

Dated

29 June

2015

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING
UNDER SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990
RELATING TO LAND AT ELLWOOD, LUNDWOOD, S71 5JF.**

BY

GLEESON DEVELOPMENTS LIMITED

TO

BARNSELY METROPOLITAN BOROUGH COUNCIL

THIS DEED is dated 24 June 2015

- (1) **GLEESON DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 00848808 whose registered office is at Sentinel House Harvest Crescent, Ancells Business Park, Fleet, Hampshire, GU51 2UZ ("the Owner");

TO

- (2) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("the Council")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner owns the Property, and has made a Planning Application and is proposing carry out the Development.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

Base Rate: the base lending rate from time to time of the Bank of England.

Commencement of Development: the carrying out in relation to the Development of any material operation' as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; site survey works; temporary access construction works; archaeological investigation; and erection of any fences and hoardings around the Property.

Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property described in the Planning Application.

Dwelling Occupation: the completion of the sale of an open market dwelling on the Development.

House Type Schedule

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The Well Garden, Brampton Green,
Great Ouseburn, North Yorks. YO26 9RT
Tel 01423 379105

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Education Contribution: the sum of £140,480 towards the cost of the provision or improvement of education facilities within Lundwood and the surrounding area.

First Occupation: the date following completion of the Development to the extent that the Development is capable of beneficial occupation and use for the purposes permitted by the Planning Permission, upon which any part of the Development is first Occupied 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.

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

Occupation and Occupied: means occupation in respect of the Development.

Plan: the plan attached to this deed.

Planning Application: an application for planning permission for the erection of 97 dwellings including parking spaces together with the provision of associated roads, sewers and infrastructure on the Property, which was validated by the Council on 14th April 2015 under reference number 2015/0436.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application.

Public Open Space Contribution: the sum of £84,500 towards the cost of the provision or improvement of public open space within Lundwood and the surrounding area.

Property: the land at Ellwood, Lundwood, S71 5JF shown edged red on the Plan and registered at HM Land Registry under title number SYK622884.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: a day (other than a Saturday, Sunday or public holiday) in England when banks in London are open for business.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force at the date of this deed.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this deed under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and plans are to the clauses and plans of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 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.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. **STATUTORY PROVISIONS**

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990.

- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Owner covenant with the Council:

- (a) to give at least 5 Working Days written notice to the Council of the Commencement Date.
- (b) to pay the Education Contribution to the Council prior to First Occupation.
- (c) To pay the Public Open Space Contribution to the Council prior to the 25th Dwelling Occupation.

4. GENERAL

- 4.1 The obligations on the part of the Owner contained in this deed are not intended to be and shall not be binding on:-
- 4.1.1 owners and occupiers of individual completed dwellings on the Property from time to time or their successors in title; and
 - 4.1.2 Statutory service providers that own service sites (e.g. pumping stations and substations) on the Property

5. RELEASE

No person shall be liable for any breach of an obligation, restriction or covenant contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

6. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. INTEREST ON LATE PAYMENT

If either the Education Contribution or Public Open Space Contribution have not been paid to the Council on the dates specified at clause 4, the Owner shall pay interest on the Education Contribution or Public Open Space Contribution for the periods from the due dates to and including the date of payments at the Default Interest Rate.

9. INDEXATION

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 the sum is payable.

10. COUNCIL'S COSTS

The Owner shall pay to the Council on the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed in the sum of £[500].

11. OWNERSHIP

The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

12. NOTICES

Any notice or other communication required to be given under this deed shall be in writing and shall be delivered personally, or sent by pre-paid first class

post or recorded delivery or by commercial courier, to any person required to receive the notice or communication at its address as set out below:

- (a) Council: the Director of Legal and Governance of Legal Services Division, PO Box 600, Barnsley, South Yorkshire, S70 9EZ;
- (b) Owner: Steve Gamble of 6 Europa Court, Sheffield Business Park, Sheffield, S.Yorks, S9 1XE

or as otherwise specified by the relevant person by notice in writing to each other person.

12.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am]on the second Working Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13. THIRD PARTY RIGHTS

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Council and the successors to its respective statutory functions shall have any rights to enforce any term of this deed.

14. SEVERANCE

14.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

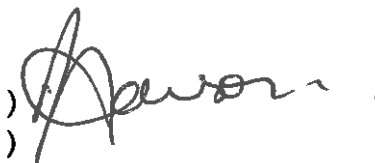
14.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

15. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law 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.

SIGNED as a DEED on behalf of
GLEESON DEVELOPMENTS LIMITED by
in the presence of:

)  .
)

Director

Signature of witness

 .

Name (in block capitals)

MATT SMITH

Address

65 SHAWESPEARE CRESENT
DONFIELD S18 1NB.