DATED 24th January 2022 ~~2021~~

BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)

-and-

BALMORAL INDUSTRIAL TANKS LIMITED (2)

-and-

HOOBER LIMITED (3)

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to land at Hough Lane, Wombwell, Barnsley, S73 0LR

LPA Reference: 2021/0043

THIS AGREEMENT (signed as a deed) is made the 24th day of January 2022 ~~2021~~

BETWEEN:

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

(2) **BALMORAL INDUSTRIAL TANKS LIMITED** (Scot. Co. Regn. No. 301825) of Balmoral Park, Loirston, Aberdeen AB12 3GY. **("Owner")** of the second part; and;

(3) **HOOBER LIMITED** (co. regn. no. 10106775) Unit 4 Fields End Business Park, Thurnscoe, Rotherham S63 0JF ("**Developer**") of the third part;

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

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

"1990 Act"	means the Town and Country Planning Act 1990 as amended;
"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 if applicable a sum in respect of each Affordable Housing Unit calculated in accordance with section 13 (and other relevant paragraphs) of the Supplementary Planning Documents ("SPD") re Affordable Housing adopted by the Council in May 2019
"Affordable Housing Units"	means a minimum of 6 (six) Dwellings of Affordable Housing comprising of 4 Affordable Housing for Rent Dwellings and 2 Shared Ownership Dwellings to be provided in accordance with paragraph 1 of the First Schedule and

	reference to "**Affordable Housing Unit**" shall be construed accordingly;
"Affordable Housing Unit Prices"	means a price being not greater than 50% 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 Housing Unit;
"Affordable Housing for Rent Dwellings"	has the same meaning as the term "affordable housing for rent" contained in paragraph (a) of Annex 2 of the National Planning Policy Framework and comprises a minimum of 4 units to be provided in accordance with plan 2 ref: H51-HLW-001 Rev X or such other house types / sizes or locations that may be agreed in writing between the Owner 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 and reference to "**Affordable Housing for Rent Dwelling**" shall be construed accordingly
"Affordable Rent"	means an affordable rent of no more than 80% of the Market Rent;
"Application"	means the reserved matters application with reference number 2021/0043 for the erection of 61 dwellings including consideration of matters of layout, scale, design, access, and landscaping in connection with the outline application with reference number 2017/1440
"Chargee"	means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or charge or any administrator (howsoever appointed) including a housing administrator (each a receiver);

"Commencement of Development"	means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That the term *"material operation"* shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys construction of any access roads erection of contractors work compound erection of site office erection of fencing to site boundary and reference to **"Commence the Development"** and **"Commenced"** shall be construed accordingly;
"Community Interest Company"	means a business with primary social objectives whose surpluses are principally reinvested for that purpose in the community;
"Contributions"	means collectively the Education Contribution, the Off-Site Open Space Contribution, the Sustainable Travel Contribution and if applicable the Affordable Housing Commuted Sum;
"Council's Approved List"	means the following Registered Providers: 1. Berneslai Homes Limited; 2. South Yorkshire Housing Association Limited; 3. Yorkshire Housing Limited; 4. Guinness Northern Counties Limited; 5. Equity Housing Group Limited; 6. Leeds and Yorkshire Housing Association Limited; 7. Together Housing Association Limited; and 8. Wakefield and District Housing Limited;

	or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time;
"Development"	means the development of the Land in accordance with the Planning Permission;
"Dwellings"	means the residential units that may be built on the Land as part of the Development and reference to "**Dwelling**" shall be construed accordingly;
"Education Contribution"	means the sum of £208,000 (two hundred and eight thousand pounds) Index Linked to be paid by the Owner to the Council as its contribution towards the provision of and or improvement to primary school educational facilities that serve the South East Area of Barnsley the need for which is required in order to mitigate impacts arising from the Development;
"Expert"	has the meaning given in clause 3.4.3;
"Head of Planning and Building Control"	means the Head of Planning and Building Control of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Agreement;
"Homes England"	means Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008;
"Independent Surveyor"	means a member of the Royal Institution of Chartered Surveyors appointed by the Owner at its own cost but first approved by the Council;
"Index"	means the 12 (twelve) month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or

	such other index as may from time to time be published in substitution therefore;
"Index Linked"	means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it;
"Interest Rate"	means interest at 4 (four) per cent above the base lending rate of the Bank of England from time to time and in every case compounded on the first day of June and December in each year;
"Initial Registered Provider Transfer Terms"	has the meaning given in paragraph 1.6 of the First Schedule;
"Land"	means all that land at 321 Hough Lane, Wombwell, Barnsley, S73 0LR shown for identification purposes only edged red on Plan 1 (ref:A0-01-01);
"Management Company"	means a limited company with the purpose of managing the Public Open Space within the Development in accordance with the POS Management Scheme;
"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 knowledgeably, prudently and without compulsion;
"National Planning Policy Framework"	means the National Planning Policy Framework as published in July 2021 by The Ministry of Housing, Communities and Local Government (or any future guidance or initiative that replaces or supplements it);

"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;
"Off-Site Open Space Contribution"	means the sum of £125,667.00 (one hundred and twenty five thousand six hundred and sixty seven pounds) Index Linked calculated in accordance with Appendix 2 of the SPD 'Open Space Provision on New Housing Developments' to be paid to the Council by the Owner and used by the Council in lieu of the provision of publically accessible formal recreation open space on the Land for the provision of, or improvements to, public open space within Barnsley Borough Council Area the need for which is required in order to mitigate impacts arising from the Development;
"Open Market Dwellings"	means the residential units that may be built on the Land as part of the Development excluding the Affordable Housing Units 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 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 Independent Surveyor assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;
"Plan 1"	means the red line plan attached to this Agreement and marked "Plan 1" appended to this Agreement as Appendix 1;
"Plan 2"	means the layout plan attached to this Agreement and marked "Plan 2" appended to this Agreement as Appendix 2;

"Planning Obligations" means the obligations, conditions and stipulations set out in the Second Schedule and "**Planning Obligation**" shall be construed accordingly;

"Planning Permission" means together the outline permission granted under reference 2017/1440 on the 29.3.2019 and the reserved matter approval that may be granted by the Council in relation to the said outline permission pursuant to the Application;

"POS Management Scheme" means a scheme for the future maintenance and management of the Public Open Space to be submitted by the Owner to the Council in accordance with the provisions of paragraph 5.2 of the First Schedule and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council) and the said POS Management Scheme will include the following details;

(a) The identity of the Management Company proposed to be engaged to carry out the maintenance and management of the Public Open Space.

(b) What if any interest in the Public Open Space is proposed to be granted to the Management Company.

(c) The schedule and program of maintenance works to be undertaken in relation to the Public Open Space.

(d) Any arrangements for ensuring that individual householders have a say or influence over the activities of the Management Company and whether this is to be achieved via the householders being given membership of the Management Company or the Management Company being set up as a Community Interest Company.

(e) The arrangements for ensuring that individual householders are given detailed breakdowns of the

costs properly incurred and showing how the total cost is translated into their individual liability.

(f) Any restrictions on year on year increases in any service charge and whether such restriction is to be fixed to a relevant cost index;

"Practical Completion" means either:

1. 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

2. the issue of buildmark cover note by the National House-Building Council or other UKFinance/ CML recognised insurance provider;

"Protected Tenant" means any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 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 right) in respect of a particular Affordable Housing Unit; or

(c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the

remaining shares so that the tenant owns the entire Affordable Housing Unit;

"Public Open Space" means those parts of the Land to be laid out as open space in accordance with condition(s) annexed to the Planning Permission as shown on Drawing Planning Layout Ref: H51-HLW-001 Rev X appended to this Agreement as Plan 2;

"Public Open Space Works" means the works to be carried out for the laying out of the Public Open Space in accordance with condition(s) 2, 3 and 4 annexed to the Planning Permission;

"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 of 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;

"Registered Provider" means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by Homes England for receipt of social housing grant as may be proposed by the Owner and approved by the Council;

"Shared Ownership Dwellings" means a minimum of 2 (two) of the Affordable Housing in accordance with Plan 2, Planning Layout Ref: H51-HLW-001 Rev X or such other house types / sizes or locations that may be agreed in writing between the Owner and the Council from time to time such properties to be made available on a Shared Ownership Lease to persons in accordance with the Registered Provider's policy or such other housing as approved in writing by the Council that provides a subsidised

	route to home ownership and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within Annex 2 of the National Planning Policy Framework;
"Shared Ownership Lease"	means the Homes England lease current at the date of this Agreement (but subject to any updates required or recommended by Homes England) relating to protected areas;
"Statutory Undertaker"	means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;
"Sustainable Travel Contribution"	means the sum of £45,750.00 (forty five thousand and seven hundred and fifty pounds) Index Linked calculated in accordance with section 5 of the SPD 'Sustainable Travel' (November 2019) to be paid to the Council by the Owner and used by the Council towards purposes identified in the SPD 'Sustainable Travel' (November 2019) the need for which is required in order to mitigate impacts arising from the Development;
"Working Day"	means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year's Day excepted) and reference to "**Working Days**" shall be construed accordingly.

1.2 Where the context so requires:

1.2.1 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;

1.2.2 References to any Party in this Agreement shall include the successors in title and assigns of that Party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;

1.2.3 Where a Party includes more than one person any obligations of that Party shall be joint and several;

1.2.4 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;

1.2.5 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it;

1.2.6 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement; and

1.2.7 Clause headings are for reference only and shall not affect the construction of this Agreement.

2 RECITALS

2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.

2.2 The Owner is the registered proprietor with absolute title of the Land which has been given title numbers SYK218061, SYK265383 and SYK65415 by HM Land Registry.

2.3 The Developer has an interest in the Land by way of a conditional purchase agreement dated 29 January 2021 and made between (1) the Owner and (2) the Developer.

2.4 The Application was submitted to the Council by the Developer for reserved matter approval for the Development.

2.5 The Owner by entering into this Agreement 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.

2.6 The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

3 OPERATIVE PROVISIONS

3.1 This Agreement 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 Agreement 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 Agreement 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 Agreement) 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 permanently from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule and the Developers acknowledges that their respective interests in the Land shall be bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule; and

3.3.2 The Council covenants with the Owner to comply with its obligations in the Second Schedule and where applicable in the First Schedule.

3.4 It is agreed and declared as follows:

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

(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 occurs (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 of the Dwellings or a purchaser of an individual Dwelling (or a mortgagee of an individual Dwelling lending money to such occupier purchaser or tenant);

(c) (save for the provisions in paragraph 1 of the First Schedule) 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 Registered Provider of the Affordable Housing Units or a Chargee or a mortgagee of a Registered Provider or 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 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person (**"Expert"**).

3.4.3 Any reference to an Expert in accordance with clause 3.4.2 shall be to a reputable person unconnected to any of the parties hereto and experienced in matters to which the subject matter of the dispute relates and who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error).

3.4.4 Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.

3.4.5 Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to 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 2019/0239 and 2017/1440.

3.4.6 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 Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.

3.4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.

3.4.8 The obligations hereby created shall be registered as a Local Land Charge.

3.4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

3.4.10 Nothing in this Agreement 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 after the date of this Agreement.

3.4.11 The Developer shall forthwith pay to the Council its reasonable legal fees incurred in the preparation negotiation and completion of this Agreement.

3.4.12 Wherever this Agreement 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.

3.4.13 The parties shall act reasonably and in good faith in the performance of their obligations in this Agreement.

3.4.14 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 Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

3.4.15 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 Agreement shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

3.4.16 If the Council does not receive payment of any money due under this Agreement on the due date the Owner will pay interest on the money concerned to the Council at the Interest Rate from the due date until the date of actual receipt by the Council provided that this sub-clause shall not prejudice any other right or remedy of the Council for the recovery of any money due.

3.4.17 Insofar as any clause or clauses of this Agreement 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 Agreement.

FIRST SCHEDULE

("the Owner's Covenants")

The Owner hereby covenants with the Council:

1. **AFFORDABLE HOUSING**

1.1 The Affordable Housing for Rent Dwellings shall not be used or Occupied other than as Affordable Housing for Rent Dwellings and the Shared Ownership Dwellings shall not be used or Occupied other than as Shared Ownership Dwellings save that this obligation shall not be binding on:

1.1.1 any Protected Tenant or any mortgagee or chargee 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;

1.1.2 any Chargee and any successor in title thereto and their respective mortgagees and chargees provided that the Chargee shall have first complied with the obligations at paragraph 1.2 of this Schedule; or

1.1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title thereto and their respective mortgagees and chargees.

1.2 A Chargee shall prior to seeking to dispose of any Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 30 (thirty) Days prior notice to the Council of its intention to dispose and:

1.2.1 in the event that the Council responds within 30 (thirty) Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing at a consideration of 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 then the Chargee shall co-operate with such arrangements and shall use its reasonable endeavours to secure such transfer;

1.2.2 if the Council does not serve its response to the notice served under paragraph 1.2.1 of this Schedule within 30 (thirty) 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;

1.2.3 if the Council or any other person cannot within 40 (forty) Working Days of the date of service of its response under paragraph 1.2.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.2 of this Schedule the Chargee shall be entitled to dispose 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 1.2 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.

1.3 The plot locations of the Affordable Housing Units have been agreed between the Council and the Owner and are indicated on Plan 2 subject to any variations that may be agreed in writing between the Council and the Owner.

1.3.1 Subject to paragraph 1.10 of this Schedule not to cause or permit more than 50% of the Open Market Dwellings to be Occupied until all of the Affordable Housing Units have been constructed to the same external standard as the Open Market Dwellings and transferred to a Registered Provider at the Affordable Housing Unit Prices and on terms that accord with Homes England funding requirements current at the date of this Agreement.

1.4 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:

1.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and

1.4.2 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 all such services to be connected to the mains.

1.5 The Owner shall provide the Council with written notice:

1.5.1 of the Commencement of Development; and

1.5.2 of Occupation of the first Dwelling; and

1.5.3 of Occupation of 50% of the Open Market Dwellings Dwelling; and

1.5.4 upon the Practical Completion of the final Affordable Housing Unit.

1.6 The Owner shall use its Reasonable Endeavours to market the Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval ("**Initial Registered Provider Transfer Terms**") **PROVIDED THAT** it is agreed for the avoidance of doubt that the Owner shall not transfer the Affordable Housing Units to a Registered Provider not 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.

1.7 The Owner will thereafter use Reasonable Endeavours to exchange contracts with the Registered Provider for the sale of the Affordable Housing Units and will keep the Council informed on the Owner's progress.

1.8 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms 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.

1.9 If any of the Affordable Housing Units have not been contracted for sale to a Registered Provider within 6 (six) calendar months of the date of Practical Completion of the last Affordable Housing Unit or such earlier date agreed in writing by the Council and the Council is satisfied that paragraphs 1.6 to 1.8 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 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.

1.10 No more than 75% of the Open Market Dwellings shall be Occupied until either the Affordable Housing Units have been transferred to a Registered Provider or the Affordable Housing Commuted Sum has been paid to the Council in relation to any Affordable Housing Units not so transferred.

1.11 Any agreement to sell or transfer the Affordable Housing Units to a Registered Provider shall contain the following minimal provisions:

1.11.1 The grant by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Unit; and

1.11.2 A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Open Market Dwellings.

2. EDUCATION CONTRIBUTION

2.1 To pay the Education Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 2.2 to 2.3 (inclusive) of this Schedule.

2.2 To notify the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until £104,000 (one hundred and four thousand pounds) 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 50% of the Dwellings and not to Occupy more than 50% of the Dwellings until the final payment of £104,000 (one hundred and four thousand pounds) of the Education Contribution as Index Linked has been paid to the Council.

3 OFF-SITE OPEN SPACE CONTRIBUTION

3.1 To pay the Off-Site Open Space Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 3.2 to 3.3 (inclusive) of this Schedule.

3.2 To notify the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until £62,833.50 (sixty two thousand eight hundred and thirty three pounds and fifty pence) of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.

3.3 To notify the Council prior to the Occupation of more than 50% of the Dwellings and not to Occupy more than 50% of the Dwellings until the remaining £62,833.50 (sixty two thousand eight hundred and thirty three pounds and fifty pence) of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.

4 **PUBLIC OPEN SPACE**

4.1 To provide the Public Open Space in accordance with the Planning Permission and condition(s) 2, 3 and 4.thereto to the reasonable satisfaction of the Council.

4.2 Not to Occupy any of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until it has submitted for the written approval of the Council and the Council has approved a POS Management Scheme for the future maintenance and management of the Public Open Space **PROVIDED THAT** it is agreed that if the Council does not notify the Owner of its approval or proposed amendments to the POS Management Scheme within the 30 (thirty) Working Days of receipt of the same (or such other period of time that the Council may reasonably require and which may be agreed in writing between the Owner and the Council) it shall be deemed that the Council has approved the POS Management Scheme submitted by the Owner.

4.3 The Owner shall not permit the Occupation of any Dwelling which has a direct frontage onto the Public Open Space until such part of the Public Open Space in relation to which that Dwelling has a direct frontage has been completed to the reasonable satisfaction of the Council.

4.4 The Owner shall not permit the Occupation of more than 75% Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the Public Open Space has been completed in accordance with the Planning Permission and a condition(s) thereto to the reasonable satisfaction of the Council.

4.5 Following the completion of the Public Open Space Works to the Council's reasonable satisfaction to engage a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) for the purpose of undertaking the future management and maintenance of the Public Open Space, prior to the sale of the penultimate Dwelling on terms agreed between the Owner and the Management Company in consultation with the Council and all further management and maintenance shall be thereafter carried out by the Management Company in accordance with the principles set out in paragraphs 4.5.1 and 4.5.3 of this Schedule **PROVIDED THAT** it is agreed that it shall be a term of Management Company's engagement that the Management Company will:

4.5.1 maintain and manage in perpetuity the Public Open Space in accordance with the approved POS Management Scheme;

4.5.2 comply with the requirements of the approved POS Management Scheme; and

4.5.3 only allow the use of the Public Open Space for public access and recreation and for no other purpose;

AND FURTHER PROVIDED THAT it is agreed that the Owner will comply with the provisions set out in paragraphs 4.5.1 and 4.5.3 of this Schedule until such time as a Management Company has been engaged to undertake the future management and maintenance of the Public Open Space, or the particular element of Public Open Space as the case may be.

4.6 The Owner shall not permit the sale of the final Dwelling without having first provided to the Council a certified copy of the Memorandum and Articles of Association of the Management Company.

4.7 The Owner shall not wind up the Management Company nor alter the constitution of the Management Company without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless otherwise first agreed in writing by the Council.

4.8 The Owner shall ensure and procure that the sale contract of each Dwelling contains a provision that requires the buyer of such Dwelling to covenant substantially in the following form direct with the Owner and the Management Company under which the buyer shall:

4.8.1 covenant to pay to the Management Company a pro rata proportion of the reasonable costs and expenses properly incurred by the Management Company in respect of its administration and of insuring and maintaining the Public Open Space; and

4.8.2 covenant that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 4.8.1 and 4.8.2.

4.9 It is agreed that in the event that the Management Company ceases operating and / or maintaining the Public Open Space the Owner will maintain or will procure the maintenance of the Public Open Space in accordance with the approved POS Management Scheme and the provisions set out in paragraphs 4.5.1 and 4.5.2 of this Schedule until such time as a new Management Company has been engaged to undertake the future management and maintenance of the Public Open Space, or the particular element of Public Open Space.

4.10 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Public Open Space has not been dedicated to the public nor is any use by the public of any part of the Public Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.

4.11 The Owner will procure in either case that public access is allowed to the Public Open Space but subject to the following provisions:

4.11.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior written approval;

4.11.2 the Owner may erect notices on the Public Open Space and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being; and

4.11.3 access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the Public Open Space or for and during the construction of any building or land abutting it subject to the Council's prior approval.

4.12 The Owner may close the Public Open Space or any part thereof for reasonable periods by reason of:

4.12.1 emergency;

4.12.2 cleansing, maintenance and repair;

4.12.3 at the direction of the emergency services or other lawful authority; and / or

4.12.4 construction activities whilst the Development is being built if in the interests of health and safety.

6SUSTAINABLE TRAVEL CONTRIBUTION

1.1 To pay the Sustainable Travel Contribution to the Council upon or prior to the Commencement of the Development not to Commence the Development until the Sustainable Travel Contribution as Index Linked has been paid to the Council.

SECOND SCHEDULE

("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 Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.

Contributions

2 To apply the Contributions towards the purposes specified in this Agreement 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

3 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 its nominee.

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

THE COMMON SEAL of **BARNSLEY**)
METROPOLITAN BOROUGH)
COUNCIL was hereunto affixed to this)
Deed in the presence of:)

[redacted]

~~Borough Secretary~~/Authorised Signatory

No. 242
IN REGISTER

EXECUTED as a DEED by)
BALMORAL INDUSTRIAL TANKS LIMITED)
acting by)

[redacted]

Director: [redacted]

Director/Secretary [redacted]

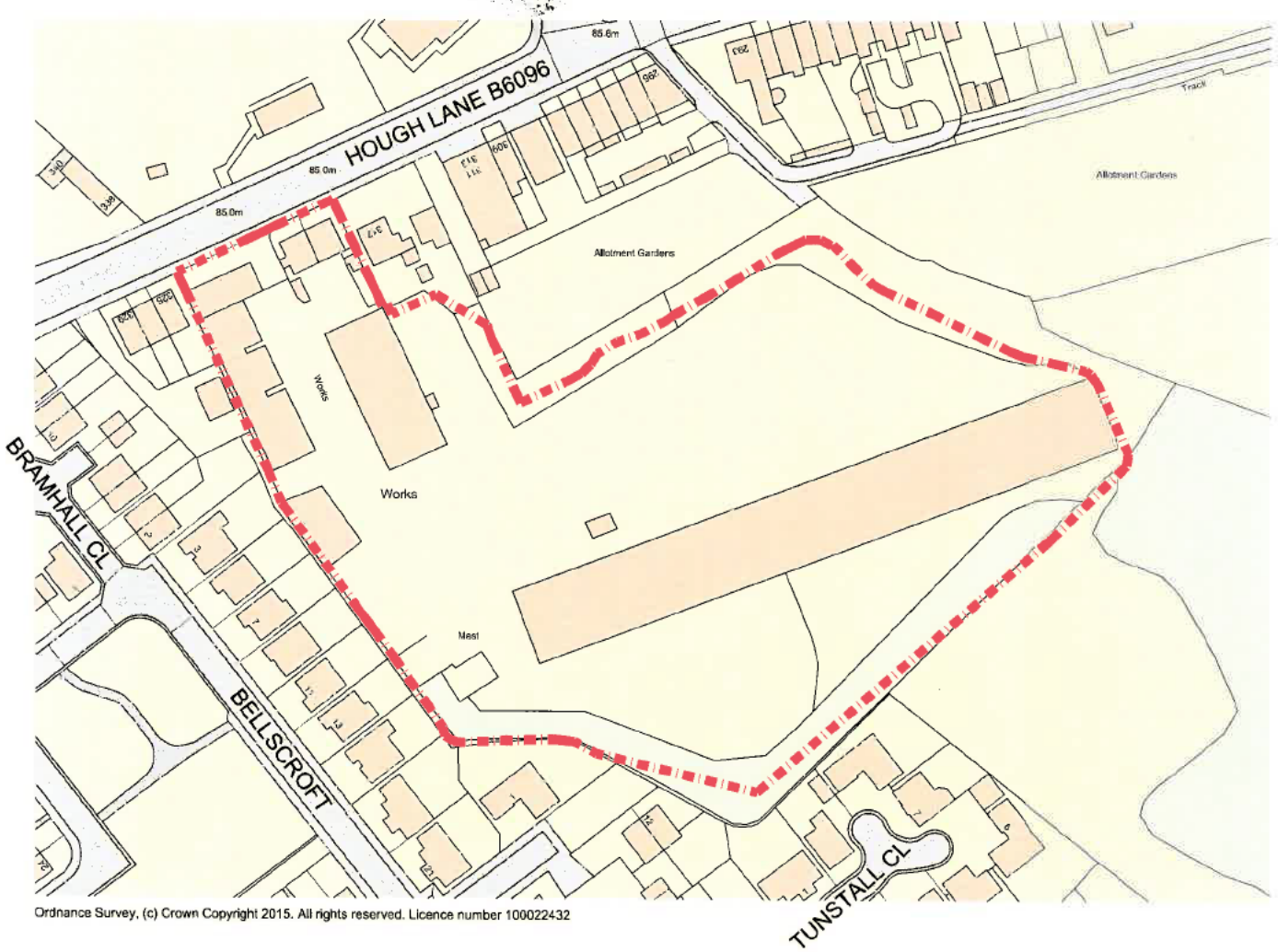
EXECUTED as a **DEED** by)
HOOBER LIMITED)
acting by:)

Director: [redacted]

Director/Secretary [redacted]

Appendix 1

(Plan 1)



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[redacted]

INFORMATION

Project/Client: PROPOSED RESIDENTIAL DEVELOPMENT AT 321 HOUGH LANE WOMBWELL, BARNSLEY	Project No: IAA315-0070
	Dwg No: A0-01-01
	Rev:
Drawing: LOCATION PLAN	Scale: 1:1000 @A3
	Drawn By: NE Date: OCT 17
	Checked By: NE Date: OCT 17

0 20 40 100

SCALE BAR 1:1000

NOTE: RED LINE BOUNDARY BASED ON TOPOGRAPHICAL SURVEY INFORMATION NOT OS DATA

NORR
3 Bon Accord Crescent, Aberdeen, AB11 6XH
T: +44 (0)1224 886 277 F: +44 (0)1224 575 314
www.norr.com

Appendix 2

(Plan 2)


DEVELOPMENT TO BE
EXISTING BUILDINGS
VISIBILITY SPLAY BASED ON DRG.
NO. 11743G/SK1001 REV A
HOUGH LANE
RE-CONSTRUCT EXISTING BOUNDARY WALL
TO ACHIEVE REQUIRED VISIBILITY SPLAY
EXISTING HOUSES TO BE RETAINED. NEW
REAR ACCESS AND PARKING REQUIRED
ALLOTMENT GARDENS
EXISTING LANDSCAPING SHOWN
INDICATIVELY AT PRESENT
EXISTING BUILDINGS ON
SITE TO BE DEMOLISHED
RED LINE TAKEN FROM TITLE PLAN SYK265383 - DISCREPANCIES
MAY OCCUR DUE TO LIMITATIONS WITH OVERLAY PROCESS
ALL PLOTS TO HAVE ELECTRIC CHARGING PROVISION
ALL PLOTS TO HAVE CYCLE STORAGE FOR MIN. 1 NO. CYCLE
MINIMUM SPACE STANDARDS APPLY TO HOUSING
F.O.S
PHONE MAST - TO
BE REMOVED
BUND TO BE REMOVED
ALONG SOUTHERN BOUNDARY
TRIM HEDGEROW ALONG
SOUTH EAST BOUNDARY
3.90 ACRES (GROSS)
MALSIN GARDENS
ASSUMED DRAINAGE OUTFALL. REQUISITION
Legend
Boundary Treatments:
1.8m high screen wall & fence
1.8m high feathered edge fence
2.0m high feathered edge fence with 300mm trellis
1.2m high loop top railings (black)
450mm high timber knee rail
Refer to boundary treatment layout and details for further information
Front entrance door
Secondary entrance door
Lockable personnel gate (circa. 101no.)
Parking space
Shared private driveway - Tarmacadam
Refuse and recycling:
LA Waste Provision
LA bins to be placed onto permanent paved area.
900X2400mm flag base to bin storage area
Bin Collection Point with flag based to size indicated on drawing
Paved Patio Area
To consist of 2no. row of 600x600 slabs positioned central to door. Paths to be 900mm wide to front entrance. All other paths to be 600mm to side and rear of dwellings with 150mm margin adjacent dwelling. Shared paths to rear and side to be increased to 900mm wide.
Planning Boundary Line
Trees and Hedgerows:
Existing trees to be retained and protected within the development
Root protection zone of existing tree to be retained
Tree/Shrubs to be removed
Affordable Rent
Affordable Shared Ownership
Feature gable
Plan 2
S106 Affordable Homes
Affordable Rent
Shared Ownership
DATE 26.03.2020 DRAWN HS1
SCALE 1:500@A2 CHK HS1
Hough Lane, Wombwell
Planning Layout
Dwg No H51-HLW-001 Rev X
HOOBER homes
HIVE