

-Dated

2026

1. **BARNSELY METROPOLITAN BOROUGH COUNCIL**

**AND**

2. **GLEESON REGENERATION LIMITED**

**AND**

3. **MARK QUIRKE AND RICHARD ALLEN**

**AND**

4. **AMBERCLEAR LIMITED**

**DEED OF AGREEMENT**

Pursuant to s106 of the Town and Country Planning Act 1990 relating to land adjacent of Former Woolley Colliery Site, Woolley Colliery Road, Darton, Barnsley, S75 5JA

Application Reference: 2024/0867

## DATED

## PARTIES

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA (**the "Council"**);
- (2) **GLEESON REGENERATION LIMITED** (Registered Company Number: 03920096) whose registered office is at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE (**the Developer"**);
- (3) **MARK QUIRKE** of 23 Barnards Way, Kibworth Harcourt, Leicester, LE8 0RS and **RICHARD ALLEN** of Heywood House, Short Hill, Wilson, Melbourne, Derby, DE73 8AF (**the Owner"**); and
- (4) **AMBERCLEAR LIMITED** (Registered Company Number: 03652703) whose registered office is at 35 Clarence Street, Market Harborough, England, LE16 7NE (**the Mortgagee of the Land"**)

Hereinafter called the "**Parties**" and reference to "**Party**" shall be construed accordingly

## BACKGROUND

- (A) By virtue of the 1990 Act the Council is the local planning authority for the area in which the Land is situated and by who the Planning Obligations hereby created are enforceable.
- (B) The Owner is the mortgagee in possession of the freehold of the Land which is registered at the Land Registry under Title Number WYK647622.
- (C) The Developer has entered into a contract to purchase the land dated 27 June 2024.
- (D) The Application was submitted to the Council for planning permission for the Development.
- (E) The Parties have agreed to enter into this Deed in order to secure (subject to the terms and conditions of this Deed) the Planning Obligations herein.
- (F) The Parties have given due consideration to the provisions of Regulation 122 of the CIL Regulations and agree the Planning Obligations it contains are: (i) necessary to make the Development acceptable in planning terms; (ii) directly related to the Development; and (iii) fairly and reasonably related in scale and kind to the Development.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following expressions shall have the following meanings:

#### **1990 Act**

the Town and Country Planning Act 1990 (as amended)

#### **Additional First Homes Contribution**

means any financial contribution payable by the Owner to the Council in lieu of providing the full number of Affordable First Homes on the Land, calculated in accordance with the Council's adopted Affordable First Homes policy or any applicable supplementary planning guidance

### **Affordable First Homes**

Means dwellings which:-

- (a) are sold to qualifying purchasers at a discount of **at least 30%** against the market value (or such greater discount as may be required by the local planning authority in accordance with its adopted policy);
- (b) have that discount secured **in perpetuity** by a restriction on title or other mechanism approved by the local planning authority;
- (c) are intended for **first-time buyers** who meet the eligibility criteria set out in the Written Ministerial Statement of 24 May 2021 and the Planning Practice Guidance on First Homes (or any other amended or replacement guidance or policy), including but not limited to:
  - (i) a household income not exceeding **£80,000.00** (eighty thousand pounds ~~£80,000~~) **per annum** (or **£90,000.00** (ninety thousand pounds ~~£90,000~~) in London);
  - (ii) local connection requirements as specified by the Local Planning Authority;
- (d) form part of the definition of **Affordable Housing** in Annex 2 of the National Planning Policy Framework, as amended from time to time, and are delivered in accordance with the First Homes policy requirements published by the Department for Levelling Up, Housing and Communities

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### **Affordable Housing**

Means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in Annex 2 of the National Planning Policy Framework

### **Affordable Housing Commuted Sum**

Means the difference between the Open Market Value of the relevant Affordable Housing Unit and its Affordable Housing Unit Transfer Value on the date that it is disposed of on the open market free from the restrictions in this Deed (as calculated in accordance with SPD "Affordable Housing" (July 2022)) to be used by the Council in lieu of Affordable Housing on the Land, for the provision of, or improvements to existing, Affordable Housing elsewhere within the Council's administrative area

### **Affordable Housing Units**

Means the Dwellings comprising of the Affordable Housing for Rent Dwellings and Affordable First Homes to be provided in accordance with paragraph 1 of Schedule 1 and paragraph 1 of Schedule 2 and reference to "Affordable Housing Unit" shall be construed accordingly

### **Affordable Housing Units (Site A)**

Means 13 of the Dwellings comprising of the Affordable Housing for Rent Dwellings and Affordable First Homes to be provided in accordance with paragraph 1 of Schedule 1 and reference to "Affordable Housing Unit (Site A)" shall be construed accordingly

### **Affordable Housing Units (Site B)**

Means 10 of the Dwellings comprising of the Affordable Housing for Rent Dwellings and Affordable First Homes to be provided in accordance with paragraph 1 of Schedule 2 and reference to "Affordable Housing Unit (Site B)" shall be construed accordingly

**Affordable Housing Unit Prices**

Means the Affordable Housing Unit Transfer Value or such other discounted sum agreed with the Registered Provider that is financially viable for a Registered Provider to be able to purchase an Affordable Housing Unit

**Affordable Housing for Rent Dwellings**

Has the same meaning as the term "affordable housing for rent" contained in paragraph (b) of Annex 2 of the National Planning Policy Framework such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy and reference to "Affordable Housing for Rent Dwelling" shall be construed accordingly

**Affordable Housing Unit Transfer Value**

Means in relation to an Affordable Housing Unit 50% (fifty percent) of the Open Market Value of an equivalent open market unit (unless otherwise first agreed in writing by the Council)

**Affordable Rent**

Means an affordable rent of no more than 80% (eighty percent) of the Market Rent

**Application**

The application for planning permission for the Development which was submitted to the Council and which was given reference number 2024/0867 by the Council

**Armed Service Member**

A person who is lawfully enlisted, commissioned, or otherwise serving in the armed forces of a state, and who is subject to that force's command structure, duties, and disciplinary code while performing military service

**BNG Monitoring Contribution**

Means the financial sum of seventeen thousand pounds (£17,000.00) payable by the Owner to the Council pursuant to this Deed for the purpose of monitoring off site habitat creation/enhancement in accordance with the Council's adopted methodology required as a direct consequence of the Development.

**Certificate of Compliance**

Means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless Schedule 4 clause 4.2 applies also meets the Eligibility Criteria (Local)

**Chargee**

Means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) (each a "Receiver") of the whole or any part of the Affordable Housing Units;

**CIL Regulations**

Means the Community Infrastructure Levy Regulations 2010 (as amended)

**Commencement of Development**

The date upon which the Development is begun 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 for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of Site access, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly

**Contributions**

Means collectively the Open Space Contribution, the Education Contribution, the Sustainable Travel Contribution, and reference to "Contribution" shall be construed accordingly

**Councils Approved List**

Means the following Registered Providers:-

Acis Homes

Auxesia Homes

Anchor Hanover

Berneslai Homes Limited

South Yorkshire Housing Association Limited

Yorkshire Housing Limited

Guiness Northern Counties Limited

Equity Housing Group Limited

Park Properties Housing Association

Sanctuary Housing

Together Housing Association

Wakefield and District Housing Limited

And

Yorkshire Housing Association

Or such other Registered Provider(s) that may be nominated by the Owner and approved by the Council from time to time

**Default Interest Rate**

4% per annum above the base rate from time to time of the Bank of England

**Development**

the development of the Land pursuant to the Planning Permission

**Discount Market Price**

means the reduced sale price of a Dwelling, calculated as 30% below the Open Market Value.

**Disposal**

means any transfer, assignment, lease, sale, charge or other disposition of the whole or any part of an interest in the Land, whether legal or equitable, and whether for value or otherwise, but excluding the grant of any mortgage, easement or charge and any disposal made pursuant to the exercise of a mortgagee's power of sale

**Dwelling**

A residential unit that may be built on the Land pursuant to the Planning Permission and the term "Dwellings" shall be construed accordingly

**Education Contribution**

means the total financial sum of six hundred and seventy two thousand pounds (£672,000.00) (six hundred and seventy two thousand pounds) split between primary and secondary contributions as follows:-

- (a) £384,000.00 (three hundred and eighty four thousand pounds) Primary contribution
- (b) £288,000.00 (two hundred and eighty eight thousand pounds) Secondary contribution

payable by the Owner to the Council pursuant to this Deed, which has been calculated in accordance with the Council's adopted methodology for the purpose of funding capital works or other measures necessary to provide additional educational facilities (including nursery, primary, secondary and/or special educational needs provision) required as a direct consequence of the Development. Such contribution shall only be used for projects that increase or improve the capacity of schools or educational infrastructure within the area of impact of the Development, and shall be applied in accordance with Regulation 122 of the CIL Regulations and relevant national and local planning policy

**Eligibility Criteria (Local)**

Means the criteria published by the Council at the date of the relevant Disposal of an Affordable First Home which are met in respect of a Disposal of an Affordable First Home if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchaser's joint annual gross income) does not exceed the Income Cap (Local) (if any);
- (b) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria)

it being acknowledged that at the date of this Deed the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of an Affordable First Home

**Eligibility Criteria (National)**

Means criteria which are met in respect of a purchase of an Affordable First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchaser each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchaser's joint annual gross income) does not exceed the Income Cap (National).

**Expert**

A reputable person unconnected to any of the Parties of at least 15 years post qualification continual and continuing experience in the subject matter of the dispute

**First Home Owner**

Means the person or persons having the freehold or leasehold interest (as applicable) in an Affordable First Home other than:-

- (a) the Owner; or
- (b) a developer or other entity to which the freehold interest or leasehold interest in an Affordable First Home or in the land on which an Affordable First Home is to be provided has been transferred before that Affordable First Home is made available and is disposed of for Occupation as an Affordable First Home

**First Homes Owner**

~~means~~Means the person or persons having the freehold or leasehold interest (as applicable) in a First Home Unit other than:

- (a) the Owner
- (b) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which the First Home is to be provided has been transferred before that First Home is made available and is disposed of for the Occupation as a First Home;

**First Time Buyer**

Means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

**Footpath**

Means the footpath show in pink on the Footpath Plan

**Footpath Plan**

Means the plan annexed to this Deed at Annex 2

**Income Cap (Local)**

Means:

- (a) on the first sale of the Affordable First Home £80,000.00 (eighty thousand pounds ~~(£80,000.00)~~); or
- (b) on a second or subsequent sale of an Affordable First Home £80,000.00 (eighty thousand pounds ~~(£80,000.00)~~) or such sum (if any) as may be published by the Council from time to time as the "First Homes Income Cap (Local)" for Barnsley and is in operation at the time of the relevant Disposal of the First Home it being acknowledged that at the date of this Deed the Council has not set an Income Cap (Local)

**Income Cap (National)**

Means:

- (a) in the case of an Affordable First Home situated within the administrative area of any London Borough Council (including the City of London) £90,000.00 (ninety thousand pounds ~~(£90,000.00)~~); and

(b) in the case of any other Affordable First ~~Hime, Home, £80,000.00~~ (eighty thousand pounds ~~(£80,000.00)~~).

or such other sum as may be published for this purpose from time to time by the Secretary of State

#### **Index Linked**

Increased in accordance with the following formula:

- (a) Amount payable = the payment specified in this Deed x (A/B)
- (b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and
- (c) B = the figure for the Retail Price Index published by the Office for National Statistics that applied when that index was last published prior to the date of this Deed

#### **Initial Disposal**

means the first sale or transfer for value of an Affordable First Home by the Owner to a First Home Owner following Practical Completion of that Dwelling, and excludes any transfer to a Chargee or pursuant to the exercise of a Chargee's power of sale

#### **Land**

Means all the land known as Former Woolley Colliery Site, Woolley Colliery Road, Darton, Barnsley shown edged red on the Plan

#### **Local Connection Criteria**

such local connection criteria as may be designated and published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" it being acknowledged that at the date of this agreement the Council has not designated any criteria as Local Connection Criteria

#### **Market Rent**

Means the average local market rent for a Dwelling in Barnsley with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing and where the parties have each acted knowledgeable, prudently and without compulsion

#### **National Planning Policy Framework / NPPF**

the National Planning Policy Framework (as redefined by any amendment, replacement or re-enactment thereof)

#### **Occupation and Occupy and Occupied**

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

#### **Open Space Contribution**

Means the total financial sum of £184,625.66 (one hundred and eighty four thousand six hundred and twenty five pounds and sixty six pence ~~(£184,625.66)~~) split by way of the following:-

Unit type	Financial contribution per unit – Child and Youth Facilities	Financial contribution per unit – Formal Recreation	Number of unit type	Total
Site A				
2 bed	£503.51	£824.41	10	£13,279.20
3 bed	£604.48	£989.01	38	£60,552.62
4 bed	£705.47	£1,155	24	£44,651.28
Site A total				£118,483.10
Site B				
2 bed	£503.51	£824.41	12	£15,935.04
3 bed	£604.48	£989.01	21	£33,463.29
4 bed	£705.47	£1,155	9	£16,744.23
Site B total				£66,142.56
Total contribution				£184,625.66

payable by the Owner to the Council pursuant to this Deed, which has been calculated accordance with the Council's adopted methodology or Supplementary Planning Document, for the purpose of funding child and youth facilities together with formal open space improvements/creation off site required as a direct consequence of the Development.

#### **Open Market Dwellings**

means the residential units forming part of the Development which may be sold or let on the open market and which are not subject to any Affordable Housing requirements or restrictions contained in this Deed and reference to “**Open Market Dwelling**” shall be construed accordingly;

#### **Open Market Value**

means an amount for which the property or piece of land should exchange on the date of the valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion as agreed between the Owner and the Council or in the absence of agreement as determined by an Expert appointed in accordance with clause 14.3.1 assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;

#### **Plan**

The plan annexed to this Deed [at Annex 1](#)

#### **Planning Obligations**

The obligations and conditions and stipulations set out at the Schedules of this Deed and the term "Planning Obligation" shall mean any one of them;

**Planning Permission**

The outline planning permission that may be granted pursuant to the Application for the Development

**Practical Completion**

Means either:

The issue of a certificate signed by a chartered architect which confirms that a specified Dwelling has been constructed in compliance with building regulations and is completed so as to be fit for habitation as a residential housing unit; or

The issue of a Buildmark cover note by the National House Building Council;

**Protected Tenant**

Means as the case may be any tenant who:

- (a) Has exercised the right to acquire pursuant to the Housing Act 1996 or Housing Regeneration Act 2008 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 or voluntary right) in respect of a particular Affordable Housing Unit; or
- (c) Has been granted a shared ownership lease by the Owner (or similar arrangement where a share of the Affordable Housing Unit is owned by the Owner) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Owner all the remaining shares so that the tenant owned the entire Affordable Housing Unit; or
- (d) Has acquired an Affordable Housing Unit from a Housing Association through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendments or replacement thereof; and
- (e) Any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs (a) to (d) above

**Registered Provider**

Means a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England under Chapter 3 of that Act or any other registered provider of social housing as agreed in writing with the Council

**Reasonable Endeavours**

Means it is agreed by the Parties that the Party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure or such effort and/ or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the Party to perform such obligation) may be reasonable

**Reserved Matters Application**

Means an application for discharge of reserved matters pursuant to the Planning Permission

**Reserved Matters Approval(s)**

Means any approval granted in respect of a Reserved Matters Application

**Secretary of State**

Means the Secretary of State for Housing, Communities and Local Government or any substitute of any Inspector appointed by him/her

**Site A**

Means the area of the Land denoted as Parcel A on the Plan;

**Site B**

Means the area of the Land denoted as Parcel B on the Plan;

**Statutory Undertaker**

Any company corporation board or authority authorised by statute to carry out an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking and any company, corporation, board or authority of a similar or like nature

**Sustainable Travel Contribution**

means the financial sum of £85,500.00 (eighty five thousand five hundred pounds ~~(£85,500.00)~~) payable by the Owner to the Council pursuant to this Deed, which has been calculated in accordance with the Council's adopted methodology or Supplementary Planning Document, for the purpose of funding measures that promote and facilitate sustainable modes of transport as a direct consequence of the Development. Such measures may include, but are not limited to:

- (a) Improvements to walking and cycling infrastructure;
- (b) Provision of public transport services or facilities;
- (c) Travel planning initiatives, including monitoring and enforcement;
- (d) Installation of cycle parking, electric vehicle charging points, and related facilities;
- (e) Other interventions that reduce car dependency and encourage modal shift to active and low-carbon travel options.

The Sustainable Travel Contribution shall be applied in accordance with Regulation 122 of the CIL Regulations and relevant national and local planning policy, including Local Transport Plans and Local Cycling and Walking Infrastructure Plans ~~(("LCWIPs"))~~

**SYMCA**

Means the South Yorkshire Mayoral Combined Authority or any body or bodies undertaking the existing functions of SYMCA

**Working Day**

Any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday in England.

- 1.2 Reference in this Deed 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 for the time being made, issued or given under that enactment.

- 1.3 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.
- 1.4 Any words denoting natural persons shall include legal persons and vice versa.
- 1.5 Reference to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.
- 1.6 The expression Owner shall include their successors in title and assigns.
- 1.7 The expression Council shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8 Where a party includes more than one person any obligations of that party shall be joint and several.
- 1.9 Clause headings shall not affect the construction of this Deed.
- 1.10 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.

## **2. RECITALS**

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Deed for the area in which the Land is situated and is the authority by whom the Planning Obligations hereby created are enforceable.
- 2.2 The Application was submitted to the Council on behalf of the Developer for Planning Permission for the Development.
- 2.3 The Owner, by entering into this Deed does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements, conditions and stipulations hereinafter contained until they have disposed of their interest in the Land to the Developer.
- 2.4 The Parties have agreed to enter into this Deed in order to secure the Planning Obligations contained in this Deed and agree that the obligations comply with regulation 122 of the CIL Regulations.

## **3. OPERATIVE PROVISIONS**

- 3.1 This Deed is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Deed are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 The Planning Obligations comprised in this Deed shall not become effective until the following conditions are satisfied:
  - 3.2.1 the Planning Permission has been granted; and
  - 3.2.2 (except where stated otherwise in this Deed) the Commencement of Development
- 3.3 Subject to clause 3.2

3.3.1 The Owner hereby covenants with the Council that the Land shall be bound by and subject to the restrictions and provisions regulating the Development PROVIDED THAT

- (a) the covenants contained in Schedule 1 shall be binding on Site A only and cannot be enforced against Site B; and
- (b) the covenants contained in Schedule 2 shall be binding on Site B only and cannot be enforced against Site A.

3.3.2 The Council covenants with the Owner to comply with its obligations in Schedule 3.

3.4 It is agreed and declared as follows:

3.4.1 No party shall be bound by the terms of this Deed or be liable for the breach of any covenants restrictions or obligations contained in this Deed:

- (a) Occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurred (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- (b) If he shall be an occupier or tenant of any Open Market Dwelling or a purchaser of an individual Open Market Dwelling (or a mortgagee or chargee of an individual Open Market Dwelling lending money to such occupier purchaser or tenant);
- (c) (save for the provisions in paragraph 1.2 of Schedule 1) if he shall be an occupier or tenant of any of the Affordable Housing Units or a purchaser of an individual Affordable Housing Unit (or a mortgagee or chargee of an individual Affordable Housing Unit lending money to such occupier purchaser or tenant);
- (d) If it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.

3.4.2 The covenants given by the Owner contained herein are made with the intent that the covenants will bind its interest in the Land and be binding on and enforceable against their successors in title or assigns and subject to clause 3.4.1 those deriving title under the Owner.

3.4.3 if the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) (other than a modification under section 73 or 96A of the 1990 Act) or revoked this Deed shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Deed from the Register of Local Land Charges

3.4.4 Nothing in this Deed 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 Deed has become vested in law

3.4.5 Wherever this Deed requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed.

3.4.6 The Parties shall act reasonably and in good faith in the performance of their obligations in this Deed.

3.4.7 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

- 3.4.8 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Deed shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement or deed to be entered into pursuant to Section 106 and 106A of the 1990 Act PROVIDED THAT (for the avoidance of any doubt) this clause and the operation of it shall not ever require the duplication of any of the Planning Obligations in this Deed.
- 3.4.9 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.
- 3.4.10 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

#### **4. EXCLUSIONS AND RELEASE**

##### 4.1 If the Planning Permission:

- 4.1.1 expires before the Commencement of Development; or
- 4.1.2 is quashed by a court; or
- 4.1.3 is at any time revoked or modified (without the consent of the Owner),

this Deed shall determine and cease to have effect.

- 4.2 No obligation in this Deed shall be binding on or enforceable against the Mortgagee of the Land or any future chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Land unless and until such chargee or mortgagee has taken or entered into possession of the Land of part thereof in which case it shall also be bound by the covenants restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.
- 4.3 No obligation or liability in this Deed shall be binding or enforceable against any person who does not have an interest in the part of the Land to which the obligation relates and it is agreed that the Owner and the Mortgagees of the Land's liabilities and obligations under this agreement shall cease on completion of the sale of the Land to the Developer.

#### **5. REGISTRATION**

##### 5.1 The Deed is a local land charge and shall be registered as such by the Council.

##### 5.2 Following either:

- 5.2.1 the performance and satisfaction of all the Planning Obligations contained in this Deed; or
- 5.2.2 the determination of this Deed in accordance with Clause 4.2

the Council shall upon the written request of the Owner as soon as reasonably practicable affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

**6. NON-FETTER AND WAIVER**

6.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions.

6.2 No waiver (whether express 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 from acting upon any subsequent breach or default.

**7. FUTURE PERMISSIONS**

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 before or after the date of this Deed.

**8. INTEREST**

If any Contribution has not been paid to the Council by the date it is due then the sum payable shall attract interest on that sum or amount at the Default Interest Rate and such interest shall accrue on a daily basis for the period from the due date to and including the actual date of payment.

**9. INDEXATION**

9.1 Where reference is made in this Deed to an index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owner in writing.

9.2 All Contributions payable to the Council shall be Index Linked.

**10. VAT**

All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.

**11. SEVERANCE**

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

**12. CHANGE OF OWNERSHIP**

The Owner agrees with the Council to give the Council written notice within ten (10) Working Days of any change in proprietorship of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (of a company or usual address if not) together with the area of the Land purchased by reference to a plan PROVIDED THAT this obligation shall not apply to a Disposal of individual Dwellings.

**13. NOTIFICATION**

13.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

13.1.1 delivered by hand; or

13.1.2 sent by pre-paid first class post or other next working day delivery service.

13.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:

13.2.1 to the Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number;

13.2.2 to the Developer at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE;

13.2.3 to the Owner at ~~[ ]~~;15 Great Linns, Marston Mortaine, MK43 0DD;

13.2.4 to the Mortgagee of the Land at ~~[ ]~~;35 Clarence Street, Market Harborough, LE16 7NE;

or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 13.

13.3 Any notice, request, demand or other written communication given or served in accordance with Clause 13.1 or Clause 13.2 shall be deemed to have been received:

13.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00am on the next Working Day; or

13.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.

13.4 A notice, request, demand or other written communication given under this Deed shall not be validly given if sent by e-mail.

13.5 This Clause 13 does not apply to the service of any proceedings or other documents in any legal action.

#### 14. DISPUTE RESOLUTION

14.1 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.

14.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 (twenty) Working Days (or such other period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision shall (except in cases of manifest error, error of law and/or fraud) be final and binding on the parties.

14.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-

14.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 (ten) Working Days (or such other period as may be agreed) of receipt of the notice in Clause 14.2 above, shall be appointed or identified by the following persons:

(a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

14.3.2 The Expert shall act as an Expert and not as an arbitrator.

14.3.3 The Expert shall be required to give notice of their appointment to each of the parties ("**Expert's Notice**") and thereafter:

- (a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 (twenty) Working Days (or such extended period as the Expert shall allow) of receipt of the Expert's Notice;
- (b) the other parties shall have 20 (twenty) Working Days from the date of receipt of such written submission (or such extended period as the Expert shall allow) to respond;
- (c) the Expert may disregard any representations made out of this time; and
- (d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;
- (e) to the extent not provided for by this clause the Expert may in their reasonable discretion depending upon the nature and complexity of the case determine such other procedures and/or directions to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination, varying any time limit or direction and/or setting new directions and either of their own volition or upon the application of any party.

14.3.4 the Expert shall make his decision within 20 (twenty) Working Days (or such other reasonable period as the complexity of the matter may require) of the close of the period for submissions of written representations;

14.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and

14.3.6 each party shall bear its own costs (or as otherwise determined by the Expert) and the Expert's costs will be payable in the determination of the Expert.

14.3.7 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

14.3.8 either party may apply to the relevant body as part Clause 14.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

14.3.9 this clause 14 shall apply to the new Expert as if there were the first Expert appointed.

## 15. COSTS

On the date of this Deed the Developer shall pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of £1,500.00 (one thousand five hundred pounds ~~(£1,500.00)~~ (no VAT payable).

## 16. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

**17. COUNTERPARTS**

17.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

17.2 Transmission of an executed counterpart of this Deed (but for the avoidance of doubt not just a signature page) by email (in PDF format) shall take effect as delivery of an executed counterpart of this Deed.

17.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## SCHEDULE 1

### THE OWNER'S COVENANTS (SITE A)

The Owner hereby covenants with the Council:

#### 1 Affordable Housing

- 1.1 To provide 13 of the Dwellings on Site A as Affordable Housing, comprised of 10 ~~(ten)~~ Affordable Housing for Rent Dwellings and 3 ~~(three)~~ Affordable First Homes or such other tenure mix as agreed in writing with the Council.
- 1.2 The Affordable Housing for Rent Dwellings shall not be used or Occupied other than as Affordable Housing for Rent Dwellings save that this obligation shall not be binding on:
  - 1.2.1 any Protected Tenant or any mortgagee or charge 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;
  - 1.2.2 any Chargee provided that the Chargee shall have first complied with the obligations at paragraph 1.3 of this Schedule; or
  - 1.2.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 1.3 A Chargee shall prior to seeking to Dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give not less than 30 (thirty) Working Days prior notice to the Council of its intention to dispose and:
  - 1.3.1 In the event that the Council responds within 30 (thirty) Working Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its reasonable endeavours to secure such transfer;
  - 1.3.2 If the Council does not serve its response to the notice served under paragraph 1.3.1 of this Schedule within 30 (thirty) Working Days 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;
  - 1.3.3 If the Council or any other person cannot within 40 (forty) Working Days of the date of service of its response under paragraph 1.3.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.3 of this Schedule 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;

**PROVIDED THAT** at all times the rights and obligations in this paragraph 1.3 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 moneys outstanding under the charge or mortgage.

- 1.4 The plot locations of the Affordable Housing Units (Site A) shall be agreed in accordance with a Reserved Matters Approval.
- 1.5 Subject to paragraph 1.10 of this Schedule not to cause or permit more than 85% (eighty five percent) of the Open Market Dwellings on Site A (or such other percentage of Open Market Dwellings that may be first agreed in writing by the Council) to be Occupied until the Affordable Housing Units (Site A) have been constructed to the same external standard as the Open Market Dwellings and transferred at the Affordable Housing Unit

Prices and on terms that accord with Homes England funding requirements current at the date of this Deed.

- 1.6 The Affordable Housing Units (Site A) shall be transferred with the benefit of the following:-
  - 1.6.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units (Site A); and
  - 1.6.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units (Site A) all such services to be connected to the mains.
- 1.7 The Owner shall provide the Council with written notice within 20 (twenty) Working Days of:
  - 1.7.1 of the Commencement of Development on Site A; and
  - 1.7.2 of Occupation of the first Dwelling on Site A; and
  - 1.7.3 of Practical Completion and Occupation of 85% (eighty five percent) of the Open Market Dwellings on Site A (or such other percentage of Open Market Dwellings that may first be agreed in writing by the Council).
- 1.8 The Owner shall use its Reasonable Endeavours to market the Affordable Housing Units (Site A) and will promptly upon agreement of heads of terms for a transfer of the Affordable Housing Units to a Registered Provider submit to the Council the name of the chosen Registered Provider.
- 1.9 The Owner will thereafter use Reasonable Endeavours to exchange contracts for the sale of the Affordable Housing Units (Site A) and will keep the Council informed on the Owner's Progress.
- 1.10 If any of the Affordable Housing Units (Site A) have not been contracted for sale within 3 (three) calendar months of the date of Practical Completion of the last Affordable Housing Unit (Site A) or such earlier date agreed in writing by the Council and the Council is satisfied acting reasonably that paragraphs 1.7 to 1.9 of this Schedule have been complied with then the Owner shall pay the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Housing Units (Site A) not already transferred to a Registered Provider and upon such payment the Owner will be free to offer such Dwellings for sale on the open market free from obligations in this Schedule as Open Market Dwellings.

## 2 Sustainable Travel Contribution.

- 2.1 To pay £54,000 (fifty four thousand pounds) of the Sustainable Travel Contribution to the Council within 5 (five) Working Days of either:
  - 2.1.1 the 1 (one) year anniversary of Occupation of the 1<sup>st</sup> (first) Dwelling on Site A; or
  - 2.1.2 Occupation of 50% (fifty percent) of the Dwellings on Site A;

(whichever is the sooner) and not to Occupy more than 50% (fifty percent) of the Dwellings on Site A until £54,000 ~~of~~ (fifty four thousand pounds) of the Sustainable Travel Contribution has been paid to the Council.

### 3 Open Space Contribution

- 3.1 To pay £118,483.10 (one hundred eighteen thousand four hundred eighty three pounds and ten pence) of the Open Space Contribution to the Council in the proportions set out below:
- 3.1.1 50% (fifty percent) being the sum of £59,241.55 (fifty nine thousand two hundred forty one pounds and fifty five pence) prior to Occupation of 60% (sixty ~~per cent~~percent) of the Dwellings on Site A (or such other number of Dwellings that may be agreed in writing by the Council) and not to Occupy 60% (sixty ~~per cent~~percent) of the Dwellings on Site A (or such other number of Dwellings that may be agreed in writing by the Council) until £59,241.55 (fifty nine thousand two hundred forty one pounds and fifty five pence) of the Open Space Contribution has been paid to the Council.
- 3.1.2 The balance of 50% (fifty percent) being the sum of £59,241.55 (fifty nine thousand two hundred forty one pounds and fifty five pence) prior to Occupation of more than 85% (eighty-five ~~per cent~~percent) of the Dwellings on Site A (or such other percentage of Dwellings that may be agreed in writing by the Council) and not to Occupy more than 85% (eighty-five ~~per cent~~percent) of the Dwellings on Site A (or such other number of Dwellings that may be agreed in writing by the Council) until £59,241.55 (fifty nine thousand two hundred forty one pounds and fifty five pence) of the Off Site Space Contribution has been paid to the Council.

### 4 Education Contribution

- 4.1 To pay to the Council £423,360 ~~of 00~~ (four hundred twenty three thousand three hundred sixty pounds) the Education Contribution (comprising a £241,920 ~~00~~ (two hundred forty one thousand nine hundred and twenty pounds) primary contribution and £181,440 ~~00~~ (one hundred eighty one thousand four hundred and forty) secondary contribution) in the proportions set out below:-
- 4.1.1 50% being the sum of £211,680 ~~00~~ (two hundred eleven thousand six hundred and eighty pounds) payable on Occupation of the first Dwelling on Site A.
- 4.1.2 The remaining 50% being the sum of £211,680 ~~00~~ (two hundred eleven thousand six hundred and eighty pounds) payable on the first anniversary of the Occupation of the first Dwelling or on Occupation of 50% (fifty percent) of the Dwellings on Site A, whichever is the earlier.

### 5 BNG Monitoring Contribution and Recreation Provision

- 5.1 The Owner shall pay to the Council the BNG Monitoring Contribution prior to the Occupation of the Development on Site A.
- 5.2 The Owner shall provide and retain for the lifetime of the Development:
- ~~Dog~~ Dogfootpath upgrades to the Footpath; and
  - ~~dog~~ fouling bins;
  - ~~Educational and educational~~ signage;  ~~and both of which shall be located at intervals along the Footpath~~
  - ~~Footpath~~ upgrades

in accordance with a scheme to be submitted and agreed with the Council, including but not limited to a timetable for the implementation of the above and details of the upkeep of the signs

and footpath and emptying of the bins. This is to mitigate the impact of the Development on local biodiversity and recreational areas. The specification and location of such measures shall be agreed in writing with the Council prior to Occupation of the Development.

## SCHEDULE 2

### THE OWNER'S COVENANTS (SITE B)

The Owner hereby covenants with the Council:

#### 1 Affordable Housing

- 1.1 To provide 10 of the Dwellings on Site B as Affordable Housing, comprised of 6 Affordable Housing for Rent Dwellings and 4 Affordable First Homes or such other tenure mix as agreed in writing with the Council.
- 1.2 The Affordable Housing for Rent Dwellings shall not be used or Occupied other than as Affordable Housing for Rent Dwellings save that this obligation shall not be binding on:
  - 1.2.1 any Protected Tenant or any mortgagee or charge 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;
  - 1.2.2 any Chargee provided that the Chargee shall have first complied with the obligations at paragraph 1.3 of this Schedule; or
  - 1.2.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 1.3 A Chargee shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give not less than 30 (thirty) Working Days prior notice to the Council of its intention to dispose and:
  - 1.3.1 In the event that the Council responds within 30 (thirty) Working Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its reasonable endeavours to secure such transfer;
  - 1.3.2 If the Council does not serve its response to the notice served under paragraph 1.3.1 of this Schedule within 30 (thirty) Working Days 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;
  - 1.3.3 If the Council or any other person cannot within 40 (forty) Working Days of the date of service of its response under paragraph 1.3.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.3 of this Schedule 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;

**PROVIDED THAT** at all times the rights and obligations in this paragraph 1.3 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 moneys outstanding under the charge or mortgage.

- 1.4 The plot locations of the Affordable Housing Units (Site B) shall be agreed in accordance with a Reserved Matters Approval.
- 1.5 Subject to paragraph 1.10 of this Schedule not to cause or permit more than 85% (eighty five percent) of the Open Market Dwellings on Site B (or such other percentage of Open Market Dwellings that may be first agreed in writing by the Council) to be Occupied until the Affordable Housing Units (Site B) have been constructed to the same external standard as the Open Market Dwellings and transferred at the Affordable Housing Unit

Prices and on terms that accord with Homes England funding requirements current at the date of this Deed.

- 1.6 The Affordable Housing Units (Site B) shall be transferred with the benefit of the following:-
  - 1.6.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units (Site B); and
  - 1.6.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units (Site B) all such services to be connected to the mains.
- 1.7 The Owner shall provide the Council with written notice within 20 Working Days of:
  - 1.7.1 of the Commencement of Development on Site B; and
  - 1.7.2 of Occupation of the first Dwelling on Site B; and
  - 1.7.3 of Practical Completion and Occupation of 85% (eighty five percent) of the Open Market Dwellings on Site B (or such other percentage of Open Market Dwellings that may first be agreed in writing by the Council).
- 1.8 The Owner shall use its Reasonable Endeavours to market the Affordable Housing Units (Site B) and will promptly upon agreement of heads of terms for a transfer of the Affordable Housing Units to a Registered Provider submit to the Council the name of the chosen Registered Provider.
- 1.9 The Owner will thereafter use Reasonable Endeavours to exchange contracts for the sale of the Affordable Housing Units (Site B) and will keep the Council informed on the Owner's Progress.
- 1.10 If any of the Affordable Housing Units (Site B) have not been contracted for sale within 3 (three) calendar months of the date of Practical Completion of the last Affordable Housing Unit (Site B) or such earlier date agreed in writing by the Council and the Council is satisfied acting reasonably that paragraphs 1.7 to 1.9 of this Schedule have been complied with then the Owner shall pay the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Housing Units (Site B) not already transferred to a Registered Provider and upon such payment the Owner will be free to offer such Dwellings for sale on the open market free from obligations in this Schedule as Open Market Dwellings.

## **2 Sustainable Travel Contribution.**

- 2.1 To pay £31,500.00 (thirty one thousand five hundred pounds) of the Sustainable Travel Contribution to the Council within 5 (five) Working Days of either:
  - 2.1.1 the 1 (one) year anniversary of Occupation of the 1<sup>st</sup> (first) Dwelling on Site B; or
  - 2.1.2 Occupation of 50% (fifty percent) of the Dwellings on Site B;(whichever is the sooner) and not to Occupy more than 50% (fifty percent) of the Dwellings on Site B until £31,500.00 (thirty one thousand five hundred pounds) of the Sustainable Travel Contribution has been paid to the Council.

### 3 Open Space Contribution

- 3.1 To pay £66,142.56 (sixty six thousand one hundred forty two pounds and fifty six pence) of the Open Space Contribution to the Council in the proportions set out below:
- 3.1.1 50% (fifty percent) being the sum of £33,071.28 (thirty three thousand seventy one pounds and twenty eight pence) prior to Occupation of 60% (sixty ~~per cent~~percent) of the Dwellings on Site B (or such other number of Dwellings that may be agreed in writing by the Council) and not to Occupy 60% (sixty ~~per cent~~percent) of the Dwellings on Site B (or such other number of Dwellings that may be agreed in writing by the Council) until £33,071.28 (thirty three thousand seventy one pounds and twenty eight pence) of the Open Space Contribution has been paid to the Council.
- 3.1.2 The balance of 50% (fifty percent) being the sum of £33,071.28 (thirty three thousand seventy one pounds and twenty eight pence) prior to Occupation of more than 85% (eighty-five ~~per cent~~percent) of the Dwellings on Site B (or such other percentage of Dwellings that may be agreed in writing by the Council) and not to Occupy more than 85% (eighty-five ~~per cent~~percent) of the Dwellings on Site B (or such other number of Dwellings that may be agreed in writing by the Council) until £33,071.28 (thirty three thousand seventy one pounds and twenty eight pence) of the Off Site Space Contribution has been paid to the Council.

### 4 Education Contribution

- 4.1 To pay to the Council £248,640.00 (two hundred forty eight thousand six hundred and forty pounds) of the Education Contribution (comprising a £142,080.00 (one hundred forty two thousand and eighty pounds) primary contribution and £106,560.00 (one hundred and six thousand five hundred and sixty pounds) secondary contribution) in the proportions set out below:-
- 4.1.1 50% (fifty percent) being the sum of £124,320.00 (one hundred twenty four thousand three hundred and twenty pounds) payable on Occupation of the first Dwelling on Site B.
- 4.1.2 The remaining 50% (fifty percent) being the sum of £124,320.00 (one hundred twenty four thousand three hundred and twenty pounds) payable on the first anniversary of the Occupation of the first Dwelling or on Occupation of 50% (fifty percent) of the Dwellings on Site B, whichever is the earlier.

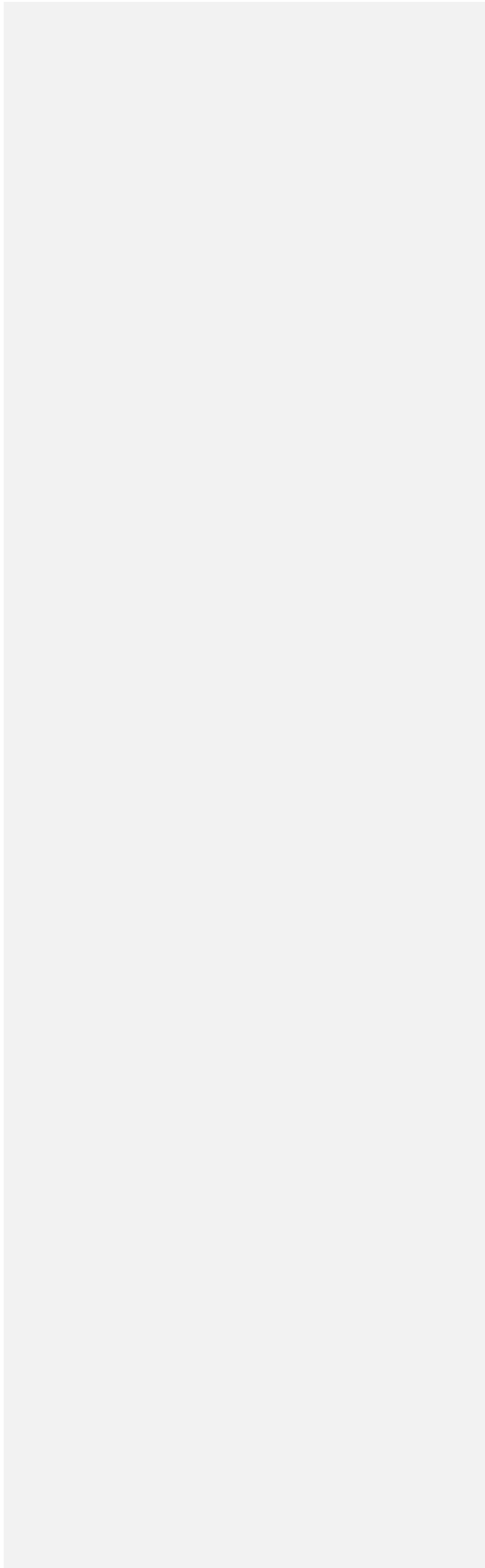
### ~~5 Recreation Provision~~

#### ~~5.1 The Owner shall provide and retain for the lifetime of the Development:~~

- ~~• Dog fouling bins;~~
- ~~• Educational signage; and~~
- ~~• Footpath upgrades~~

~~in accordance with a scheme to be submitted and agreed with the Council, including but not limited to a timetable for the implementation of the above and details of the upkeep of the signs and footpath and emptying of the bins. This is to mitigate the impact of the Development on local biodiversity and recreational areas. The specification and location of such measures shall be agreed in writing with the Council prior to Occupation of the Development.~~

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### **SCHEDULE 3**

#### **THE COUNCIL'S COVENANTS**

The Council hereby covenants with the Owner:

##### **General**

- 1 The Council will on the reasonable written request of the Owner at any reasonable time or times after any of the Planning Obligations under this Deed have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the Planning Obligations under this Deed have been fulfilled or at any reasonable time after this Deed ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.
- 2 To issue separate receipts on request for any sum or Contribution paid to the Council under this Deed.

##### **Contributions**

- 3 To apply the Contributions towards the purposes specified in this Deed and not to apply the Contributions for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.

##### **Repayment**

- 4 That in the event the Contributions or any part or parts thereof are not expended within 10 (ten) years of the date of payment (or the date of payment of the final instalment if applicable) of such payment then the sum or sums not expended plus interest accrued will be repaid to the Owner or their nominee.

~~Schedule 3~~**SCHEDULE 4**

**FIRST HOMES**

**1 OBLIGATIONS**

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Unless otherwise prior agreed in writing by the Council the Owner covenants with the Council as below save that

- 1.1 paragraphs 2, 3 and 4 of this Schedule 4 shall not apply to a First Home Owner;
- 1.2 paragraphs 5 and 6 of this Schedule 4 apply as set out therein but and for the avoidance of doubt where an Affordable First Home is owned by a First Home Owner they shall apply to that First Home Owner only in respect of the Affordable First Home owned by that First Home Owner; and
- 1.3 Paragraph 7 of this Schedule 4 applies as set out therein.

**2 CLUSTERING**

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- 2.1 The internal specification of the Affordable First Homes shall not by reason of their being Affordable First Homes be inferior to the internal specification of the equivalent Open Market Dwelling but, subject to that requirement, variations to the internal specifications of the Affordable First Homes shall be permitted

**3 DEVELOPMENT STANDARD**

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All Affordable First Homes shall be constructed to no less than the standard applied to the Open Market Dwellings.

**4 DELIVERY MECHANISM**

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- 4.1 The Affordable First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as Affordable First Homes to a person or person(s) meeting:
  - 4.1.1 the Eligibility Criteria (National); and
  - 4.1.2 the Eligibility Criteria (Local) (if any)
- 4.2 If after an Affordable First Home has been actively marketed for 3 ~~(three)~~ months (such period to expire no earlier than ~~three-(3)~~ ~~(three)~~ months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 4.1.2 shall cease to apply.

**5**

- 5.1 Subject to paragraphs 5.6 to 5.10 no Affordable First Home shall be disposed of (whether on a first or any subsequent sale) unless not less than 50% ~~(fifty percent)~~ of the purchase price is funded by a first mortgage or other home purchase plan with a mortgagee
- 5.2 No Affordable First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
  - 5.2.1 The Council has been provided with evidence that:
    - 5.2.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.2 applies also meets the Eligibility Criteria (Local) (if applicable);

- 5.1.1.1 the Dwelling is being Disposed of as an Affordable First Home at the discount market price; and
- 5.1.1.2 the transfer of the Affordable First Home includes:
- (a) a definition of the "Council" which shall be Barnsley Council
  - (b) a definition of "First Homes Provisions" in the following terms:
  - (c) "means the provisions set out in paragraph 5.1-5.9 of Schedule 4 of the S106 Agreement a copy of which is attached hereto as the Annexure."
  - (d) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) dated [ ] made between (1) the Council [and] (2) [ ] [and] (3) [ ]
  - (e) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions
  - (f) a copy of the First Homes Provisions in an Annexure

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5.2.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within 28 (twenty eight ~~(28)~~) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3 and 5.4.1 have been met

5.2.3 The First Home Owner shall pay to the Council prior to the date of the Initial Disposal of each Affordable First Home the sum of £1,500.00 (one thousand five hundred pounds) as a contribution towards the Council's costs incurred in connection with the performance of the Council's obligations under this deed.

5.3 On the first Disposal of each and every Affordable First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that Affordable First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Barnsley Metropolitan Borough Council of Town Hall, Barnsley, S70 2TA or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [ ] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

5.4 The owner of an Affordable First Home (which for the purposes of this clause shall include the First Home Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

5.4.1 the Dwelling has been actively marketed as an Affordable First Home for six (6) months in accordance with Clauses 5.1 and 5.2 (and in the case of a first Disposal the 6 (six-~~6~~) months shall be calculated from a date no earlier than 6 (six-~~6~~) months prior to Practical Completion) and all Reasonable Endeavours

have been made to Dispose of the Dwelling as an Affordable First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 5.3 and 5.4.1; or

- 5.4.2 requiring the First Home Owner to undertake active marketing for the period specified in paragraph 5.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the Owner undue hardship
- 5.5 Upon receipt of an application served in accordance with paragraph 5.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is Disposed of to it at the Discount Market Price.
- 5.6 If the Council is satisfied that either of the grounds in paragraph 5.6 above have been made out it shall confirm in writing within 28 (twenty eight ~~(28)~~) days of receipt of the written request made in accordance with paragraph 5.6 that the relevant Dwelling may be Disposed of :
  - 5.6.1 to the Council at the Discount Market Price; or
  - 5.6.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 5.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

- 5.7 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 5.6 above have been made out then it shall within 28 (twenty eight ~~(28)~~) days of receipt of the written request made in accordance with paragraph 5.6 serve notice on the owner of the Affordable First Home setting out the further steps it requires the owner of the Affordable First Home to take to secure the Disposal of a Dwelling as an Affordable First Home and the timescale (which shall be no longer than 6 (six ~~(6)~~) months). If at the end of that period the owner of the Affordable First Home has been unable to Dispose of the Dwelling as an Affordable First Home they may serve notice on the Council in accordance with paragraph 5.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as an Affordable First Home
- 5.8 Where a Dwelling is Disposed of other than as an Affordable First Home or to the Council at the Discount Market Price in accordance with paragraphs 5.8 or 5.9 above the owner of the Affordable First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 5.9 Upon receipt of the Additional First Homes Contribution the Council shall:
  - 5.9.1 within 28 (twenty eight) Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in paragraph 5.5 where such restriction has previously been registered against the relevant title
  - 5.9.2 apply all monies received towards the provision of Affordable Housing
- 5.10 Any person who purchases an Affordable First Home free of the restrictions in this Schedule 4 pursuant to the provisions in paragraphs 5.9 and 5.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

Each Affordable First Home shall be used only as the main residence of the First Home Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 6.1 - 6.4 below.

- 6.1 A First ~~Home Owner~~ Home Owner may let or sub-let their First Home for a fixed term of no more than 2 (two ~~(2)~~) years, provided that the First Home Owner notifies the Council in writing before the Affordable First Home is Occupied by the prospective tenant or sub-tenant. A First Home Owner may let or sub-let their Affordable First Home pursuant to this paragraph more than once during that First Home Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Home Owner's period of ownership may not exceed 2 (two ~~(2)~~) years.
- 6.2 A First Home Owner may let or sub-let their Affordable First Home for any period provided that the Affordable First Home Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) - (f) below:
- (a) the First Home Owner is required to live in accommodation other than their Affordable First Home for the duration of the letting or sub-letting for the purposes of employment;
  - (b) the First Home Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - (c) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - (d) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - (e) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - (f) the First Home Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 6.3 A letting or sub-letting permitted pursuant to paragraph 6.1 or 6.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the Affordable First Home on terms which expressly prohibit any further sub-letting.
- 6.4 Nothing in this paragraph 6 of this Schedule 4 prevents a First Home Owner from renting a room within their Affordable First Home or from renting their Affordable First Home as temporary sleeping accommodation provided that the Affordable First Home remains at all times the Owner's main residence.

## 7 **MORTGAGEE EXCLUSION**

The obligations in paragraphs 1-6 of this Schedule 4 shall not apply to any mortgagee or any receiver (including an administrative receiver appointed by such mortgagee or any other person appointed under any security documentation to enable such mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual Affordable First Home or any persons or bodies deriving title through such mortgagee or Receiver PROVIDED THAT:

- 7.1 such mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant Affordable First Home; and

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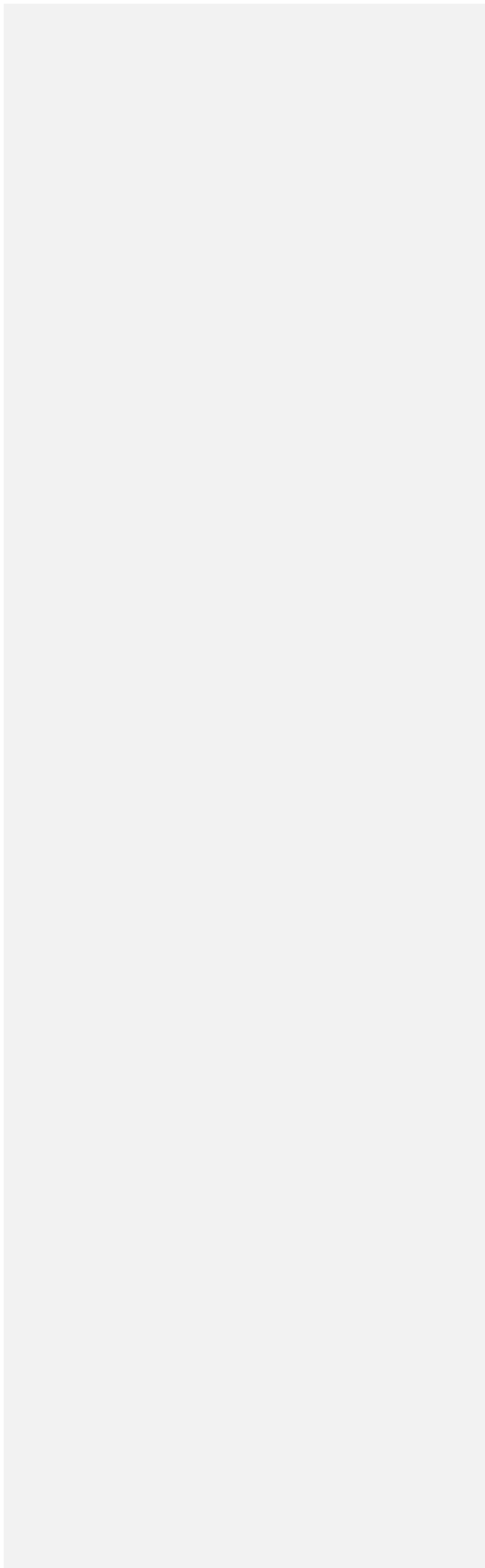
- 7.2 once notice of intention to Dispose of the relevant Affordable First Home has been given by the mortgagee or Receiver to the Council the mortgagee or Receiver shall be free to sell that Affordable First Home at its full Market Value and subject only to paragraph 7.3
- 7.3 following the Disposal of the relevant Affordable First Home the mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution
- 7.4 following receipt of notification of the Disposal of the relevant Affordable First Home the Council shall:
  - 7.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 5.5; and
  - 7.4.2 apply all such monies received towards the provision of Affordable Housing

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Authorised Sealing Officer

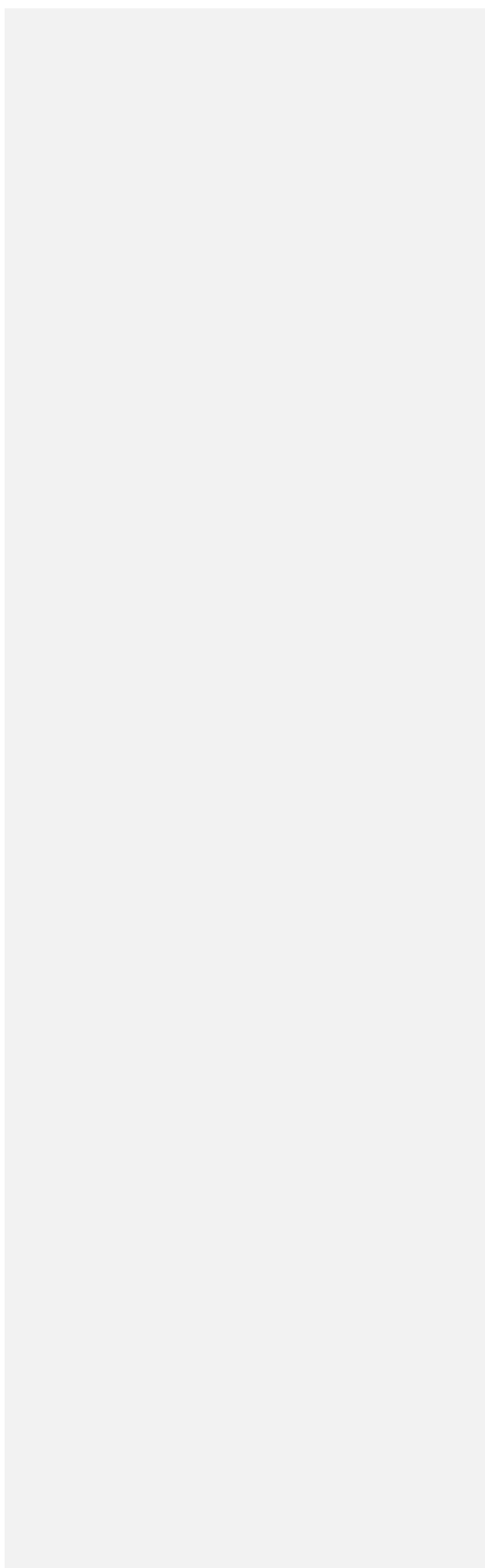
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**ANNEX 1**

**Plan**

ANNEX 2

Footpath Plan