

DATED THIS DAY OF 2008

BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)

STYLE GROUP UK LIMITED (2)

NICKY 1 LLP (3)

NICKY 4 LLP (4)

CLYDESDALE BANK PLC (5)

Agreement pursuant to Section 106 of the
Town and Country Planning Act 1990
relating to the proposed development of
land at Station Road, Wombwell,
Barnsley, South Yorkshire

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120 Wellington Street
Leeds
LS1 4LT

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THIS AGREEMENT is made the day of 2008
BETWEEN:-

- (1) BARNSELY METROPOLITAN BOROUGH COUNCIL of Town Hall Barnsley South Yorkshire S70 2TA (“the Council”)
- (2) NICKY 1 LLP (LLP No. OC313816) whose registered office is at St James Building 79 Oxford Street Manchester M1 6HT (“the First Owner”)
- (3) NICKY 4 LLP (LLP No. OC313820) whose registered office is at St James Building 79 Oxford Street Manchester M1 6HT (“the Second Owner”)
- (4) STYLE GROUP UK LIMITED (Company No. 03937383) whose registered office is at Style House Eldon Place Bradford BD13 3AZ (“the Developer”)
- (5) CLYDESDALE BANK PUBLIC LIMITED COMPANY (Scot Co Regn No. 1111) of Yorkshire Bank 20 Merrion Way Leeds LS2 8NZ (“the Mortgagee”)

1. DEFINITIONS

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

“Affordable Housing”- subsidised housing (as defined in the Council’s Planning Advice Note 34 in Policy H7 and in the Department of Communities Planning Policy Statement 3) that will be available to persons who cannot afford to rent or buy housing generally available on the open market

“Affordable Housing Units- that part of the Development comprising 25% of the residential units to be constructed on the Site together with one car parking space for each residential housing unit comprising 20% Intermediate Affordable Housing and 80% Social Rented Affordable Housing and as provided for in the Fourth Schedule and situate in locations on the Site agreed by the Council as part of the developer’s reserved matters planning application

“Chargee”- any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

“Chargee’s Duty”-the tasks and duties set out in paragraph 3 of the Fourth Schedule to this Agreement

“the Decision Notice” - a decision notice in the form of the draft notice annexed in the First Schedule to this Agreement

“the Development” - the development of the Site pursuant to the Planning Application

“Intermediate Affordable Housing” – shall mean housing at prices and rents above those of Social Rented Affordable Housing but below market price or rents

“Market Housing Units”- that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

“Plan 1” - the plan attached to this Agreement and marked Plan 1

“Plan 2” - the plan attached to this Agreement and marked Plan 2

“the Planning Act” - the Town and Country Planning Act 1990 (as amended at the date of this Agreement)

“the Planning Application” - the application made by the Developer to the Council for outline planning permission for the construction on the Site of residential dwellings under application reference []

“the Planning Obligations” – the obligations on the part of the Developer arising pursuant to Clause 5 of this Agreement

“the Planning Permission” - the grant of planning permission pursuant to the Planning Application and the subsequent grant of reserved matters approval

“Practical Completion”- the issue of a certificate of practical completion by the Developer’s architect or in the event that the Development is constructed by a party other than the Developer 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
- b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- c) has been granted a shared ownership lease by a Registered Social Landlord (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant or a share is owned by the Registered Social Landlord)in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Social Landlord all the remaining shares so that the tenant owns the entire Affordable Housing Unit

“the Public Open Space” – the land shown edged in green on Plan 2

“Registered Social Landlord”- a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act and who is approved by the Council (such approval not to be unreasonably withheld or delayed)

“the Site” - the land and premises on the north west side of Station Road Wombwell Barnsley shown edged in red on Plan 1.

“Social Rented Affordable Housing”- shall mean rented housing owned and managed by a Registered Social Landlord

2. RECITALS

- 2.1 The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Site is situated.
- 2.2 The First Owner is registered as the proprietor of the Site at the Land Registry under Title Number SYK275674
- 2.3 The Second Owner is registered as proprietor of the Public Open Space at the Land Registry under Title Number SYK244646
- 2.4 The Developer has made the Planning Application to the Council
- 2.5 The Site is in an employment zone and is currently occupied by Windowstyle UK Limited ("the Company") which is an important manufacturer and employer in the Barnsley District
- 2.6 The Council acknowledge that the Site is not adequate for the continuing manufacturing needs of the Company which now requires to relocate its business elsewhere within the district of the Council
- 2.7 The Council as a condition of granting the Planning Permission pursuant to the Planning Application will not permit the Site to be occupied other than by the Company until the Developer shall have secured to the satisfaction of the Council the relocation of the business of the Company to an alternative site within the district of the Council
- 2.8 The Council has determined that (subject to the completion of this Agreement) planning permission for the carrying out of the Development should be granted in the form of the Decision Notice

3. STATUTORY POWERS

This Agreement is made pursuant to Section 106 of the Planning Act (and is a planning obligation for the purposes of that Section) and the Council is the Local Planning Authority by which the provisions of this Agreement are intended to be enforceable

4. EFFECTIVE DATE

- 4.1 The obligations imposed upon the First Owner the Second Owner and the Developer pursuant to this Agreement shall not become binding upon them respectively until:
 - 4.1.1 The Council has issued the Decision Notice; and
 - 4.1.2 The Development has been begun by the carrying out of a material operation as defined in Section 56(4) of the Planning Act
- 4.2 For the purposes of determining whether or not a material operation (as so defined) has been carried out there shall be disregarded such operations as demolition site clearance site preparation diversion and laying of services and construction of access or service roads

- 4.3 If the Planning Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure or expires before the Development has been implemented this Agreement shall cease to have effect (except as regards any part of the Development which has by then been implemented)

5. PLANNING OBLIGATIONS

- 5.1 The Developer hereby covenants with the Council and (as a separate covenant) with the First Owner and the Second Owner to observe and perform its obligations pursuant to the Second Schedule the Third Schedule and the Fourth Schedule to this Agreement
- 5.2 The First Owner the Second Owner and the Mortgagee hereby consents to the creation of the Planning Obligations for the purposes of Section 106 of the Planning Act

6. EXTENT OF LIABILITY

No person shall be liable for any breach of the Planning Obligations:

- 6.1 Occurring before that person has acquired or after that person has parted with his interest in the Site or in that part of the Site to which any such obligation relates; or
- 6.2 If that person shall be a purchaser tenant or other occupier of an individual dwelling comprised within the Development

7. CONFIRMATION OF PERFORMANCE OR DISCHARGE

The Council will upon written request of the Developer at any time after the Planning Obligations have been performed or otherwise discharged issue written confirmation of such performance or discharge and thereafter forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement

8. ABANDONMENT

The Developer may at any time before implementing Planning Permission by notice in writing served on the Council elect to abandon the Planning Permission whereupon the Developer shall be released from all liabilities under this Agreement but (for the avoidance of doubt) shall not be entitled thereafter to implement the Planning Permission

9. REGISTRATION AS LOCAL LAND CHARGE

This Agreement is a Local Land Charge and shall be registered as such by the Council

10. RECEIPT

The Council acknowledges receipt of a copy of this Agreement

11. DISPUTE OR DIFFERENCES

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force

12. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

Save as expressly provided none of the provisions of this Agreement are intended or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement other than (where the context so permits) the successor in title of the named parties

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties hereto the day and year first above written

THE FIRST SCHEDULE

The Decision Notice

[Insert here a copy of the notice when conditions have been settled]

THE SECOND SCHEDULE

Employment

1. Not to commence the Development until the Developer shall have secured to the satisfaction of the Council (as expressed by confirmation in writing from the Council's Chief Planning Officer) the relocation of the business of the Company from the Site to a site within the district of the Council and for the avoidance of doubt planning permission and an enforceable contractual commitment to secure alternate premises for the Company's existing business shall be deemed to be satisfactory and acceptable to the Council
2. The Developer shall use such reasonable endeavours consistent with prevailing commercial and economic conditions to re-establish the business currently carried on at the Site so that the relocated business operates in terms of the size of the business operation and the number of employees as near as may be commercially achievable to the existing business on the Site PROVIDED THAT the Developer shall be under no absolute obligation to replicate precisely any aspect of the current business operation which due to changed circumstances may be outside the Developer's reasonable control

THE THIRD SCHEDULE

Provision of Public Open Space

1. The Developer shall lay out and landscape the Public Open Space to the reasonable satisfaction of the Council [in accordance with the plans and specifications appended in the [] Schedule] prior to the occupation of more than 75% of the dwellings comprised in the Development
2. Upon practical or substantial completion of the works mentioned in paragraph 1 of this Schedule (“the Works”) the Developer shall serve notice upon the Council (“the Inspection Notice”) who shall forthwith arrange for the Works to be inspected. If the Works shall have been carried out in accordance with paragraph 1 of this Schedule the Council shall thereupon issue a certificate of completion of the Works (“the Certificate of Completion”) such certificate to bear the date of inspection (“the Completion Date”). If the Council shall not have inspected the Works within six weeks of the date of the Inspection Notice (“the Inspection Date”) the Works will thereupon be deemed to have been carried out satisfactorily and the Inspection Date will be deemed to be the Completion Date for these purposes
3. The Developer shall maintain the Works for a period of 12 months from the Completion Date (the “Maintenance Period”) making good any defects in the Works discovered or becoming apparent in the Maintenance Period.
4. Upon the expiration of the Maintenance Period (“the Handover Date”) the Developer shall transfer the Public Open Space in a neat and tidy condition to a residents management company established for the purpose of maintaining the Public Open Space.
5. The transfer of the Public Open Space shall contain :
 - (a) The reservation of such rights as may be requisite to enable the Site to be developed and sold including (without limitation) the grant of such rights as may be appropriate to the relevant service undertakers in respect of services installed or to be installed within the Public Open Space.
 - (b) A covenant (for the benefit of the remainder of the Site) restricting the use of the Public Open Space to use as amenity land for the enjoyment of the residents of the Site their invitees and licensees.

THE FOURTH SCHEDULE

Affordable Housing

1. The Developer and the First Owner shall use all reasonable endeavours to enter into a contract to sell the Affordable Housing Units to a Registered Social Landlord prior to the commencement of the Development and subject as hereinafter provided no Market Housing Units shall be occupied until the Developer and the First Owner have entered into such contract PROVIDED THAT if no such contract shall be entered into within a period of six months from the commencement of the Development then this condition shall no longer prevent the occupation of Market Housing Units
2. No more than 50% of Market Housing Units shall be occupied until all the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of such has been received by the Council

3. The Affordable Housing Units shall be constructed to an equally high standard and quality as the Market Housing Units and must achieve the design standards set out in the Council's policies D1 to D6 and be constructed to Code 3 sustainable homes standard and satisfy related policy documents including the Housing Corporation's 'Scheme Development Standards' and 'Secured by Design'.
4. From the date of Practical Completion of the Affordable Housing Units they shall not be used for other than Affordable Housing save that this obligation shall not be binding on:
 - 4.1 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; or
 - 4.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty; or
 - 4.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
5. 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 two months' prior notice to the Council of its intention to dispose and:
 - 5.1 in the event that the Council responds within one month 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 all reasonable endeavours to secure such transfer
 - 5.2 if the Council does not serve its response to the notice served under paragraph 3 within two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule
 - 5.3 if the Council or any other person cannot within two months of the date of service of its response under paragraph 5.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 5 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 5 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

6. The Developer shall endeavour to sell the Affordable Housing to a Registered Social Landlord from a list provided by the Council provided that:
 - 6.1 Such sale shall be at a price representing [no more than [%] of the then current market value of the relevant Affordable Housing Unit] [the Council's then published current pricing structure for Affordable Housing]
 - 6.2 The transfer or lease of each Affordable Housing Unit shall contain covenants and/or restrictions with the intention of procuring that any subsequent resale of such unit shall also be at a price no greater than [%] of the open market value of such unit at the time of such

resale [the Council's then current published pricing structure for Affordable Housing.] and shall incorporate the Council's standard occupancy clauses for Affordable Housing

6.3 In respect of leasehold Affordable Housing Units these shall limit initial service charges to a rate no greater than £450 per annum and inflated by increases in the Retail Prices Index on the 1st April thereafter and shall be granted on a long lease of not less than 125 years at ground rent not exceeding £10 per annum.

7. If the Developer shall not have exchanged contracts with a Registered Social Landlord for the sale of any Affordable Housing Unit so provided within six months of the commencement of the Development then the Developer shall be entitled to serve notice in writing on the Council (at any time thereafter) inviting the Council to nominate a purchaser of any such unit.

8 If:

8.1 Within three months after service of such notice the Council shall not have nominated a purchaser; or

8.2 Within nine months of the date of commencement of the Development any such purchaser shall not have exchanged contracts for the purchase of the relevant unit then (in either such case)

the Developer shall be entitled to sell any such unit in the open market and free from any of the restrictions mentioned in the proviso to paragraph 5 of this Schedule.

EXECUTED as a Deed by)
BARNSELY METROPOLITAN BOROUGH)
COUNCIL in the presence of:)

Authorised Signatory

EXECUTED as a Deed by)
STYLE GROUP UK LIMITED acting by its)
Director and Secretary or by two Directors:)

Director

Secretary

EXECUTED as a Deed by)

NICKY 1 LLP acting by its Director and Secretary)
or by two Directors:)

Director

Secretary

EXECUTED as a Deed by)
NICKY 4 LLP acting by its Director and Secretary)
or by two Directors:)

Director

Secretary

EXECUTED as a Deed by)
CLYDESDALE BANK PUBLIC LIMITED)
COMPANY in the presence of:)

Authorised Signatory