

Dated 9th July 2020

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

and

**WARRIOR DEVELOPMENTS LIMITED**

**Agreement under Section 111 of the Local Government Act 1972**

**land known as Former Goldthorpe Primary School Site, High Street, Goldthorpe,  
Rotherham, S63 9NQ**

## Contents

| Clause                                  | Page |
|-----------------------------------------|------|
| 1. DEFINITIONS AND INTERPRETATION ..... | 1    |
| 2. INTERPRETATION .....                 | 2    |
| 3. COMMENCEMENT AND LEGAL EFFECT .....  | 2    |
| 4. COVENANTS .....                      | 3    |
| Schedule – Planning Agreement.....      | 4    |

**This Deed** is made on

9th July

2020

**Between**

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and
- (2) **WARRIOR DEVELOPMENTS LIMITED** with company registration number 02525771 and registered office address Tattersall House, East Parade, Harrogate, North Yorkshire, United Kingdom, HG1 5LT ("the Developer").

**Whereas**

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situated and is the authority.
- (B) The Council is the owner of an estate in fee simple absolute in possession of the Land under freehold title number .....
- (C) The Developer is desirous to acquire from the Council the Land.
- (D) The Developer submitted the Planning Application to the Council for permission to carry out the Development.
- (E) The Council has decided to grant Planning Permission for the Development subject to the completion of this Deed without which planning permission for the Development would not be granted.

**This Deed is made in pursuance of Section 111 of the Act and witnesses as follows**

1. **DEFINITIONS AND INTERPRETATION**

- 1.1. The definitions and rules of interpretation shall apply as follows:-

|            |                                            |
|------------|--------------------------------------------|
| <b>Act</b> | the Local Government Act 1972 (as amended) |
|------------|--------------------------------------------|

|                    |                                                                                                                                                                         |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Development</b> | means the development of the Land by the erection of a 1,394 sq.m (gross) retail unit (Use Class A1) with access, car parking, hard and soft landscaping, trolley bays, |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                             |                                                                                                                                                                                                         |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | electricity substation and associated works                                                                                                                                                             |
| <b>Land</b>                 | the Land known Former Goldthorpe Primary School Site, High Street, Goldthorpe, Rotherham, S63 9NQ and shown for identification edged red on the Plan.                                                   |
| <b>Plan</b>                 | the plan which is annexed to this Deed.                                                                                                                                                                 |
| <b>Planning Agreement</b>   | the Agreement in the form of that appended to the Schedule hereto to be duly entered into with the Council pursuant to the terms of Section 106 of the Town and Country Planning Act 1990 (as amended). |
| <b>Planning Application</b> | the application (including plans and drawings) submitted by the Developer to the Council for permission to carry out the Development (reference: 2019/0518).                                            |
| <b>Planning Permission</b>  | the planning permission granted by the Council pursuant to the Planning Application.                                                                                                                    |

## 2. **INTERPRETATION**

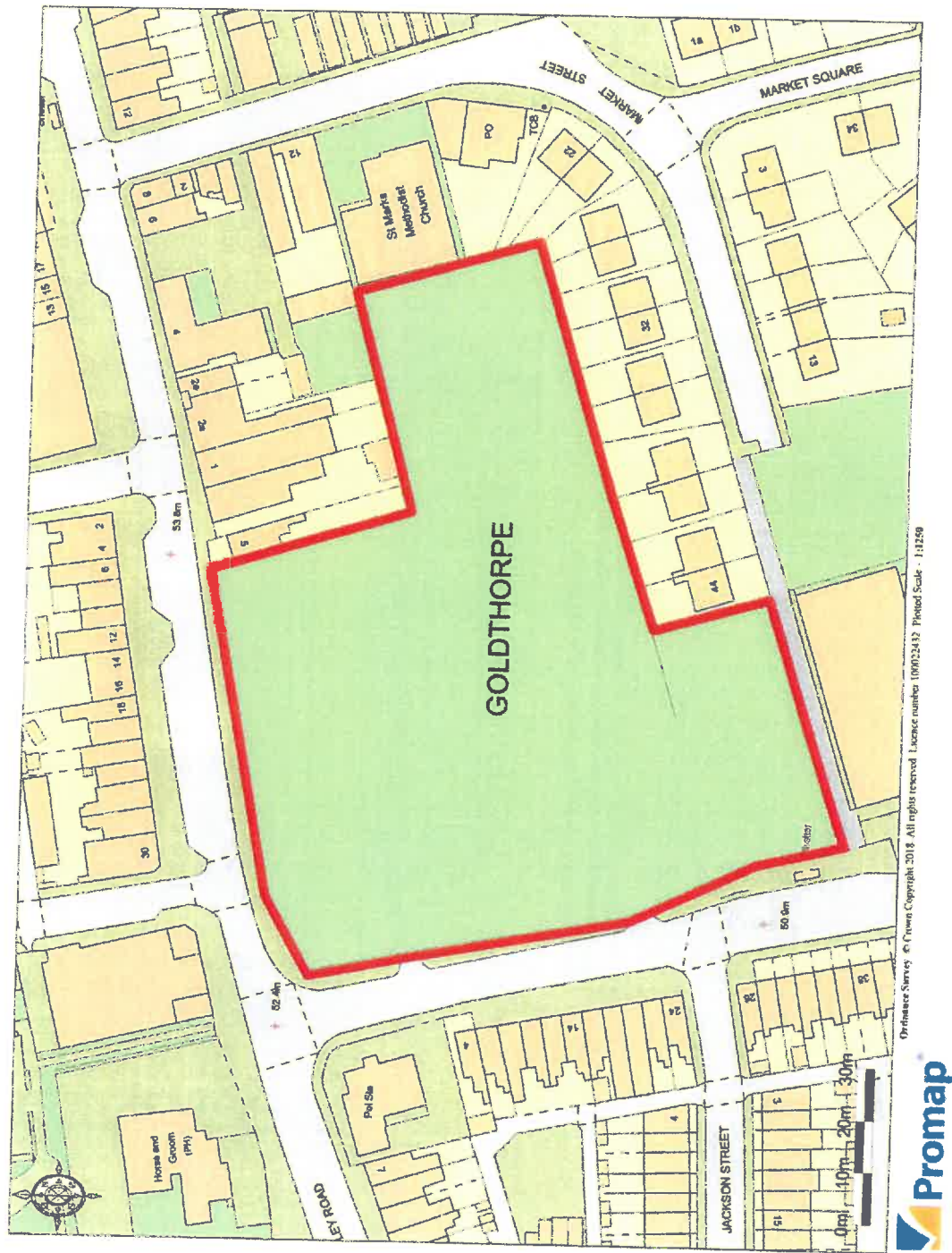
- 2.1. Reference to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations.
- 2.2. Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 2.3. Reference to a clause or schedule shall unless the context otherwise admits be a reference to a clause or schedule of this Deed.

## 3. **COMMENCEMENT AND LEGAL EFFECT**

The provisions hereof shall take effect on the date hereof.

- 3.1. Save as provided for by this Deed nothing in this Deed shall be treated as giving rise to any rights or to third parties under the Contracts (Rights of Third Parties) Act 1999.

## Location Plan



Land off High Street, Goldthorpe

*Handwritten signature*

3.2. If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.

3.3. If the Planning Permission expires through operation of law or is otherwise quashed or revoked such that it may no longer be implemented this Deed shall forthwith determine and cease to have effect.

4. **COVENANTS**

4.1. This agreement is entered into pursuant to the powers contained in Sections 111 of the Local Government Act 1972 and 33 of the Local Government (Miscellaneous Provisions Act 1982 and all other enabling powers.

4.2. The Developer hereby covenants to enter into the Planning Agreement in the form of that appended to the Schedule hereto on the date that it acquires the Land from the Council and not to implement the Planning Permission until the Planning Agreement has been executed by the Developer.

4.3. The Council hereby covenants as follows:

4.3.1. to issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter;

4.3.2. to enter in to the Planning Agreement with the Developer on the date that it disposes of the Land to the Developer in the form of that is appended to the Schedule hereto.

**Schedule – Planning Agreement**

DATED

9

2020

BARNSELY METROPOLITAN BOROUGH COUNCIL

And

WARRIOR DEVELOPMENTS LIMITED

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990 relating to land  
known as Former Goldthorpe Primary School Site, High Street, Goldthorpe,  
Rotherham, S63 9NQ

A.C. Frosdick, LL.B. DipLG,  
Executive Director Core Services  
Solicitor to the Council  
Barnsley Metropolitan Borough Council  
Town Hall,  
Barnsley, S70 2TA.

**THIS DEED OF AGREEMENT** is made the                      day of  
Two Thousand and Twenty

**BETWEEN**

- (1) **BARNSELEY METROPOLITAN BOROUGH COUNCIL** of Town Hall  
Barnsley South Yorkshire S70 2TA ("the Council") of the first part and
- (2) **WARRIOR DEVELOPMENTS LIMITED** with company registration  
number 02525771 and registered office address Tattersall House, East  
Parade, Harrogate, North Yorkshire, United Kingdom, HG1 5LT ("the Owner")  
of the second part

**RECITALS**

- (1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the Authority by whom the obligations contained in this Agreement are enforceable
- (2) The Owner is the registered proprietor of the Land registered under Land Registry Title Number [                      ]
- (3) The parties have agreed to enter into this Deed 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.

**NOW THIS DEED WITNESSETH AS FOLLOWS:-**

**DEFINITIONS**

1 For the purposes of this Deed the following expressions shall have the following meanings

"the 1990 Act" means the Town and Country Planning Act 1990 (as amended)

**“the Application”** means the outline planning application with the reference number 2019/0518 submitted to the Council to construct The Development

**“the Car Park”** means that part of the Development reserved for car parking shown edged blue on the attached plan

**“the 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 Town and Country Planning Act 1990 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” is to be construed accordingly

**“the Car park Scheme”** means a scheme for imposing a time limit of two hours (but not more than two hours) on cars parked within the Car Park including provisions for enforcing such limit (which scheme may be operated by (but is not limited to) use of ANPR cameras and which scheme may be implemented and/or operated and/or managed by the Owner or by an independent third party contractor).

**“the Development”** means the development of the Land by the erection of a 1,394 sq.m (gross) retail unit (Use Class A1) with access, car parking, hard and soft landscaping, trolley bays, electricity substation and associated works in accordance with the Planning Permission

**“Interest”** means interest at 3 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

**“the Land”** means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

**“Occupation and Occupied”**: means occupation for the purposes permitted by the Planning Permission from which the Development benefits 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 “Occupy” shall be construed accordingly.

**“the Plan”** means the plan annexed hereto

**“the Planning Permission”** means a planning permission to be granted pursuant to the Application in the draft form annexed to this Deed

## **CONSTRUCTION OF THIS DEED**

2.1 Where in this Deed 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 Deed.

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

2.3 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.

2.4 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.

2.5 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.

2.6 References to any party to this Deed 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 statutory functions.

### **LEGAL BASIS**

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as the local planning authority against the Owner

### **COMMENCEMENT**

4 The provisions of this Deed shall be conditional upon:

4.1 the grant of the Planning Permission; and

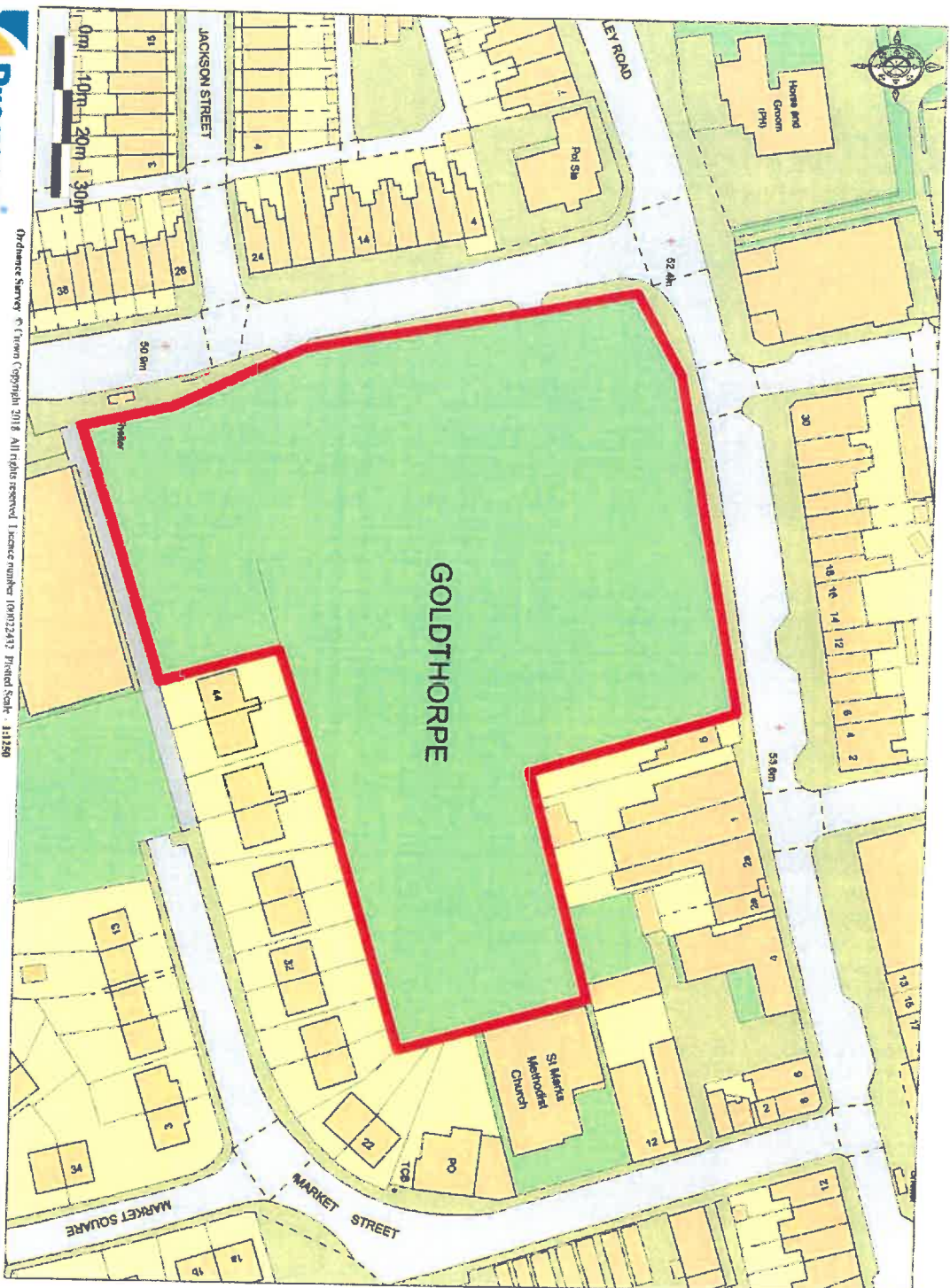
4.2 the Commencement of Development;

Save for the provisions of Clauses 6 – 11 (inclusive) which shall have immediate effect upon the completion of this Deed.

### **OWNER AND COUNCIL COVENANTS**

5.1 The Owner covenants with the Council as set out paragraph 1 of the Second Schedule

## Location Plan



Ordnance Survey © Crown Copyright 2018. All rights reserved. Licence number 100023417. Printed Scale: 1:11250

Land off High Street, Goldthorpe

*[Handwritten signature]*

5.2 The Council covenants with the Owner as set out in paragraph 2 of the Second Schedule

## **RELEASE**

6.1 No person shall be liable for any breach of a covenant, restriction or obligation 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.

## **MISCELLANEOUS**

7.1 The Owner shall pay to the Council on completion of this Deed the sum of £1000.00 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 This Deed shall be registrable as a local land charge by the Council.

7.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and any notices shall be deemed to have been properly served if sent by recorded delivery or special delivery to the principal address or registered office (as appropriate) of the relevant party.

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request to do

expeditiously effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.6 Insofar as any clause or clauses of this Deed 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 Deed.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.8 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.

7.9 No waiver (whether expressed or implied) by the Council 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 from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

7.10 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

## **INTEREST**

8 If any payment due by the Owner under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

## **NOTICES**

9.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by pre-paid first class post, or recorded delivery.

9.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as one party may notify in writing to the others at any time as its address for service.

9.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Head of Planning or designated Council Officer at Municipal Buildings, Dale Street, Liverpool L2 2DH quoting the Planning Application reference.

9.4 Where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## **DISPUTE PROVISIONS**

10.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed, at the agreement of all parties, such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

10.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 10.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties in equal shares.

10.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

10.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

10.5 This clause 10 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts.

## **JURISDICTION**

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

**IN WITNESS** whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

## **FIRST SCHEDULE**

All that land at land adjacent Former Goldthorpe Primary School Site, High Street, Goldthorpe, Rotherham, S63 9NQ and for the purpose of identification shown edged red on the Plan

## **SECOND SCHEDULE**

- 1 The Owner covenants to:
  - 1.1 submit for the approval of the Council a Car Park Scheme;
  - 1.2 not Commence the Development until the Car Parking scheme has been approved by the Council;
  - 1.3 not Occupy the development until any works required by the approved Car Park Scheme have been carried out to enable the said scheme to be operational; and
  - 1.4 effectively operate the approved Car Park Scheme (or use reasonable endeavours to procure that any third party given responsibility for its operation does so)
- 2 The Council covenants to act reasonably and without delay in approving the Car Park Scheme following any submissions made by the Owner.

IN WITNESS of the above the parties have executed this Deed as a deed and the same has been delivered by them or on their behalf on the above date

THE COMMON SEAL of BARNSELEY )

METROPOLITAN BOROUGH )

COUNCIL was hereunto affixed to this )

Deed in the presence of:- )

Executive director Core Services/

Legal Services Director /

Authorised Signatory



EXECUTED as a Deed by affixing )

The Common Seal of )

WARRIOR DEVELOPMENTS LIMITED )

  
MARK W. WARRION

a director in the presence of )

Witness: (Signature)

(Name)

(Address)

(Occupation)

Simon Bentley-Reiscoe

Gatebridge House

Gulway

HQ 3NT

Associate Director.

