

**Dated** 29<sup>th</sup> March **2023**

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

**and**

**GLEESON REGENERATION LTD**

**DEED**

**Pursuant to Section 111 Local Government Act 1972 (as amended) in relation to Land  
at Barnburgh Lane, Goldthorpe, Rotherham, S63 9FL**

**Head of Legal Services  
Barnsley Metropolitan Borough Council  
Town Hall, Barnsley, S70 2TA**

## Contents

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	INTERPRETATION .....	2
3.	COMMENCEMENT AND LEGAL EFFECT .....	2
4.	COVENANTS .....	3
	First Schedule.....	4
	Second Schedule.....	5

This Deed is made on

29<sup>th</sup> March

2023

**Between**

- (1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Church Street Barnsley S70 2DR of (hereinafter referred to "the Council"); and
- (2) **GLEESON REGENERATION LTD** (Company Number 03920096) of 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE. (hereinafter referred to as "the Developer")

**Whereas**

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situated and is the authority.
- (B) The Council is the owner of an estate in fee simple absolute in possession of the Land under freehold title number SYK620350
- (C) The Developer is desirous to acquire from the Council the Land.
- (D) The Developer submitted the Planning Application to the Council for permission to carry out the Development.
- (E) The Council has decided to grant planning permission for the Development subject to the completion of this Deed without which planning permission for the Development would not be granted.

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

1. **DEFINITIONS AND INTERPRETATION**

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

**Act** the Local Government Act 1972 (as amended)

**Development** means residential development of sixty eight dwellings and associated access and landscaping,

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

**Plan** the plan which is annexed to this Deed.

**Planning Agreement** the Agreement in the form of that appended to the Schedule hereto to be duly entered into with the Council pursuant to the terms of Section 106 of the Town and Country Planning Act 1990 (as amended).

**Planning Application** the application (including plans and drawings) submitted by the Developer to the Council for permission to carry out the Development (reference: 2020/1439).

**Planning Permission** the planning permission granted by the Council pursuant to the Planning Application.

## 2. INTERPRETATION

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

## 3. COMMENCEMENT AND LEGAL EFFECT

The provisions hereof shall take effect on the date hereof.

- 3.1. Save as provided for by this Deed nothing in this Deed shall be treated as giving rise to any rights or to third parties under the Contracts (Rights of Third Parties) Act 1999.
- 3.2. If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form

part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.

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

#### 4. **COVENANTS**

- 4.1. The Developer hereby covenants to enter into the Planning Agreement in the form of that appended to the Second Schedule hereto on the date that it acquires the Land from the Council.

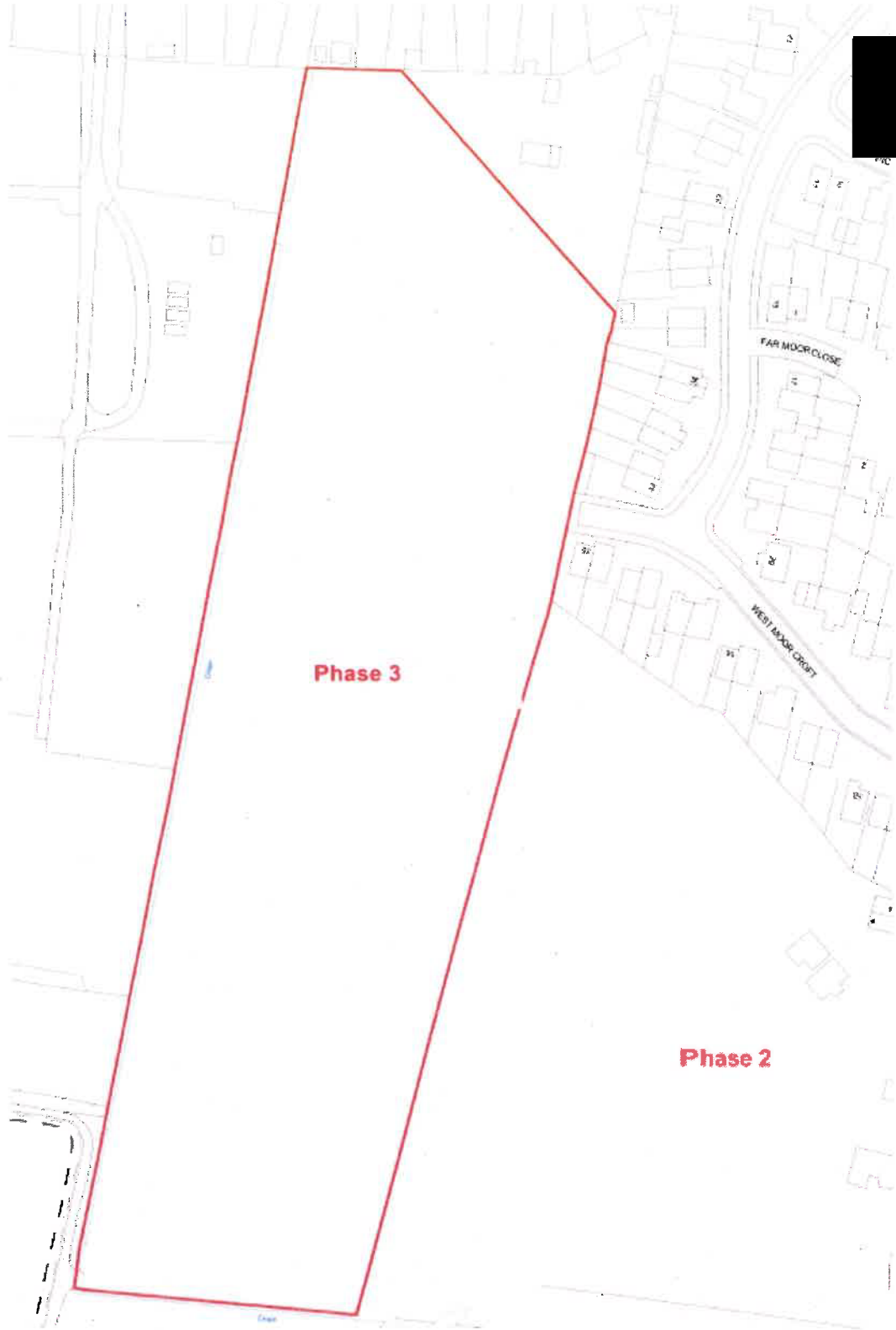
- 4.2. The Council hereby covenants as follows:

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

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

**First Schedule**

all that Site known as land at Barnburgh Lane, Goldthorpe, Rotherham, S63 9FL.



**Second Schedule**

**Deed of Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990**

**Land at Barnburgh Lane, Goldthorpe, Rotherham, S63 9FL**

**Dated**

**2023**

**Deed of Agreement made pursuant to Section 106 of the Town and Country Planning Act  
1990**

Land at Barnburgh Lane, Goldthorpe, Rotherham, S63 9FL

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

**and**

**GLEESON REGENERATION LTD**

**DATE** 2023

**PARTIES**

- (1) BARNESLEY METROPOLITAN BOROUGH COUNCIL of Town Hall Barnsley South Yorkshire S70 2TA (the "Council").
- (2) GLEESON REGENERATION LTD (Company Number 03920096) of 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE. (the "Owner").

**BACKGROUND**

- (A) By virtue of section 1 of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations hereby created are enforceable.
- (B) The Owner is the proprietor of the freehold title to the Site which is registered at the Land Registry under Title Number SYK620350
- (C) The Owner has submitted the Application to the Council for planning permission for the Development.
- (D) The Council resolved on 27<sup>th</sup> September 2022 to grant the Planning Permission subject to the prior completion of this Deed.
- (E) The Owner by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

**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.
Affordable Housing	affordable housing as defined in Annex 2 of the NPPF.
Affordable Housing Contribution	a financial contribution which is (if applicable) to be calculated and paid by the Owner to the Council in accordance with and in the circumstances specified in paragraphs 3.1 - 3.2 of Schedule 2 of this Deed as a contribution towards the cost of providing new Affordable Housing within the Council's administrative area.
Affordable Housing Plan	the approved site layout plan with reference: 1014/3L which identifies the number, location and type of the Affordable Units appended hereto at Schedule 5.
"Affordable Housing for	has the same meaning as the term "affordable housing for rent" contained in paragraph (a) of Annex 2 of the National Planning Policy to

Rent Dwellings”	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 Scheme	<p>means an approved scheme which specifies in relation to the Affordable Housing on the Land:</p> <p>confirmation that the number size and tenure of the Affordable Housing Units will accord with the Affordable Housing Plan;</p> <p>the location and distribution of the Affordable Housing within the Land; and</p> <p>details of how the proposed design and construction of the Affordable Housing Units will ensure that the Affordable Housing Units are materially indistinguishable (in terms of outward design and appearance) from the Open Market Dwellings of similar size within the Development;</p>
Agreed Price	means the sum of £25,000.00 (twenty five thousand pounds) per required biodiversity unit;
Affordable Value	means a price being not greater than 50% (fifty percent) of the Open Market Value of an equivalent open market unit 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 Unit;
Affordable Units	10% of the total Dwellings to be built on the Site as part of the Development and to be provided as Affordable Housing in accordance with the provisions of Schedule 2 of this Deed comprising 3 x 3 beds and 4 x 2 beds with 71% (5 units) being Affordable Housing for Rent Dwellings and (2 units) 29% being Shared Ownership Housing.
Application	the application for planning permission for the Development which was submitted to the Council on behalf of the Developer and which was given reference number 2020/1439.
“Approved BEMP” and “Approved Supplementary BEMP”	means approved in writing by the Council and shall include the level of the Required Biodiversity Gain accepted by the Council as achieved by the Approved BEMP and (where applicable) the Approved Supplementary BEMP.
Biodiversity Contribution	means the sum of £ 288,750 (two hundred and eighty eight thousand seven hundred and fifty ) calculated by applying the Agreed Price by the Required Biodiversity Gain (subject to paragraphs 4.2 to 4.4 of Schedule 3);
“Biodiversity Shortfall”	means the extent to which the Required Biodiversity Gain is not met by the BEMP as determined by the Council in the Approved BEMP or where applicable in the Approved Supplementary BEMP
“BEMP”	means a Biodiversity Ecological Management Plan to be prepared by the Owner which relies on a detailed ecological assessment and is

	<p>agreed in writing by the Council in accordance with paragraph 4 of the Schedule 3, incorporating the following detail;</p> <ul style="list-style-type: none"> <li>(i) short, medium and long term aims and objectives</li> <li>(ii) A scheme of works (including a timetable for implementation) and or measures which are designed to secure the delivery of Biodiversity Gain [or compensation]</li> <li>(iii) management responsibilities; and maintenance schedules for any compensation works</li> <li>(iv) a scheme to monitor whether the Biodiversity Gain has been delivered in accordance with the plan with monitoring reports to the Council at stated intervals.</li> <li>(v) Ownership and or contractual arrangements to ensure that the delivery of the requirements of the BEMP are secured throughout the 30 year period</li> </ul>
Chargee	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 Units.
Commencement of Development	the date upon which the Development is begun by the carrying out on the Site 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 fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly.
Contributions	collectively the Affordable Housing Contribution (if applicable), the Biodiversity Contribution (if applicable), Education Contribution, the Off-Site Greenspace Contribution, and the Sustainable Travel Contribution.
Council's Approved List	<p>means the following Registered Providers:</p> <ul style="list-style-type: none"> <li>Berneslai Homes Limited;</li> <li>South Yorkshire Housing Association Limited;</li> <li>Yorkshire Housing Limited;</li> <li>Guinness Northern Counties Limited;</li> <li>Equity Housing Group Limited;</li> <li>Leeds and Yorkshire Housing Association Limited;</li> <li>Chevin Housing Association Limited; and</li> <li>Wakefield and District Housing Limited</li> </ul>

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	residential development of sixty eight dwellings and associated access and landscaping,
Dwelling	a residential unit that may be built on the Site pursuant to the Planning Permission and the term Dwellings shall be construed accordingly.
Education Contribution	the sum of £ 384,000 (three hundred and eighty four thousand pounds) Index Linked to be paid by the Owner to the Council comprising £224,000 (two hundred and twenty four thousand pounds) in respect of the provision of 14 Primary School places at £16,000 per place and £160,000 (one hundred and sixty thousand pounds) in respect of the provision of 10 Secondary School places at £16,000 per place and to provide improvements to school educational facilities within the South East school planning area as defined in the Councils SPD Financial Contributions to Schools adopted May 2019.
Expert	a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
General Housing Unit	a Dwelling which is not an Affordable Unit.
Homes England	the Homes and Communities Agency (trading as Homes England) or any body or bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act).
Index Linked	increased in accordance with the following formula: (a) Amount payable = the payment specified in this Deed x (A/B) where: (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.
NPPF	the National Planning Policy Framework, July 2021 (or as redefined by any amendment, replacement or re-enactment thereof).
Occupation	occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration, marketing, display or security operations and the term Occupy and Occupied shall be construed accordingly.

Off-Site Greenspace Contribution	the sum of £125,904.60 (one hundred and twenty five thousand nine hundred and four pounds and 60 pence) Index Linked to be paid by the Owner to the Council and to be used by the Council in lieu of the provision of publicly accessible formal recreational open space on the Site for the provision of, or improvements to, public open space within 10km of the boundary of the Site the need for which is required in order to mitigate the impacts arising from the Development.
Open Market Value	means an amount for which the property should exchange on the date of valuation (assessed as if it were free from all the obligations in this Deed) 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 proposed by the Owner and approved by the Council or in the absence of agreement as determined by an Valuer assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;
Plan	drawing reference-appended hereto at Schedule 1.
Planning Obligations	the obligations, conditions and stipulations set out at Schedules 2 and 3 of this Deed and the term Planning Obligation shall be construed accordingly.
Planning Permission	a planning permission permitting the Development granted by Council pursuant to the Application.
Practical Completion	means either: <ul style="list-style-type: none"> <li>(a) 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</li> <li>(b) the issue of a Buildmark cover note in relation to a Dwelling by the National House-Building Council or such cover note of similar effect from an alternative warranty provider</li> </ul> and Practically Completed shall be construed accordingly;

Protected Tenant	<p>any tenant who:</p> <ul style="list-style-type: none"> <li>(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or equivalent contractual or voluntary right) in respect of a particular Affordable Unit;</li> <li>(b) has exercised any statutory right to buy (or equivalent contractual or voluntary right) in respect of a particular Affordable Unit;</li> <li>(c) has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Unit is owned by the tenant and a share is owned by the Registered Provider) and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Unit;</li> <li>(d) is a former tenant of an Affordable Unit who has purchased that Affordable Unit under the provisions of the Housing and Regeneration Act 2008 or any statutory right in force from time to time entitling tenants of Registered Providers to purchase their homes;</li> <li>(e) has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Unit and who has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns 100% of that Affordable Unit;</li> <li>(f) is a former tenant of an Affordable Unit where a Registered Provider sells to the tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996, or any amendment or replacement thereof; and/or</li> </ul> <p>any person or body deriving title through or from any of the parties mentioned in (a) to (f) above.</p>
“Reduced Biodiversity Contribution”	Means the Biodiversity Contribution which has (where applicable) been reduced pro rata in accordance with paragraph 4.5 of schedule 3 to this agreement.
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.
Required Biodiversity Gain	means 11.55 biodiversity units (based on the Development), calculated in accordance with the DEFRA Biodiversity Metric v3.1 which it is agreed between the Owner and the Council would provide net gain for biodiversity based on the Development

“Supplementary BEMP” Means a Scheme in relation to land outside the Development Site which contains the detail required in a BEMP and identifies the land to be subject to the scheme and relies on a detailed ecological assessment and links back to the terms of Biodiversity Shortfall and an overarching Biodiversity Metrics (the biodiversity units to be calculated in accordance with the DEFRA Biodiversity Metric v3.1 or latest version). The Scheme will set out how the Biodiversity Shortfall is to be achieved on land within the administrative area of the Council but outside the Development Site.

Shared Ownership Housing housing transferred by the Registered Provider on a Shared Ownership Lease and where staircasing is permitted.

Shared Ownership Lease such lease as shall from time to time be used by the Registered Provider in respect of it being a landlord of Shared Ownership Housing

Site all that Site known as land at Barnburgh Lane, Goldthorpe, Rotherham, S63 9FL shown edged red on the Plan.

Statutory Undertaker any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking.

Sustainable Travel Contribution the sum of £ 51,750 (fifty one thousand seven hundred and fifty pounds) Index Linked to be paid by the Owner to the Council and to be used by the Council towards sustainable travel improvements in accordance with the Councils SPD Sustainable travel adopted in November 2019 the need for which is required in order to mitigate the impacts arising from the Development.

Valuer a chartered surveyor (being a member of the Royal Institution of Chartered Surveyors) appointed by agreement between the Owner and the Council to act as an independent expert in the determination of the Open Market Value where required in accordance with this Deed.

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.

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 References 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. STATUTORY BASIS**

- 2.1 This Deed secures planning obligations made pursuant to section 106 of the 1990 Act and is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this Deed.
- 2.2 This Deed is enforceable by the Council as local planning authority for the purposes of the 1990 Act.
- 2.3 To the extent that the covenants, restrictions and requirements in this Deed are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

## **3. CONDITIONS PRECEDENT**

- 3.1 This Deed is conditional upon and does not become effective unless and until the Planning Permission is granted.
- 3.2 Clause 4 of this Deed is further conditional upon and does not become effective unless and until the Commencement of Development.

## **4. COVENANTS & DECLARATIONS**

- 4.1 The Owner covenants with the Council to comply with the Planning Obligations in this Deed at Schedules 2 and 3.
- 4.2 The Council covenants with the Owner to comply with the obligations in this Deed at Schedule 4.

## **5. EXCLUSIONS AND RELEASE**

- 5.1 No person shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:
  - 5.1.1 after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest);
  - 5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or

5.1.3 if that party is an owner or occupier of an individual Dwelling.

5.2 If the Planning Permission:

5.2.1 expires before the Commencement of Development; or

5.2.2 is at any time revoked or modified (without the consent of the Owner) pursuant to Part IV of the 1990 Act

this Deed shall determine and cease to have effect.

5.3 No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or 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.

## **6. REGISTRATION**

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

6.2 Following either:

6.2.1 the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2 the determination of this Deed in accordance with Clause 5.2;

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

## **7. NON-FETTER AND WAIVER**

7.1 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.

7.2 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

7.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

## **8. SECTION 73 OF 1990 ACT**

If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a S73 Application) then in the event that the Council is minded to approve such S73 Application:

- (a) if the Council considers that the Planning Obligations contained in this Deed are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to Planning Permission in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act (and for the avoidance of any doubt it is hereby agreed by the Council that the operation of this clause 8(a) shall never require the duplication of any of the Planning Obligations contained in this Deed) ; or
- (b) if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause **Error! Reference source not found.** shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause **Error! Reference source not found.**(a) shall be disregarded.

## 9. INTEREST

If any sum or amount 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.

## 10. INDEXATION

- 10.1 All Contributions payable to the Council shall be Index Linked.
- 10.2 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.

## 11. VAT

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

## 12. 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.

## 13. CHANGE OF OWNERSHIP

The Owner agrees with the Council to give the Council written notice within 10 Working Days of any change in proprietorship of any of its interests in the Site 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 (if a company or usual address if not)

together with the area of the Site purchased by reference to a plan PROVIDED THAT this obligation shall not apply to a disposal of an individual Dwelling.

#### 14. NOTIFICATION

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

14.1.1 delivered by hand; or

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

14.2 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:

14.2.1 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 2021/1661;

14.2.2 to the Owner at 6 Europa Court, Sheffield Business Park, Sheffield, S9 1XE marked for the attention of Steve Gamble, Land & Planning Director or Leanne Johnson, Company Secretary.

at or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause **Error! Reference source not found.**

14.3 Any notice, request, demand or other written communication given or served in accordance with Clause 14.1 or Clause 14.2 shall be deemed to have been received:

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

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

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

14.5 This Clause **Error! Reference source not found.** does not apply to the service of any proceedings or other documents in any legal action.

#### 15. DISPUTE RESOLUTION

15.1 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

15.2 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 Working Days (or such lesser 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 (except in cases of manifest error, error of law and/or fraud) shall be final and binding on the parties.

- 15.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-
- 15.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 15.2 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.
- 15.3.2 the Expert shall act as an expert and not as an arbitrator
- 15.3.3 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 Working Days of receipt of the Expert's Notice;
  - (b) the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;
  - (c) the Expert shall 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 determine such other procedures 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
- 15.3.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
- 15.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and
- 15.3.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 15.4 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:
- 15.4.1 either party may apply to the relevant body as per Clause 15.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
- 15.4.2 Clause 15.3 shall apply to the new Expert as if they were the first Expert appointed.

**16. THIRD PARTY RIGHTS**

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 PROVIDED THAT this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.

**17. COSTS**

The Developer shall on (or prior to) the date hereof pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of £1500.

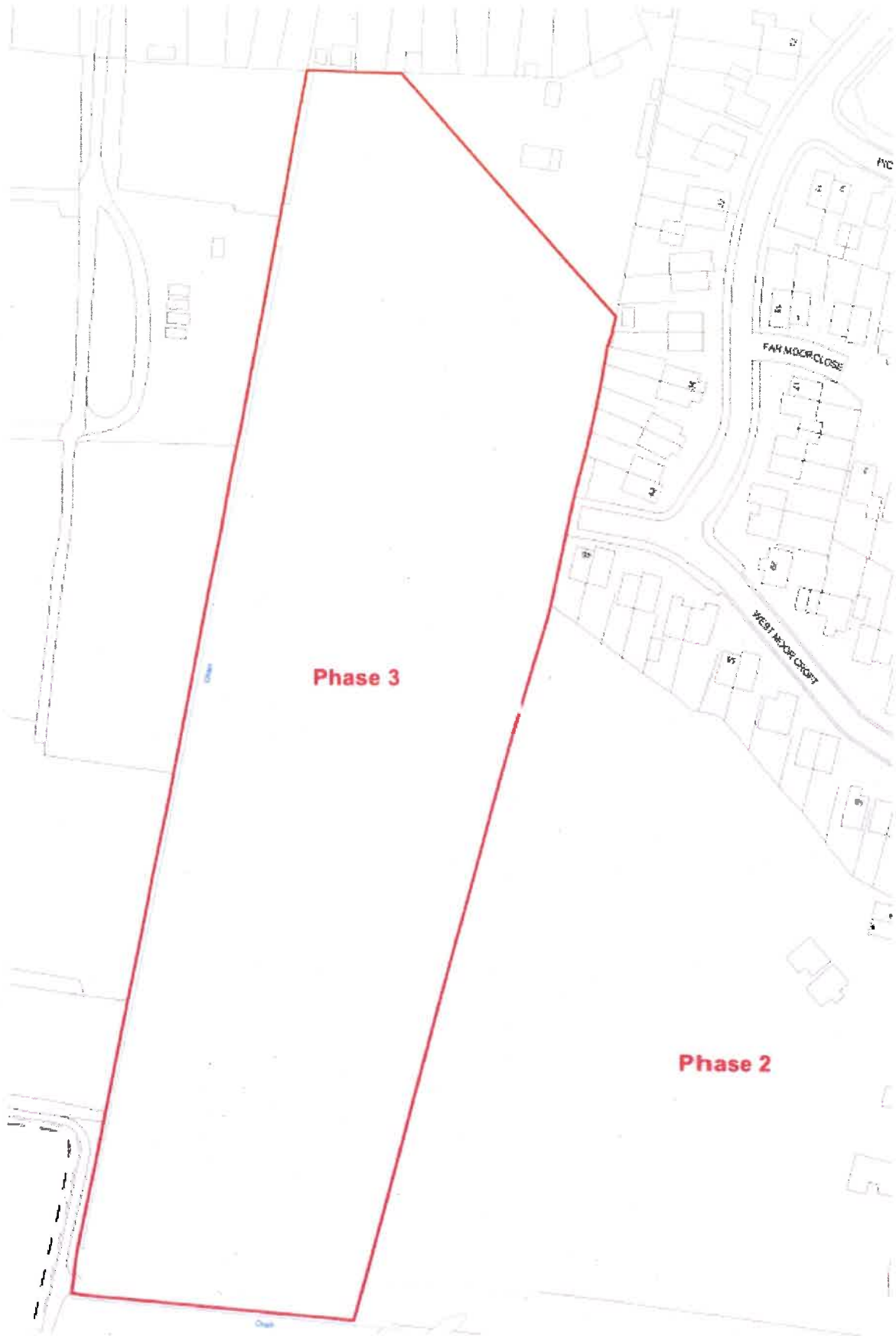
**18. JURISDICTION**

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

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

**SCHEDULE 1**

**The Site Plan**



## SCHEDULE 2

### Affordable Housing

1. provision of on-site affordable units
  - 1.1 The Owner shall not Commence Development until the Council has approved in writing an Affordable Housing Scheme
  - 1.2 The Owner shall
    - 1.2.1 carry out the Development in accordance with the Affordable Housing Scheme and the Affordable Housing Plan; and
    - 1.2.2 ensure the Affordable Units are provided in accordance with the Planning Permission and any applicable legislation, policy and regulatory requirements relevant to the delivery of new Affordable Housing.
  - 1.3 The Owner shall notify the Council of the Practical Completion of the last of the Affordable Units within 30 days thereof.
2. transfer of the affordable units
  - 2.1 The Owner shall as soon as reasonably practicable following the Commencement of Development issue draft heads of terms to the Registered Provider and thereafter use reasonable endeavours to contract to transfer the Affordable Units to the Registered Provider in accordance with the approved Affordable Housing Scheme.
  - 2.2 If the proposed sale does not proceed with the initial Registered Provider as set out at 2.1 above the Owner will continue to use reasonable endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of the Owner's progress.
  - 2.3 If the Owner has complied with Paragraph 2.1 to 2.2 of this Schedule of this deed and no Registered Provider has contracted to acquire the Affordable Units:
    - 2.3.1 within a period of 6 months from the Practical Completion of the last of the Affordable Units; or
    - 2.3.2 upon the Occupation of 40% of the General Housing Units (whichever is the earlier)
  - 2.3.3 the Owner may (at the Owners' absolute discretion) dispose of such Affordable Units on the open market (free from all the provisions of this Deed as if the relevant Affordable Unit(s) were a General Housing Unit) and in lieu of the on-site provision of Affordable Housing the Owner shall pay to the Council the Affordable Housing Contribution.
3. restriction on Occupation of General Housing Units
  - 3.1 The Owner shall not in relation the General Housing Units either exchange contracts for the transfer of more than 75% of the Units or Occupy or permit to be Occupied more than 75% of the Units until the Owner has either:

- 3.1.1 notified the Council in writing that the Affordable Units have been Practically Completed and transferred to the Registered Provider ; or
  - 3.1.2 paid an Affordable Housing Contribution to the Council.
- 3.2 Any Affordable Housing Contribution payable in accordance with Paragraph 3.1.2 above shall be calculated as follows (in reference to each applicable Affordable Unit):

A – (B)

Where: A = the Open Market Value.

B = the Affordable Value.

In calculating any Affordable Housing Contribution:

- 3.2.1 in the event that the Owner and the Council cannot agree the Affordable Housing Contribution within 30 Working Days (or such lesser period as may be agreed) the Affordable Housing Contribution shall be determined by a Valuer;
  - 3.2.2 the Valuer shall act as an expert and his decision shall be final; and
  - 3.2.3 the costs of any determination by the Valuer shall be paid by the Owner.
4. management and occupation of on-site affordable units
- 4.1 Subject only to paragraphs Paragraph 5 of this Schedule 2 the Owner shall not permit the Affordable Units to be Occupied other than as Affordable Housing in accordance with the Affordable Housing Scheme.
  - 4.2 For the avoidance of doubt, nothing in this Schedule 2 shall prevent any of the General Housing Units from being voluntarily provided as Affordable Housing and in such case such General Housing Units:
    - 4.2.1 may comprise 'affordable housing' for the purposes of the National Planning Policy Framework and/or a 'qualifying dwelling' for the purposes of Regulation 49(2) of the Community Infrastructure Levy Regulations 2010; and
    - 4.2.2 shall not comprise Affordable Units for the purposes of this Deed

5. exclusions to this SCHEDULE 2

- 5.1 The obligations in this Deed shall not be binding on:
  - 5.1.1 any Protected Tenant (or any mortgagee or chargee, receiver or administrative receiver of the Protected Tenant);
  - 5.1.2 any Chargee (subject only to Paragraph 5.2 of Schedule 2);
  - 5.1.3 any purchaser of an individual Affordable Unit from a Protected Tenant or a Chargee; or
  - 5.1.4 any person deriving title from or through any of the above 5.1.1 to 5.1.3

5.2 This Schedule 2 of this Deed shall not be binding on a Chargee or any persons or bodies deriving title from or through such mortgagee or chargee or Receiver PROVIDED THAT:

5.2.1 such Chargee has first given written notice to the Council of its intention to dispose of the relevant Affordable Unit(s) and thereafter has used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the relevant Affordable Unit(s) to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

5.2.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Unit(s) free from the obligations in this 0 of this Deed which thereafter will determine absolutely in respect of such Affordable Unit(s).

### **SCHEDULE 3**

#### **Financial Contributions and Biodiversity**

##### **6. Education contribution**

6.1 The Owner shall pay the Education Contribution to the Council in the following instalments:

6.1.1 £192,000 (one hundred and ninety two thousand pounds) prior to the Commencement of the Development

6.1.2 £192,000 (one hundred and ninety two thousand pounds) prior to the Occupation of the 33<sup>rd</sup> Dwellings

##### **7. Off-Site Green Space contribution**

7.1 The Owner shall pay the Off-Site Green Space Contribution to the Council in the following instalments:

7.1.1 £62,952.30 (sixty two thousand nine hundred and fifty two pounds and thirty pence) prior to the Commencement of the Development; and

7.1.2 £62,952.30 (sixty two thousand nine hundred and fifty two pounds and thirty pence) prior to Occupation of the 33<sup>rd</sup> Dwelling.

##### **8. Sustainable Travel contribution**

8.1 The Owner shall pay the Sustainable Travel Contribution to the Council in the following instalments:

8.1.1 £25,875 (twenty five thousand eight hundred and fifty pounds) prior to the Commencement of Development;

8.1.2 £25,875 (twenty five thousand eight hundred and fifty pounds) prior to Occupation of the 33<sup>rd</sup> Dwelling.

##### **9. Biodiversity OFF- SETTING MEASURES**

9.1 Prior to the Commencement of Development either;

9.1.1 a draft BEMP shall be submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed), setting out the intended biodiversity gain to be achieved across the Development Site, in terms of biodiversity units (the biodiversity units to be calculated in accordance with the DEFRA Biodiversity Metric v3.1 or latest version), or

9.1.2 a written explanation shall be given why a BEMP cannot be submitted and be approved by the Council.

9.1.3 The Owner undertakes to implement any BEMP as approved (the "Approved BEMP").

9.2 In the case of 9.1.2 or If the Approved BEMP does not fully meet the Required Biodiversity Gain as determined by the Council acting reasonably and expressed

in its approval of the BEMP then the Owner shall, within 30 Working Days of receipt of the Councils approval under paragraphs 9.1.1 or 9.1.2 submit either

9.2.1 a draft Supplementary BEMP to the Council for its approval setting out how the Biodiversity Shortfall is to be achieved (such approval not to be unreasonably withheld or delayed). Any draft Supplementary BEMP submitted and approved, in accordance with this paragraph 9.2, shall be implemented by the Owner as approved (the "Approved Supplementary BEMP" ) or

9.2.2 written explanation why a Supplementary BEMP cannot be submitted and be approved by the Council.

9.3 If the Approved BEMP and/or the Approved Supplementary BEMP meets the Required Biodiversity Gain then the Owner shall not be required to pay the Biodiversity Contribution.

9.4 If the Approved BEMP and/or the Approved Supplementary BEMP does not fully meet the Required Biodiversity Gain as determined by the Council, then the Owner shall pay the Reduced Biodiversity Contribution to the Council in accordance with paragraphs 9.4 – 9.8 (inclusive) of this Schedule.

9.5 The Biodiversity Contribution shall (where applicable) be reduced pro rata, at the Agreed Price, by the number of biodiversity units that are to be delivered as identified in the Approved BEMP and/or the Approved Supplementary BEMP (the "Reduced Biodiversity Contribution").

9.6 In the event that a BEMP and a Supplementary BEMP is not approved by the Council or is not submitted pursuant to paragraphs 9.1.2 and or 4.2.2 then the Biodiversity Contribution shall be paid in full by the Owner to the Council in accordance with paragraphs 9.7 and 9.8 hereto.

9.7 The Owner shall not allow or permit the Occupation of more than 50% of the Dwellings until the Biodiversity Contribution has been paid to the Council.

9.8 Save for where the payment of a full Biodiversity Contribution falls to be paid No Dwellings shall be Occupied until there is an Approved BEMP which alone or together with an Approved Supplementary BEMP meets all or some of the Required Biodiversity Gain;

9.9 Where a BEMP or Supplementary BEMP is submitted to the Council the Council shall give notice of its approval or rejection as soon as reasonably practicable but being within a period no longer than 8 weeks after its receipt and in the event of its rejection set out the reasons for rejection and indicate the measures required to produce an acceptable submission

9.10 In the event that the Council rejects a submission under paragraph 9.9 the Owner will submit a revised submission to the Council for approval whereupon the Council will issue an approval or rejection in accordance with 9.9

9.11 In the event of a further rejection of a submission under paragraph 4.10 the Owner may continue to make further submissions to the Council in which case the procedure set out in paragraph 9.9 and 9.10 above shall apply. In the alternative any dispute or disagreement may be referred to an arbitrator in accordance with the Disputes Procedure in clause 15 of this agreement.

## **SCHEDULE 4**

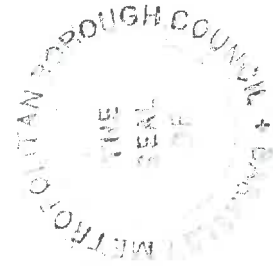
### **Council's Covenants**

10. The Council shall issue separate receipts on request for any sum paid to it under this Deed;
11. The Council shall place the Contributions and any Affordable Housing Contribution in an interest bearing account or in separate accounts as the Council shall at its discretion decide.
12. The Council shall not apply the Contributions or any Affordable Housing Contribution for any purpose other than for the purposes set out within Clause 1.1 of this Deed;
13. In the event that any Contribution or the Affordable Housing Contribution (or any part or parts thereof) are not expended or committed within 10 (ten) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee as soon as reasonably practicable; save for in respect of the Biodiversity Contribution (if payable) which if not expended or committed within 30 (thirty) years of the date of payment (or the date of payment of the final instalment if applicable) then the sum or sums not expended plus interest accrued will be repaid to the Owner or its nominee.
14. The Council shall respond to any request to account for the sums expended within 28 (twenty eight) Working Days of that request being made



**THE COMMON SEAL of BARNSLEY  
METROPOLITAN BOROUGH**

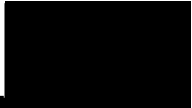
**COUNCIL** was hereunto affixed to this  
Deed in the presence of:-



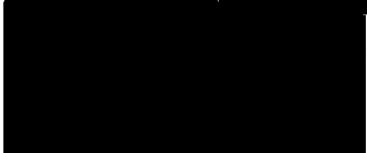
~~Executive director Core Services/~~  
Legal Services Director /  
Authorised Signatory

No. 731  
IN REGISTER

**EXECUTED** as a **DEED** by  
**GLEESON REGENERATION LTD**



acting by a Director:



Director:



In the presence of;

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

