2	Y
Warwick	4 Bed	5p	97m2	127m2	Y

NOTES:

Existing drainage easement



Rev	Date	Amendment	By

Duchy Homes Ltd
1125 Century Way, Torquay Park, Leeds, LS15 8EB

DEVELOPMENT

Mount Vernon Road
Worsborough

TITLE

S106 Agreement Plan

DATE

07/09/2021

SCALE

1:500 @ A1

DRAWN

BM

DRAWING NO

DH-WORS-S106-001

REV



Scaled @ 1:500

0 10m 20m 50m

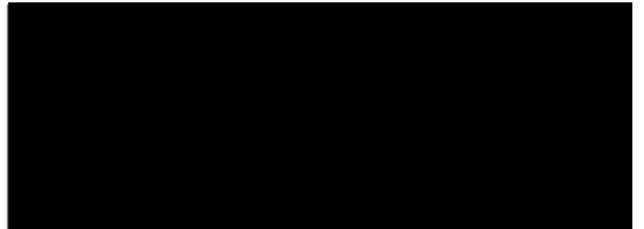
IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

THE COMMON SEAL of BARNESLEY)
METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed to this)
Deed in the presence of:)



~~Borough Secretary/Authorised Officer~~

EXECUTED as a **DEED** by)
RICHARD JASON ALEXANDER ELMHIRST)
in the presence of:-)



Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



Section 106 Agreement

EXECUTED as a **DEED** by)
DUCHY HOMES LIMITED)
acting by:)
in the presence of:-

Director Signature:



Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

