

DATED 9th March 2017

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

and

PERSIMMON HOMES LIMITED (2)

DEED OF VARIATION

**in connection with an Agreement and Planning Obligation made under Section 106 and Section
106A of the Town and Country Planning Act 1990 (as amended)
relating to land off north of Wilthorpe Road, Redbrook, Barnsley**

WALKER MORRIS

Kings Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
Fax: 0113 2459412
Ref: PPV/PER.78-1617

THIS DEED is made the

24

day of

March

2017

BETWEEN: -

- (1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire S70 2TA ("**Council**") of the first part; and
- (2) **PERSIMMON HOMES LIMITED** (Company No. 04108747) whose registered office is situated at Persimmon House, Fulford, York YO19 4FE ("**Owner**") of the second part.

1 DEFINITIONS

1.1 In this **DEED** the following words and expressions shall have the meanings set out below:

"**Deed**" means this deed;

"**Land**" means all that land north of Wilthorpe Road, Redbrook, Barnsley in the county of South Yorkshire, shown for identification purposes only edged red on Plan 1 to the Section 106 Agreement;

"**Section 106 Agreement**" means the agreement dated 6 January 2015 and made pursuant to Section 106 of the 1990 Act between (1) Barnsley Metropolitan Borough Council; (2) Alwyn Philip Mount and Richard Laurence Mount; (3) E L Mount & Company Limited; (4) Richard John Sadler; and (5) Persimmon Homes Limited, as varied by the Supplemental Agreement;

"**Supplemental Agreement**" means the deed of variation to the Section 106 Agreement dated 10 December 2015 and made between (1) Barnsley Metropolitan Borough Council and (2) Persimmon Homes Limited to substitute Plan 3 of the Section 106 Agreement; and

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

1.2 Where the context so requires:

- 1.2.1 save as is otherwise varied by this Deed, all the words and expressions beginning with capital letters in this Deed shall have the same meanings ascribed to them in the Section 106 Agreement, as varied by the Supplemental Agreement, and shall be construed accordingly;
- 1.2.2 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.3 references to any party shall include the successors in title to that party;
- 1.2.4 where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.5 any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing; and
- 1.2.6 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed and are for reference only and shall not affect the construction of this Deed.

2 RECITALS

- 2.1 The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and is the authority by whom the obligations hereby created are enforceable.
- 2.2 This Deed is supplemental to the Section 106 Agreement, as varied by the Supplemental Agreement, and varies the Section 106 Agreement and Supplemental Agreement only to the extent set out in this Deed.
- 2.3 The Owner is the registered proprietor with absolute title of the Land following a transfer in September 2015 and is successor in title to Alwyn Philip Mount and Richard Laurence Mount, E L Mount & Company Limited, and Richard Sadler, as now registered at the Land Registry under title number SYK631861.

- 2.4 To this end, Alwyn Philip Mount and Richard Laurence Mount, E L Mount & Company Limited, and Richard Sadler are not parties to this Deed and for the purposes of this Deed and the Section 106 Agreement (as varied by the Supplemental Agreement), the expression "the Owner" and / or "the Owners" (as the case may be) shall be construed as a reference also to the Developer as defined in the Section 106 Agreement.
- 2.5 The Owner has submitted Application 2016/1228 (as defined below) to the Council. Application 2016/1228 is an application seeking to vary the unit number, layout and unit types applied to the Planning Permission.
- 2.6 The Council is minded to encourage the Development but would have been unwilling to approve Application 2016/1228 in the absence of this Deed.
- 2.7 The Council and the Owner have agreed that the Section 106 Agreement, as varied by the Supplemental Agreement, shall be varied as set out in clause 3.3 below and the parties have agreed to enter into this Deed in order to vary the terms of the Section 106 Agreement (as varied by the Supplemental Agreement) accordingly.
- 2.8 The Owner has agreed to enter into this Deed so as to create planning obligations in favour of the Council pursuant to Section 106 and Section 106A of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

3 OPERATIVE PROVISIONS

- 3.1 This Deed is made pursuant to Section 106 and 106A of the 1990 Act and all other powers so enabling and is a planning obligation for the purposes thereof and the covenants contained herein shall bind the Land with the intent that it shall bind the interests of the Owner and its successors in title to each and every part of the Land and its assigns as provided in these clauses and in the clauses of the Section 106 Agreement, as varied by the Supplemental Agreement.
- 3.2 The planning obligations comprised in this Deed shall not become effective until the condition precedent in clause 3.2 of the Section 106 Agreement has been satisfied.
- 3.3 The parties hereto hereby mutually agree to vary and supplement the terms of the Section 106 Agreement, as varied by the Supplemental Agreement, so that the Section 106 Agreement shall from today be read and construed as amended and detailed in the First Schedule to this Deed.

- 3.4 For the avoidance of doubt, all existing references to Application and Planning Permission in the Section 106 Agreement and Supplemental Agreement are to be construed in accordance with this Agreement.

4 IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

- 4.1 This Deed shall be construed as one with the Section 106 Agreement (as varied by the Supplemental Agreement).
- 4.2 The provisions of the Section 106 Agreement (as varied by the Supplemental Agreement) continue to be enforceable by the Council and to bind the Land in all respects save for as varied by the Supplemental Agreement and by this Deed, but for the avoidance of doubt the alterations and amendments hereby made shall to the extent only that they are material supersede specific provisions to the contrary in the Section 106 Agreement (as varied by the Supplemental Agreement and this Deed) and the Section 106 Agreement (as varied by the Supplemental Agreement) and this Deed shall always be read together (*mutatis mutandis*) with the latter to that extent predominating.
- 4.3 No party shall be liable for breach of a covenant contained in this Deed after having parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 4.4 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.
- 4.5 The planning obligations hereby created by this Deed shall be registered as a Local Land Charge.
- 4.6 The Owner shall pay to the Council on or before the date of completion of this Deed the Council's reasonable and proper legal costs of £1,000.00 (One Thousand Pounds) incurred in the negotiation, preparation and execution of this Deed, which includes all disbursements incurred in connection with the preparation, completion and registration of this Deed.

FIRST SCHEDULE

Amendments to the Section 106 Agreement (as varied by the Supplemental Agreement)

- 1) The definition of "Affordable Housing Contribution" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be amended as follows and is to read as follows:

"Affordable Housing Contribution" means the sum of ~~£1,057,902.00 (one million and fifty seven thousand and nine hundred and two pounds)~~ £1,308,115.00 (one million, three hundred and eight thousand, one hundred and fifteen pounds) Index Linked to be paid to the Council by the Owners and used by the Council in lieu of part provision of Affordable Housing on the Land for the provision of, or improvements to, existing Affordable Housing elsewhere within the Council's area'.

- 2) The definition of "Affordable Rented Dwellings" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be amended as follows and is to read as follows:

"Affordable Rented Dwellings" has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises 36 Dwellings in total consisting of 6 x 2 bed bungalows (Willow house type) to be constructed on plots 8 to 10 (inclusive) and 15 to 17 (inclusive); ~~9 x 2 bed and 3 x 1 bed~~ 6 x 2 bed and 6 x 1 bed apartments to be constructed on plots ~~221 to 232~~ 222 to 233 (inclusive); and 18 x 2 bed houses (Brampton house type) to be constructed on plots ~~48 to 57~~ 46 to 55 (inclusive), ~~91 to 93~~ 89 to 91 (inclusive), ~~95~~ 93, ~~107~~ 105 and ~~109 to 111~~ 107 to 109 (inclusive) or such other locations and / or house types that may be agreed in writing between the Owners and the Council from time to time such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy'.

- 3) The definition of "Application" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be deleted and replaced with the following:

“Application” means:

1. the application reference number 2014/0474 and registered by the Council on 1 May 2014 for residential development of 302 dwellings with associated public open space, landscaping, access, parking and ancillary work as subsequently varied by a non-material amendment under this reference (**"Application 2014/0474"**); and / or
 2. Application 2016/1228'.
- 4) The following new definition be inserted into clause 1.1 of the Section 106 Agreement, between the definitions of "Application" and "Chargee":

"Application 2016/1228" means the application reference number 2016/1228 and registered by the Council on 5 October 2016 to increase the total number of dwellings from 302 (301 dwellings under planning permission granted under reference 2014/0474 amended by a non-material amendment to 302) to 326, including 14 dwellings on public open space and a net gain of 10 units through plot substitutions'.

- 5) The definition of "Education Contribution" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be amended as follows and is to read as follows:

"Education Contribution" means the sum of ~~£421,440.00 (four hundred and twenty one thousand four hundred and forty pounds)~~ £456,560.00 (four hundred and fifty six thousand, five hundred and sixty pound) Index Linked to be paid by the Owners to the Council as its total contribution towards the provision of and or improvement to primary school educational facilities within the Wards of Darton West and Old Town Ward by means of the construction of a new classroom and/or the refurbishment/remodelling of existing accommodation to provide additional classroom places, the need for which directly arises from the Development;'

- 6) The definition of "Index Linked" at clause 1.1 of the Section 106 Agreement shall be deleted and replaced with the following:

"Index Linked" means such increase to a sum or sums payable on a pro rata per diem basis to:

- (i) the Education Contribution and the Affordable Housing Contribution from the date of this Agreement and

(ii) all other payments to the Council from 6th January 2015

to the date of payment based on the increase to the Index published prior to the relevant date in (i) or (ii)'.

7 The definition of "Intermediate Dwellings" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be amended as follows and is to read as follows:

"Intermediate Dwellings" has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises 9 Dwellings in total consisting of 7 x 2 bed houses (Brampton house type) to be constructed on plots ~~58 to 60~~ 56 to 58 (inclusive), ~~94~~ 92, ~~96~~ 94, ~~106~~ 104 and ~~108~~ 106 ~~(inclusive)~~ and 2 x 2 bed bungalows (Willow house type) to be constructed on plots 11 and 14 or such other locations and / or house types that may be agreed in writing between the Owners and the Council from time to time such properties to be made available at an Intermediate Rent to persons in accordance with the Registered Provider's policy'.

8 The definition of "LEAP" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be deleted.

9 The definition of "NEAP" shall be inserted at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, as follows:

"NEAP" means a 'neighbourhood equipped area for play' as defined by Fields in Trust (or such successor body or organisation whose primary objects are protecting and improving outdoor sports and place spaces) designed to serve children aged 8-14 years and younger children if supervised consisting of a minimum eight items of play equipment plus an activity trail and mini kickabout'.

10 The definition of "Planning Permission" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be deleted and replaced with the following:

"Planning Permission" means:

1. the planning permission granted by the Council on 7 January 2015 pursuant to Application 2014/0474 substantially in the form of the draft annexed in the Third Schedule as subsequently varied by a non-material amendment under this reference (**"Planning Permission 2014/0474"**); and / or
2. a planning permission to be granted by the Council pursuant to Application 2016/1228.'

11) The definition of "Public Open Space" at clause 1.1 of the Section 106 Agreement, as varied by the Supplemental Agreement, shall be deleted and replaced with the following:

"Public Open Space" means the areas of functional publicly accessible greenspace and / or open space to include the NEAP as shown hatched in blue on Plan 3 to be provided within the Development by the Owners in accordance with paragraph 3 of the First Schedule'.

12) Paragraphs 1.12 to 1.14 (inclusive) of the First Schedule ("the Owners' Covenants") shall be amended as follows and is to read as follows:

'Off-Site Affordable Housing Provision

- 1.12 To notify the Council prior to the Occupation of more than 50 Dwellings and not to Occupy more than 50 Dwellings until £436,038.00 ~~£352,634.00~~ of the Affordable Housing Contribution as Index Linked has been paid to the Council.
- 1.13 To notify the Council prior to the Occupation of more than 99 Dwellings and not to Occupy more than 99 Dwellings until a further £436,038.00 ~~£352,634.00~~ of the Affordable Housing Contribution as Index Linked has been paid to the Council.
- 1.14 To notify the Council prior to the Occupation of more than 123 Dwellings and not to occupy more than 123 Dwellings until the balance of £436,039.00 ~~£352,634.00~~ of the Affordable Housing Contribution as Index Linked has been paid to the Council.'

13) Paragraph 2 of the First Schedule ("the Owners' Covenants") shall be amended as follows and is to read as follows:

2. EDUCATION CONTRIBUTION

- 2.1 Within 28 days of the Commencement of Development to pay £140,480.00 of the Education Contribution as Index Linked to the Council.

2.2 To notify the Council prior to the Occupation of more than 75 of the Dwellings and not to Occupy more than 75 of the Dwellings until a further £158,040.00 ~~£140,480.00~~ of the Education Contribution as Index Linked has been paid to the Council.

2.3 To notify the Council prior to the Occupation of more than 153 of the Dwellings and not to occupy more than 153 of the Dwellings until the balance of £158,040.00 ~~£140,480.00~~ of the Education Contribution as Index Linked has been paid to the Council.'

14) Paragraph 3.1.3 of the First Schedule ("the Owners' Covenants") shall be amended as follows and is to read as follows:

'3.1.3 details of the ~~LEAP~~ NEAP'.

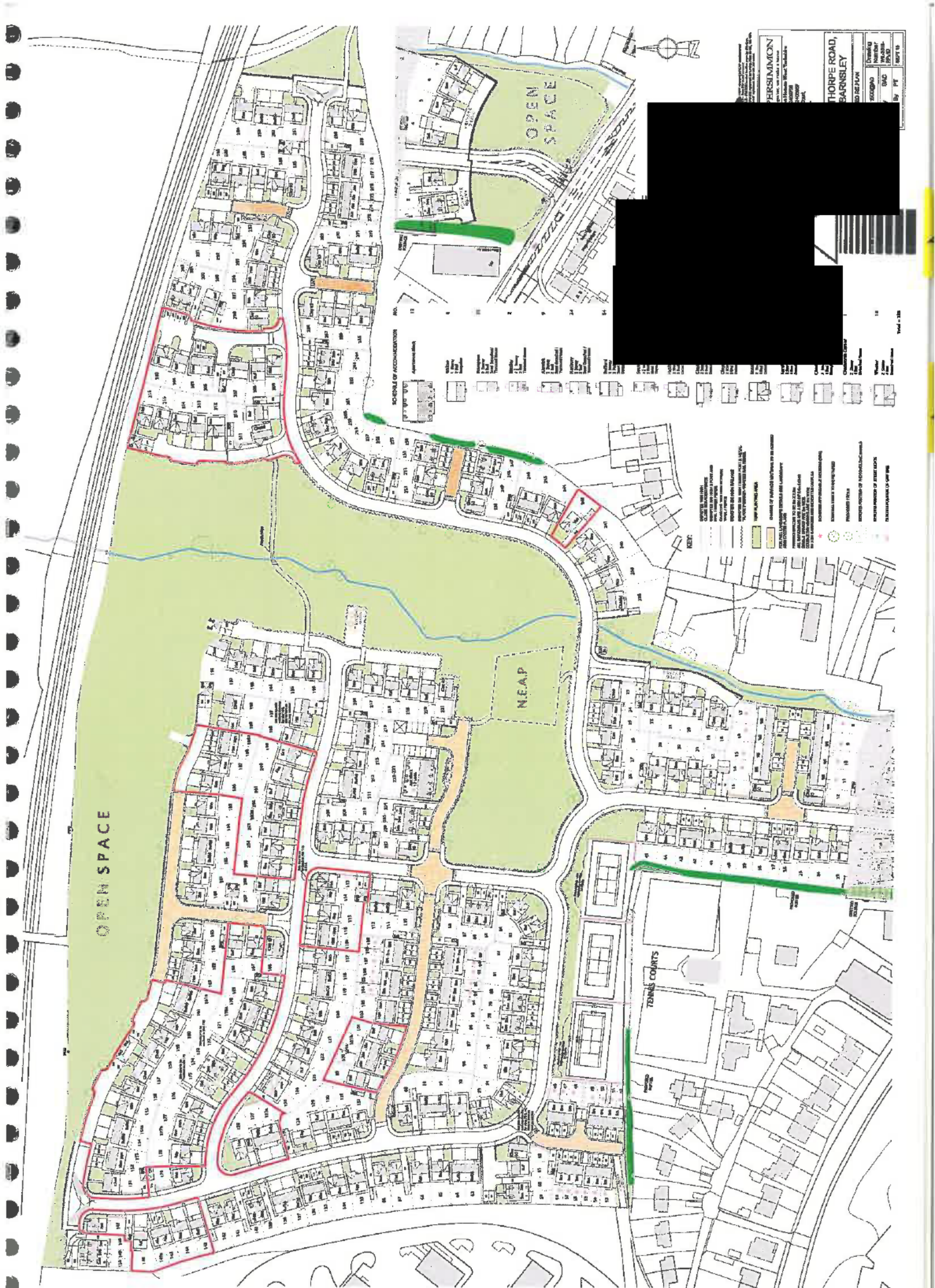
15) Paragraph 4.5.2 of the First Schedule ("the Owners' Covenants") shall be amended so that the figure of "£452,550.06" is replaced with "£457,466.79".

16) "Plan 2" attached to the Section 106 Agreement shall be superseded and replaced with the new "Plan 2" attached to this Deed at Annex One.

17) "Plan 3" attached to the Section 106 Agreement shall be superseded and replaced with the new "Plan 3" attached to this Deed at Annex Two.

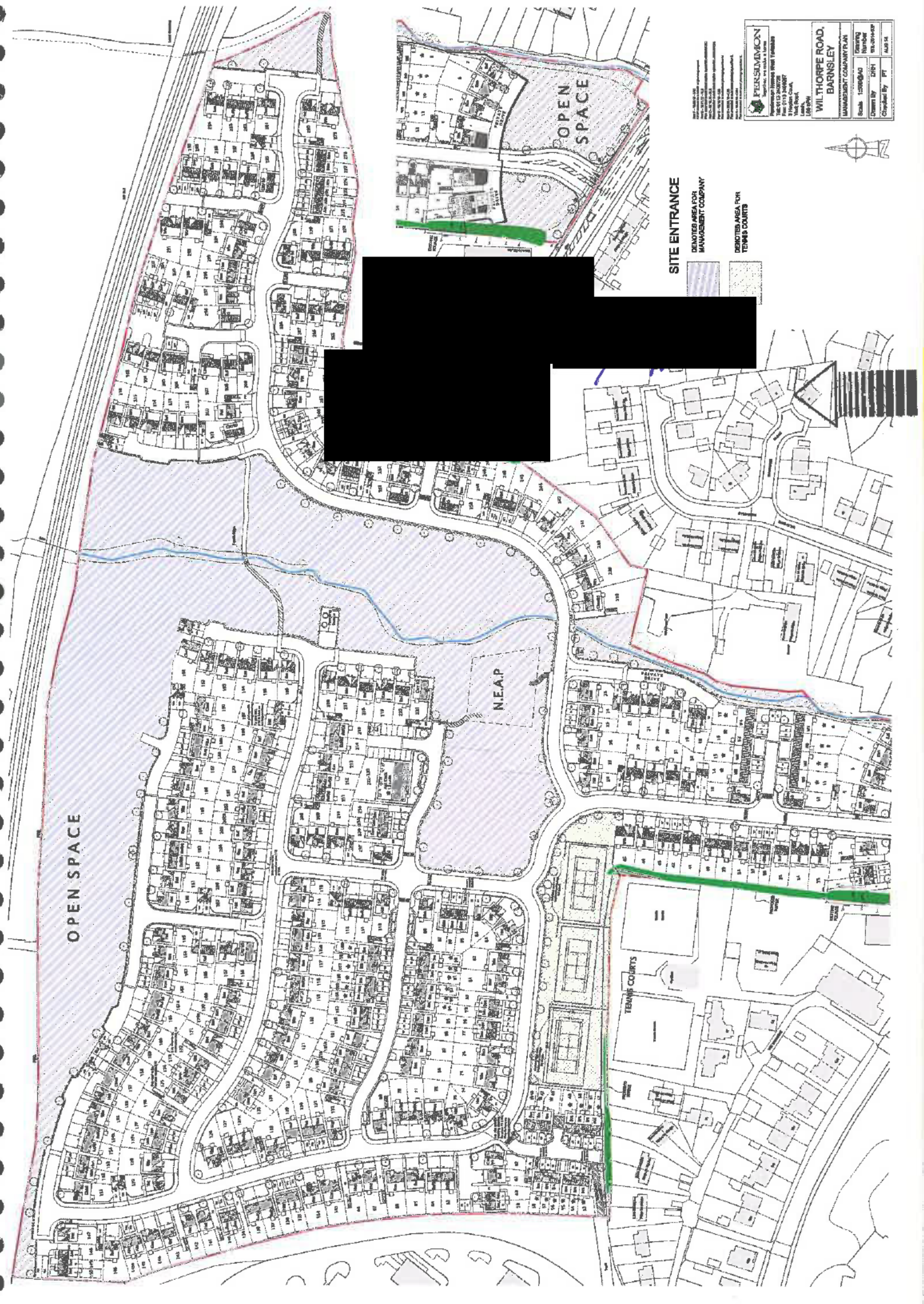
ANNEX ONE

"Plan 2"



ANNEX TWO

"Plan 3"



SITE ENTRANCE

DENOTES AREA FOR
MANAGEMENT COMPANY

DENOTES AREA FOR
TENNIS COURTS

PERSIMMON	
PERSIMMON HOMES (UK) LIMITED	
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000	



IN WITNESS whereof the parties have executed this Deed the day and year first before written

EXECUTED AS A DEED by affixing the
COMMON SEAL of **BARNSELY**
METROPOLITAN BOROUGH COUNCIL
in the presence of:

No. 236
IN REGISTER



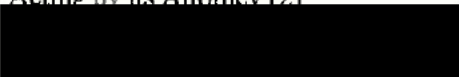
Director of Legal and Governance / Authorised Signatory

PRB 21/02/17 Min 80

EXECUTED as a **DEED** by
PERSIMMON HOMES LIMITED
Acting by its Attorney (1)



Acting by its Attorney (2)



in the presence of:

