DATED 8th December **2011**

PLANNING AGREEMENT

between

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

(2) GLEESON DEVELOPMENTS LIMITED

Planning Obligation Agreement under
Section 106 Town & Country Planning Act 1990

relating to land at

Lowfield Road, Bolton Upon Dearne

Chattertons Solicitors
5 South Street
Horncastle
Lincs
LN9 6DS
DX 29501 Horncastle

Ref: JSP.RCH.GLEES003.62

THIS DEED is made the 8th day of December 2011

BETWEEN

1) BARNSLEY METROPOLITAN BOROUGH COUNCIL of 1 Gateway Plaza, Sackville St, Barnsley, South Yorkshire S70 ("the Council")

2) GLEESON DEVELOPMENTS LIMITED whose registered office is at Sentinel House Harvest Crescent Ancells Business Park, Fleet, Hampshire GU51 2QG (Company Registration Number; 00848808 ("the Owner")

RECITALS

(A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and by whom the obligations and covenants contained in this Deed are enforceable

(B) The Owner is the registered proprietor of the registered land being registered at the Land Registry under title numbers SYK33950 and SYK393219.

(C) The Owner has submitted the Planning Application to the Council for the residential development of the Land

(D) To facilitate the granting of Planning Permission the parties have agreed to enter into this Deed to secure the obligations contained hereafter.

OPERATIVE PART

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Deed the following terms shall have the following meanings: -

"1972 Act"	The Local Government Act 1972
" 1990 Act"	The Town and Country Planning Act 1990 (as amended)
" 2000 Act"	The Local Government Act 2000

"Affordable Housing"	Has the meaning given to it in annex B of the Planning "Policy Statement 3: Housing" as published by the Department for Communities and Local government dated November 2006
"Affordable Housing Commuted Sum"	Means £385,800 (three hundred and eighty five thousand and eight hundred pounds) to be used towards the provision of Affordable Housing with the administrative area of the Council
"Affordable Housing Units"	Means the Affordable Rented Housing Units and the Social Rented Dwellings to be provided in accordance with Schedule 1
"Affordable Rented Housing Units"	Means Affordable Housing owned and managed by an RSL and let to households who are eligible for social rented housing. The rent is not subject to the national rent regime and is subject to the requirement that a rent of no more than 80% of the local market rent is charged comprising one x 2 bedroom semi-detached dwelling with an internal floor area of no less than 60.48 sq. Metres and being that plot shown shaded orange on Plan 2 and comprising plot number 58 and one x 2 bedroom semi-detached dwelling with an internal floor area of 70.56 sq. Metres and being that plot shown shaded pink on Plan 2 and comprising plot number 20.
"the Chargee"	Means any mortgagee or charge of the RSL or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
"the Chargee's Duty"	Means the tasks and duties set out in paragraph 2 of the First Schedule

"Commencement of Development"	means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the 1990 Act save that for the purposes of this Deed the term is not to include operations in connection with site clearance, demolition, archaeological investigation, investigations for the purposes of assessing contamination, or for assessing the need for any diversion and laying out of services and the erection of means of enclosure for the purposes of site security and/or the display of advertisements and the expressions "Commence" and "Commence Development" is to be construed accordingly
"Completed" and "Completion"	In respect of a Dwelling, the issue of a Final Certificate under the Building Act 1984
" Development"	Means the development the subject of the Planning Application
"Index"	means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates
"Interest"	4% above the base rate published by the Bank of England from time to time
"Land"	Means the land at Lowfield Road, Bolton Upon Dearne registered under title numbers SYK33950 and SYK393219 and shown for identification purposes edged red on Plan 1

	annexed hereto
"Occupation"	Means occupation of a Residential Unit for any purpose 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 relating to security operations and "Occupied" and "Occupy" shall be construed likewise.
"Planning Permission"	Means the planning permission granted pursuant to the Planning Application .
" Planning Application"	Means an application for planning permission for a residential development of the Land and allocated the Council's reference number 2011/0963
"Practical Completion"	means issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect;
"Protected Tenant"	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 by a RSL (or similar arrangement where a share of the Affordable Housing Unit

	is owned by the tenant and a share is owned by the RSL) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the RSL all the remaining shares so that the tenant owns the entire Affordable Housing Unit
"Public Open Space Commuted Sum"	Means the sum of £78,472 (seventy eight thousand four hundred and seventy two pounds)
"Residential Units"	Means all of the Dwellings, excluding the Affordable Housing Units and "Residential Unit" shall be construed accordingly
"RSL"	Means Yorkshire Housing Limited (Company Registration Number 30443R) whose registered office is at Yorkshire House, 6 Innovation Close, Heslington, York, YO10 5ZS
"Social Rented Dwellings"	Means Affordable Housing owned and managed by a local authority or a RSL which is available for rent to persons whose incomes are insufficient to meet their housing need and for which guideline target rents are determined through the central government national rent regime or at an equivalent level to those rents should target rents or the rent regime cease to exist. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition ofgrant comprising one x 2 bedroom dwelling with an internal floor area of no less than 60.48 sq. Metres as shown shaded yellow on plan 2 and comprising plot number 25 and five x 2

bedroom semi-detached dwellings with an internal floor area of no less than 70.56 sq. Metres and shown shaded green on plan 2 and comprising of plot numbers 8, 27, 31, 34 and 52.

1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed

1.3. Where in any Schedule or part of any Schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that Schedule or (if relevant) part of that schedule

1.4. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them and in respect of the Council shall include the successors to their respective statutory functions

1.5. Words importing the singular meaning where the context so admits include the plural meaning and vice versa

1.6. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner

1.7. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise

1.8. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall

include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2. LEGAL BASIS

2.1. This Deed is made pursuant to Section 106 of the 1990 Act section 2 of the 2000 Act and section 111 of the 1972 act and all other enabling powers

2.2. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as local planning, authority against the Owner.

3. CONDITIONALITY

3.1. This Deed is conditional upon:

3.1.1. the grant of the Planning Permission

3.1.2. the Commencement of Development save for the provisions of clauses 4.1.3, 4.1.6 and 6.1.2, which shall come into affect immediately upon completion of this Deed.

4. AGREEMENTS AND DECLARATIONS

4.1. The parties agree and declare that:

4.1.1. the provisions of this Deed shall not be enforceable by any person who is not a party to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

4.1.2. The covenants given in this Deed shall cease to have effect if

4.1.2.1. the Planning Permission is quashed revoked or otherwise withdrawn at any time; or

4.1.2.2. the Planning Permission expires prior to the Commencement of Development; or

4.1.2.3. the Planning Permission is modified by any statutory procedure without the consent of the Owner

4.1.3. this Deed shall be registrable as a local land charge by the Council as local planning authority

4.1.4. Following the performance and satisfaction of all of the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all relevant entries made in the Register of Local Land Charges in respect of this Deed

4.1.5. no person or party shall be liable for a breach of the restrictions and obligations contained in this Deed after that person or party has parted with all of his interest in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting

4.1.6. the Owner agrees to give the Council immediate written notice of any change in ownership of its legal interest in the Land occurring before all the obligations under this Deed have been discharged save in respect of the sale of the completed Dwellings to consumers and the sale of Lands for infrastructure purposes to any supplier of services for the general use of the Development or any material part of it

4.1.7. nothing in this Deed 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 (whether or not on appeal) after the date of this Deed

4.1.8. nothing contained in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and the local education authority and their rights powers duties and obligations under all public and private statutes byelaws and

regulations may be as fully and effectually exercised as if the Council were not parties to this Deed

4.1.9. if any severable provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired

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

4.1.11. the obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated to that statutory undertaker nor enforceable against any owner-occupier for the time being of a completed dwelling on the Land or their successors in title.

4.1.12. where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed

4.1.13. any notices requests demands or other written communications pursuant to this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party

4.1.14 if any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date payment is made

4.1.15 any sum payable under this deed by the Owner shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable

5. **COUNCIL'S COVENANTS**

The Council covenants to comply with its obligations set out in this Deed (including any obligations contained in the Schedules) and further to use all reasonable endeavours to grant the Planning Permission within 7 days of the date of this Agreement.

6. **OWNER'S COVENANTS**

6.1.1. The Owner covenants with the Council to observe and perform the obligations as set out in First and Second Schedules

6.1.2. The Owner covenants to pay to the Council on the completion of this Deed the reasonable legal costs of the Council in preparing, negotiating and completing this Deed of £1000

7. **JURISDICTION**

This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

8. **EXECUTION AND DELIVERY**

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed

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

FIRST SCHEDULE

The Owner covenants with the Council to observe and perform the following obligations

Affordable housing

1. The Social Rented Dwellings shall not be used or occupied other than as Social Rented Dwellings and the Affordable Rented Housing Units shall not be used or occupied other than as Affordable Rented Housing Units save that the Social Rented Dwellings may be used as Affordable Rented Housing Units and the Affordable Rented Housing Units may be used as Social Rented Dwellings with the written permission of the Assistant Director of Planning and Regulatory Service and further this obligation shall not be binding on

   1.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected tenant or any successor in title thereto and their respective mortgagees and chargees
   1.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty; or
   1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor

2. The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than three months' prior notice to the Council of its intention to dispose and:

   2.1 in the event that the Council responds within three months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its best endeavours to secure such transfer

2.2 if the Council does not serve its response to the notice served under paragraph 2 within three months then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule as open market dwellings.

2.3 if the Council or any other person cannot within three months of the date of service of its response under paragraph 2.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 2.1 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule as open market dwellings.

3. Subject to paragraph 4 below not to cause or permit more than 26 of the Residential Units to be Occupied until a contract for the sale and construction of the Affordable Housing Units has been entered into with the RSL on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.

4. If a contract for the sale and construction of the Affordable Housing Units has not been entered into by the RSL within three calendar months of a reasonable offer for the same being made in writing to the RSL by the Owner (or such earlier date agreed in writing by the Council) and the Owner has produced evidence in writing to the reasonable satisfaction of the Council that they have made all reasonable endeavours to secure a contract for sale and construction of the Affordable Housing Units to the RSL then the Owner will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule as open market dwellings and the restriction on Occupation of more than 26 Residential Units at paragraph 3 above shall cease to apply subject to prior payment by the Owner to the Council of the Affordable Housing Commuted Sum

5. Any agreement to sell or transfer the Affordable Housing Units to the RSL shall contain the following provisions:-

a. The grant by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Units

b. A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Dwellings on the Land.

6. The Affordable Housing Units shall be constructed to the same standard as the Residential Units

7 Within 10 Working Days of the date of the contract(s) for sale of the Affordable Housing Units to the RSL the owner shall pay £1,796 (one thousand seven hundred and ninety six pounds) towards the provision or improvement of affordable housing in the administrative area of the Council PROVIDED THAT for the avoidance of doubt where the Affordable Housing Commuted Sum has been paid this clause shall cease to have effect.

SECOND SCHEDULE

Public Open Space Commuted Sum

The Owner hereby covenants with the Council to observe and perform the following obligation:-

1. Not to Commence Development until the Public Open Space Commuted Sum shall have been paid to the Council in full provided that if the Council shall not have or expended or committed to expend any or all of the Pubic Open Space Commuted Sum for the purpose of the provision or improvement of public open space within Bolton Upon Dearne (which may include improvements at GS97 Brickyard Ponds GS1580 Barnsley Boundary Walk GS963 The Green Prospect Road and GS491 Ingsfield Lane Sports ground) within the period of 15 years beginning on the date that the Public Open Space Commuted Sum was paid to them then so much of the Public Open Space Commuted Sum that remains unspent shall be refunded by the Council to the Owner upon written request.

THE COMMON SEAL OF)

BARNSLEY METROPOLATIN)

BOROUGH COUNCIL was affixed in the presence of:)

[redacted]

Authorised Signatory:

No. 1942
IN REGISTER

EXECUTED AS A DEED by)

GLEESON DEVELOMENTS LIMITED)

in the p[redacted]

Director

Directo[redacted]

PLAN 1

HOUSE TYPE

code	type	no
201	2 bed semi det/ terr	10
202	2 bed semi det	10
301	3 bed semi det	11
302	3 bed semi det	4
304	3 bed detached	3
309	3 bed semi det	4
310	3 bed detached	2
401	4 bed detached	5
403	4 bed detached	3
404	4 bed detached	1
405	4 bed detached	7
TOTAL		60

- NOT FOR USE ON SITE -
PROVISIONAL LAYOUT DRAWING, SUBJECT TO PLANNING APPROVAL

[redacted]

LOWFIELD MEADOWS

RETAINED LAND

RETAINED LAND

TREATMENT WORKS

SECTION A-A

SECTION B-B

RAILWAY LINES

Richard Ward Dip

Chartered Architectural Technologist
Architectural Design & Development Consultant

Richard F. Ward
M.C.I.A.T.
Telephone 01604 41840

2 Beatrice Close
Weston Favell
Northampton NN3 3PH

LOWFIELD ROAD
BOLTON ON DEARNE

planning layout

GLEESON
HOMES & REGENERATION

Scale	1:500 at A1
Date	18.07.11
Dwg No	944/20

PLAN 2.

[redacted]

HOUSE TYPE

code	type	no
201	2 bed mid dd/ter	10
202	2 bed end dd	10
301	3 bed end dd	11
302	3 bed end dd	4
304	3 bed detached	3
309	3 bed end dd	4
310	3 bed detached	2
401	4 bed detached	5
403	4 bed detached	3
404	4 bed detached	1
405	4 bed detached	7
TOTAL		60

- NOT FOR USE ON SITE -
PROVISIONAL LAYOUT DRAWING, SUBJECT TO PLANNING APPROVAL

LOWFIELD MEADOWS

RETAINED LAND

LOWFIELD ROAD

- Social Rented Standard 2 bed.
- Social Rented enlarged 2 bed.
- Affordable Rented standard 2 bed.
- Affordable Rented enlarged 2 bed.

RETAINED LAND

SECTION A-A

6.00m WIDE LANDSCAPE BUFFER ZONE

TREATMENT WORKS

5.00m HIGH ACOUSTIC FENCE TO SPECIALIST DESIGN

RAILWAY LINES

SECTION B-B

[redacted]

Richard Ward Design

Chartered Architectural Technologist
Architectural Design & Development Consultant

Richard B. Ward
M.C.I.A.T.
Telephone 01204 428869

2 Beacon Close
Worsley Fold
Westhoughton BOLTON BL5 3PH

LOWFIELD ROAD
BOLTON ON DEARNE

planning layout

GLEESON
HOMES & REGENERATION

Scale	1:500 at A1
Date	19.07.11
Drg No	344/2F