DATED 27th June 2017

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

-and-

(2) JAGUAR ESTATES LIMITED and WORTLEY CONSTRUCTION LIMITED

-and-

(3) JEFFERY ERNEST SILVERWOOD and BRENDA MARY TINGEY

-and-

(4) BDW TRADING LIMITED

PLANNING OBLIGATION BY DEED OF AGREEMENT

Section 106 of the Town and Country Planning Act 1990

relating to land off Summerdale Drive and Carrs Lane, Cudworth

Planning Application Ref: 2017/0577

WALKER MORRIS LLP
Kings Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
Ref: JVG/BL.4-10311

THIS AGREEMENT is made the 21st **day of** June **2017**

BETWEEN: -

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Smithies Lane Depot, Smithies Lane, Barnsley S71 1NL (**"Council"**) of the first part; and

(2) **JAGUAR ESTATES LIMITED** (Company No. 02190562) whose registered office is situate at 201 High Street, Ecclesfield, Sheffield S35 9XB and **WORTLEY CONSTRUCTION LIMITED** (Company No. 01048904) whose registered office is situate at Unit 1, Wortley Court, Fall Bank Industrial Estate, Dodworth, Barnsley S75 3LS (together **"the First Owners"**) of the second part; and

(3) **JEFFERY ERNEST SILVERWOOD** of 4a Aspin Lane, Knaresborough HG5 8ED and **BRENDA MARY TINGEY** of Beechfield House, Fore Street, West Camel, Yeovil BA22 7QW (together **"the Second Owners "**) of the third part; and

(4) **BDW TRADING LIMITED** (Company No. 03018173) whose registered office is situate at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF (**"the Developer"**) of the fourth part.

RECITALS

(A) 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 Site is situated and by whom the planning obligations hereby created are enforceable.

(B) The First Owners are the registered proprietors of the freehold interest in those parts of the Site which are registered at the Land Registry under title numbers SYK379803 and SYK379798.

(C) The Second Owners are the registered proprietors of the freehold interest in that part of the Site which is registered at the Land Registry under title number SYK610168.

(D) The Developer is the beneficiary of an option to purchase the Site contained in an agreement dated 24 June 2014 and made between (1) the First Owners (2) the Second Owners and (3) the Developer.

(E) The Developer submitted the Application to the Council.

(F) The Council is minded to grant the Planning Permission subject to the completion of this Agreement.

(G) The Parties to this Agreement hereby agree to be bound by this Agreement and (in the event that the Council grants a Planning Permission) to observe and perform the covenants agreements conditions and stipulations contained herein.

1 DEFINITIONS AND INTERPRETATION

1.1 For the purposes of this deed the following expressions shall have the following meanings:

"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
"Affordable Housing"	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 to the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it);
"Affordable Housing Contribution"	means the sum of £601,693.00 (six hundred and one thousand six hundred and three pounds) to be paid by the Owners to the Council in accordance with paragraph 1 of the Second Schedule as a contribution towards the provision or improvement of Affordable Housing within the Council's administrative area;
"Application"	means the planning application for the Development validated by the Council on 10 May 2017 under reference number 2017/0577;
"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 erection of contractors work compound erection of

	site office erection of fencing to site boundary and reference to **"Commence Development"** shall be construed accordingly;
"Contributions"	means together the Affordable Housing Contribution, the Education Contribution and the Recreation Space Contribution;
"Development"	means the development of 278 dwellings with associated roads, public open space and landscaping upon the Site;
"Dwelling"	means a residential unit built on the Site pursuant to the Planning Permission and reference to **"Dwellings"** shall be construed accordingly;
"Education Contribution"	means the sum of £925,000 (nine hundred and twenty five thousand pounds) to be paid by the Owners to the Council in accordance with paragraph 3 of the Second Schedule as a contribution towards the cost of providing or improving classrooms and resource spaces which includes increasing the size of the existing school hall; remodelling the existing school meals kitchen, PE/dining storage; relocation of the multi-use games area, car parking and footpath facilities at Birkwood Primary school;
"Index"	means the All Construction Output Prices Index published by the Office for National Statistics or any official publication substituted for it; and if discontinued without substitution the Retail Prices Index published by the Office for National Statistics or any official publication substituted for it;
"Index Linked"	means such increase to any sum or sums payable under this Agreement on an annual basis or pro rata per diem from the date of the Planning Permission to the date the payment is due (or calculation as the case may be) based upon the Index last published before the date of the Planning Permission;
"Interest"	means interest at four per cent above the base lending rate of

the Barclays Bank Plc from time to time;

"Management Company"	means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Owners for the purposes carrying out future maintenance and management of the SuDS and:- 1. which is incorporated in England and Wales; 2. which has its registered office in England or Wales; and 3. whose primary objects permit it to maintain and renew the SuDS
"Occupation"	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 and references to "**Occupy**" shall be construed accordingly;
"Owners"	means together the First Owners and the Second Owners;
"Parties"	means together the Council, the First Owner, the Second Owner and the Developer;
"Plan"	means drawing number YW-04-03 attached hereto at Annex I;
"Planning Permission"	means a planning permission for the Development granted by the Council pursuant to the Application;
"Recreation Space Contribution"	means the sum of £273,306.92 (two hundred and seventy three thousand three hundred and six pounds and ninety two pence) to be paid by the Owners to the Council in accordance with paragraph 2 of the Second Schedule as a contribution towards the cost of enhancing the existing formal recreation provision at the Dorothy Hyman Stadium, Snydale Road,

	Cudworth;
"Site"	means all that shown edged red on the Plan;
"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;
"SuDS"	means a surface water drainage system to be provided on the Site as part of the Development which is designed to mimic the natural drainage of the Site;
"SuDS Commuted Sum"	means a sum to be paid (if applicable) by the Owners to the Council to cover all costs associated with the anticipated future maintenance of the SuDS for the lifetime of the Development **SUCH SUM** to be agreed between the Owners and the Council pursuant to paragraph 3 of the Third Schedule;
"SuDS Land"	means that part or parts of the Site upon which the SuDS is to be provided;
"Working Day"	means any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday; and
"Yorkshire Water"	means Yorkshire Water Services Limited in its capacity as the statutory sewerage undertaker for the area within which the Site is located for the purposes of the Water Industry Act 1991 or any or any successor organisation to such statutory functions.

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

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

1.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons shall include companies, corporations and firms and all such words shall be construed interchangeably.

1.5 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.

1.6 Any reference to an Act of Parliament shall include modifications, extensions or re-enactments 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.

1.7 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its respective statutory functions.

1.8 In this Agreement clause headings are for reference only and shall not affect the construction of this Agreement.

1.9 Any covenant by the Owners not to do any act or thing shall be deemed to include a covenant not to cause permit suffer or procure the doing of that act or thing.

2 LEGAL BASIS AND EFFECT

2.1 This Agreement contains planning obligations made under Section 106 of the 1990 Act and to the extent that the covenants, restrictions and requirements in this Agreement do not fall within the statutory scope of Section 106 of the 1990 Act they are made under Section 1 of the Localism Act 2011 and Section 111 of the Local Government Act 1972 and all other powers so enabling.

2.2 The obligations in the First, Second and Third Schedules are binding in their entirety upon Site and are enforceable against the Owners and their successors and assigns in title in accordance with Section 106(3)(b) of the 1990 Act.

3 CONDITIONALITY

3.1 Clause 4 and the First, Second and Third Schedules to this Agreement are conditional upon:

3.1.1 the granting of a Planning Permission by the Council; and

3.1.2 the Commencement of Development.

4 COVENANTS

4.1 Subject only to Clause 3 the Owners hereby covenant with the Council to perform, observe and comply with the covenants, restrictions, limitations and requirements contained in the First, Second and Third Schedules.

4.2 Subject to Clause 3 the Council covenants with the Owners to perform, observe and comply with the covenants, restrictions, limitations and requirements contained in the Fourth Schedule.

5 GENERAL

5.1 No person shall be bound by the terms of this Agreement or be liable for any breach of covenant contained in this Agreement: -

5.1.1 occurring after he or it has parted with his or its interest in the Site 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); or

5.1.2 (subject to paragraph 6 of the Third Schedule) if he or it is an owner-occupier or tenant of an individual Dwelling; or

5.1.3 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking.

5.2 The restrictions and requirements contained in this Agreement may be registered by the Council on the Local Site Charges Register for the purposes of the Local Site Charges Act 1975

5.3 If the Planning Permission shall expire or be revoked or at any time be materially modified without the consent of the Owners this Agreement shall terminate and cease to have effect and the Council shall if requested in writing to do so remove any entry relating to this Agreement from the Local Site Charges Register if it is reasonable and proper to do so.

5.4 The Parties will act in good faith in considering any approval consent certificate direction authority agreement action or expression of satisfaction required to be given or reached or taken by any Party and shall not be unreasonable or unreasonably withheld or delayed **PROVIDED THAT** nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its statutory functions and the rights powers duties and obligations of the Council under private or public statutes byelaws orders and regulations may be as fully and effectively exercised as if the Council was not a Party to this Agreement.

5.5 No waiver (whether express or implied) by the Council or the Owners of any breach in performing or observing any of the covenants terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the Owners from enforcing any of the terms or conditions or from acting upon any subsequent breach or default.

5.6 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 nor shall it affect any rights of any successor body to the Council.

5.7 If any provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law such provisions shall (to the extent required) be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement and in the event of any such deletion the Owners shall seek to negotiate in good faith with the Council in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

5.8 This Agreement is governed by and interpreted in accordance with the law of England and Wales.

6 DETERMINATION OF DISPUTES

6.1 The Parties agree that any differences and questions which arise between the Parties in connection with this Agreement may be referred for determination by an independent person ("**an Expert**") in accordance with the following provisions:

6.1.1 where such dispute relates to the construction of this Agreement or any other document referred to herein it shall be referred to a lawyer agreed upon by the Parties or in default of agreement within one month appointed (on the application of any Party) by or at the direction of the President or appointed deputy for the time being of the Law Society; or

6.1.2 where such dispute relates to the acceptability or otherwise of a scheme submitted in accordance with this Agreement it shall be referred to a Chartered Town Planner with suitable expertise in drainage matters agreed upon by the Parties or in default of agreement within one month appointed (on the application of any Party) by or at the direction of the President or appointed deputy for the time being of the Royal Town Planning Institute.

6.2 Notice in writing of the appointment of an Expert pursuant to this Clause 6 shall be given by the Expert to the Parties and he shall invite each to submit within a specified period (which will not exceed three weeks) any written representations each wishes to make to him and any submissions shall be provided to the Parties with an invitation to respond within a specified period (not exceeding two weeks).

6.3 The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.

6.4 The Expert shall give notice in writing of his decision with reasons to the Parties within six weeks of his appointment or within such extended period as the Parties may together allow.

6.5 The decision of the Expert shall be final on all matters referred to him and in the absence of manifest error shall be binding on the Parties.

6.6 If for any reason the Expert fails to make a decision and give notice in accordance with Clauses 6.3 to 6.5 any Party may apply to the President or appointed deputy for the time being of the Law Society or the Royal Town Planning Institute (as appropriate) for a substitute to be appointed in his place.

6.7 Each Party shall bear its own costs save that the fees of the Expert shall be in the Expert's award.

6.8 Nothing in this Clause shall be taken to fetter the Parties' ability to seek legal redress in the Courts (or otherwise) for any breach of the obligations in this Agreement.

7 NOTICES

7.1 All notices, requests and demands or other written communications to or upon the parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter or facsimile transmission to the party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other parties as its address for the purposes of this Clause 7:

7.1.1 to the Council: C/O The Head of Planning, Building Control and Sustainability Development Services, Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2015/1070; and

7.1.2 to the First Owners, the Second Owners and/or the Developer, at the respective addresses shown on page 2 of this Agreement.

8 INDEXATION

The Contributions shall be Index Linked.

9 VAT

All consideration given in accordance with the terms of this Agreement shall be exclusive of any Value Added Tax properly payable.

10 INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of actual payment.

IN WITNESS of which this Agreement has been duly executed as a deed and delivered on the day and year first before written.

FIRST SCHEDULE

(Notifications)

1 The Owners shall notify the Council of the intended date of the Commencement of Development not less than 5 (five) Working Days prior to such intended date;

2 The Owners shall notify the Council of the intended date of the of the first Occupation of the 10th Dwelling not less than 5 (five) Working Days prior to such intended date;

3 The Owners shall notify the Council of the intended date of the of the first Occupation of the 50th Dwelling not less than 5 (five) Working Days prior to such intended date;

4 The Owners shall notify the Council of the intended date of the first Occupation of the 139th Dwelling not less than 5 (five) Working Days prior to such intended date; and

5 The Owners shall notify the Council of the intended date of the first Occupation of the 200th Dwelling not less than 5 (five) Working Days prior to such intended date.

SECOND SCHEDULE

(Payment of the Contributions)

1 AFFORDABLE HOUSING CONTRIBUTION

1.1 The Owners shall not Occupy or allow the Occupation of more than 50 Dwellings until the Owners have paid the sum of £200,565.00 (two hundred thousand five hundred and sixty five pounds) (being the first instalment of the Affordable Housing Contribution) to the Council.

1.2 The Owners shall not Occupy or allow the Occupation of more than 139 (one hundred and thirty nine) Dwellings until the Owners have paid the sum of £200,564.00 (two hundred thousand five hundred and sixty four pounds) (being the second instalment of the Affordable Housing Contribution) to the Council.

1.3 The Owners shall not Occupy or allow the Occupation of more than 200 (two hundred) Dwellings until the Owners have paid the sum of £200,564.00 (two hundred thousand five hundred and sixty four pounds) (being the third and final instalment of the Affordable Housing Contribution) to the Council.

2 RECREATION SPACE CONTRIBUTION

The Owners shall pay the Recreation Space Contribution to the Council not later than the date being six months following the Commencement of Development.

3 EDUCATION CONTRIBUTION

3.1 The Owners shall not Occupy or allow the Occupation of more than 50 Dwellings until the Owners have paid the sum of £309,000.00 (three hundred and nine thousand pounds) (being the first instalment of the Education Contribution) to the Council.

3.2 The Owners shall not Occupy or allow the Occupation of more than 139 (one hundred and thirty nine) Dwellings until the Owners have paid the sum of £308,000.00 (three hundred and eight thousand pounds) (being the second instalment of Education Contribution) to the Council.

3.3 The Owners shall not Occupy or allow the Occupation of more than 200 (two hundred) Dwellings until the Owners have paid the sum of £308,000.00 (three hundred and eight thousand pounds) (being the third and final instalment of the Education Contribution) to the Council.

THIRD SCHEDULE

(SuDS)

1 Prior to the Occupation of any Dwellings the Owners shall submit a scheme for the management and maintenance of the SuDS for the Council's approval ("**the SuDS Scheme**").

2 The SuDS Scheme shall include the detailed design of the SuDS together with a construction timetable for the implementation of the SuDS.and a programme for the maintenance of the SuDS throughout the lifetime of the Development ("**the Maintenance Schedule**").

3 The SuDS Scheme shall also include the Owners' proposals for the future management and ownership of the SuDS which for the avoidance of doubt may provide for:

3.1 The Owners to retain ownership of the SuDS Land in perpetuity;

3.2 The Owners to transfer of the SuDS Land to a Management Company and in such case the Owners shall supply to the Council:

3.2.1 the details of the Management Company (including a certified copy of the Memorandum and Articles of Association of the Management Company) to whom the SuDS Land will be transferred upon its completion;

3.2.2 a copy of the draft transfer of the SuDS Land from the Owners to the Management Company; and

3.2.3 the funding mechanism of the Management Company;

3.3 The Owners to transfer the SuDS Land to Yorkshire Water; or

3.4 The Owners to transfer the SuDS Land to the Council and in such case the Owners shall supply to the Council:

3.4.1 a copy of a draft transfer of the SuDS Land from the Owners to the Council; and

3.4.2 details of the Owners' estimate of the SuDS Commuted Sum.

4 The Owner shall not Occupy or allow Occupation of more than 10 Dwellings until the SuDS Scheme has been approved by the Council and the approved SuDS Scheme including the Maintenance Schedule shall be implemented in accordance with the timetable contained within the approved SuDS Scheme or if no timetable is contained then the SuDS shall be completed within a reasonable period of time.

5 Should the approved SuDS Scheme provide for the management and ownership by the Owners and/or a Management Company pursuant to paragraphs 3.1 or 3.2 above and the Owners and/or Management Company fail in their performance of the maintenance obligations under the approved SUDS Scheme the Council may in default perform those obligations and charge the cost of doing so to the Owners and/or the Management Company (as applicable).

6 If after reasonable endeavours by the Council it is unable to recover its costs pursuant to paragraph 5 above from the Owners and/or Management Company the Council may recover its costs from each individual Dwelling owner **PROVIDED THAT** if the Council does seek to recover its costs from individual Dwelling owners such charge per Dwelling shall be calculated by dividing the total cost to the Council of the performance of the maintenance obligations by the total number of Dwellings served by the SuDS at the time of the performance of the maintenance obligation concerned.

FOURTH SCHEDULE

(The Council's Covenants)

1 CONTRIBUTIONS

1.1 The Council shall issue separate receipts on request for any sum paid to it under the terms of this Agreement.

1.2 The Council shall place all sums paid to the Council under this Agreement in an interest bearing account or in separate accounts as the Council shall at its discretion decide.

1.3 The Council shall apply all sums paid to the Council under this Agreement towards the relevant purpose(s) described in Clause 1.1 of this Agreement and not to any other purposes.

1.4 The Council shall (on the reasonable request of the payee or the payee's nominee) evidence that the Contributions have been so applied in accordance with paragraph 1.3 of this Schedule.

2 REPAYMENT

2.1 In the event that any Contribution paid to the Council under this Agreement or any part or parts thereof are not expended or committed to be spent within 5 (five) years of the date of payment then the Council shall repay the sum or sums not expended plus interest accrued to the Owners or its nominee.

ANNEX I

(Plan)


NEWDALE AVE
SUMMERDALE ROAD
NEWTOWN AVE
NEWLAND AVE
F2
0
0.001
kilometres



LOCATION PLAN LEGEND:

Site Boundary

Rev	Description	Date

Urban Design

Urban Design
Barratt House
Forest Business Park
Bardon Hill
Leicestershire
LE67 1UB

01530 276276

Project

Land off Carrs Lane
Cudworth

Drawing Title

Site Location Plan

Scale

1:3000 @ A3

Date

27.04.15

Drawn By

SM

Drawing Ref

YW-04-03

BARRATT HOMES

THE COMMON SEAL of **BARNSLEY**)

METROPOLITAN BOROUGH)

COUNCIL was hereunto affixed to this)

Deed in the presence of:-)

Borough Secretary/Authorised Signatory

PRB 27/6/17

No. 425
IN REGISTER

EXECUTED AS A DEED but not)

delivered until the date hereof by)

JAGUAR ESTATES LIMITED)

acting by:)

Director

Director / Secretary

EXECUTED AS A DEED but not)

delivered until the date hereof by)

WORTLEY CONSTRUCTION LIMITED)

acting by:)

Director

Director / Secretary

EXECUTED AS A DEED but not)

delivered until the date hereof by)

JEFFERY ERNEST SILVERWOOD) J E Silverwood

in the presence of a witness:)

Signature:

Name of witness: MICHAEL RAYMOND SIMPSON

Address: 18 WILLOW CRESCENT
CLIFFORD
WETHERBY
LS23 6JX

Occupation: SITE MANAGER

EXECUTED AS A DEED but not)

delivered until the date hereof by)

BRENDA MARY TINGEY) B Tingey

in the presence of a witness:)

Signature: SK Burns

Name of witness: SANDRA KATHLEEN BURNS

Address: APPLEMEAD
FORE STREET, WEST CAMEL
SOMERSET
BA22 7DW

Occupation: RETIRED

SIGNED and **DELIVERED** as a **DEED**)

(but not delivered until the date hereof) by)



A. DONOGHUE

and)

D. COE

as the Attorney in the name of)

BDW TRADING LIMITED)

in exercise of the power conferred upon)

them by a Power of Attorney)

dated 16 September 2014)

in the presence of:-)

Witness Signature

Name JPURPLE

Address

Barratt & David Wilson Homes
Raynham House
2 Capitol Close
Morley
Leeds
LS27 0WH

Occupation STRATEGIC LAND MANAGER