

Date 22<sup>nd</sup> August 2024

(1) BARNSELY METROPOLITAN BOROUGH COUNCIL

AND

(2) NETWORK SPACE LAND LIMITED

**DEED OF AGREEMENT**

Pursuant to s106 of the Town and Country Planning Act 1990 relating to land north of Shaw Lane, Carlton, Barnsley S71 3HH

Appeal Reference: APP/R4408/W/24/3341097

## **PARTIES**

(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA (the "Council")

(2) **NETWORK SPACE LAND LIMITED** (Co. Regn. No.1604509) of Centrix House, 26 Crow Lane East, Newton-Le-Willows WA12 9UY

## **BACKGROUND**

(A) By virtue of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by who the Planning Obligations hereby created are enforceable.

(B) The Owner is the proprietor of the freehold of the Site which is registered at the Land Registry under Title Number SYK392337

(C ) The Application was submitted to the Council for planning permission for the Development. The Application was refused by the Council on the 27 September 2023

(D) Subsequently, the Appeal has been submitted

(E ) The parties have agreed to enter into this Deed in order to secure (subject to the terms and conditions of this Deed) the planning obligations herein

(F) The parties have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) and agree the planning obligations it contains are: (i) necessary to make the Development acceptable in planning terms; (ii) directly related to the Development; and (iii) fairly and reasonably related in scale and kind to the Development.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

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

#### **1990 Act**

the Town and Country Planning Act 1990 (as amended)

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

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 5.8, 5.9 or 7 of Schedule 5, the lower of the following two amounts:

(a) 30% of the proceeds of sale; and

- (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

### **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 or improvements to existing Affordable Housing within the Council's administrative area

### **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 to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy and reference to "Affordable Housing for Rent Dwelling" shall be construed accordingly;

### **Affordable Housing Scheme**

Means a scheme submitted by the Owner to the Council in relation to the operation of the Affordable Housing and which specifies in relation to the Affordable Housing on the Site:

- (i) confirmation of the number size and tenure of the Affordable Units;
- (ii) the location and distribution of the Affordable Units within the Site; and
- (iii) details of how the proposed design and construction of the Affordable Units will ensure that the Affordable Units are materially indistinguishable (in terms of outward design and appearance) from the Open Market Dwellings within the Development

(and which includes the size location and distribution of the Schedule 5 First Homes (if any) in the relevant Phase);

### **Affordable Rent**

At least 20% below local market rents (including service charges where applicable);

### **Affordable Value**

50% (fifty percent) of the Open Market Value of an equivalent open market unit (or such other greater sum agreed with the Council that is financially viable for a Registered Provider to be able to purchase an Affordable Unit) plus a developer's profit agreed with the Council in respect of the relevant unit as set out in the Council's affordable housing SPD;

### **Affordable Units**

7.5% of the total number of Dwellings to be built on the Site as part of the Development (rounded up or down to the nearest whole Dwelling) which shall be provided as Affordable Housing comprising a tenure

split as follows:- (i) 20% of the 7.5% as Other Affordable Ownership Units; & (ii) 80% of the 7.5% as Affordable Housing for Rent Dwellings to be provided in accordance with the provisions of Schedule 2 of this Deed and for the avoidance of doubt reference to Affordable Units does not include First Home units

### **Appeal**

The appeal against the refusal of the Application allocated reference number APP/R4408/W/24/3341097 by the Planning Inspectorate

### **Application**

The application for planning permission for the Development which was submitted to the Council and which was given reference number 2022/0115 by the Council and which is now the subject of the Appeal

### **Armed Services Member**

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

### **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 Site access, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly;

### **Compliance Certificate**

means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 of Schedule 5 applies the Eligibility Criteria (Local) (if any);

### **Contributions**

means collectively the Primary Education Contribution and the Secondary Education Contribution, the Off-site Recreation Contribution, the Sustainable Travel Contribution, the SSSI Mitigation Contribution and the Northern Access Road Contribution;.

**Council's Approved List**

Means the following Registered Providers:

Acis Group  
Auxesia Homes  
Anchor Hanover  
Berneslai Homes Limited  
Great Places Housing Group  
South Yorkshire Housing Association Limited  
Yorkshire Housing Limited  
Guinness Northern Counties Limited  
Habinteg Housing Association  
Heylo (Shared Ownership)  
Home Group  
Park Properties Housing Association Ltd  
Places for People  
Riverside Housing Group  
Sanctuary Housing  
Together Housing Association Ltd  
Wakefield and District Housing Association &  
Yorkshire Housing Association

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

**Default Interest Rate**

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

**Development Standard**

means a standard to fully comply with the following:-

- (a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015
- (b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the Council from time to time
- (c) Part 2 of Secured by Design standards published by Police Crime Prevention Initiatives Limited
- (d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)

and the same may be amended by written agreement between the Owner and the Council;

**Development**

the development of the Site pursuant to the Planning Permission;

**Discount Market Price**

Means a sum which is the Market Value discounted by at least 30%;

**Disposal**

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:

- (a) a letting or sub-letting in accordance with paragraph 6 of Schedule 5
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- (c) an Exempt Disposal

and "Disposed" and "Disposing" shall be construed accordingly;

**Dwelling**

A residential unit that may be built on the Site pursuant to the Planning Permission and the term of Dwellings shall be construed accordingly;

**Dwelling Phase**

Means a Phase of the Development that contains Dwellings;

**Eligibility Criteria (Local)**

means criteria (if any) published by the Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if:

- (a) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (Local) (if any); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
  - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria); and/or
  - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
  - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a Key Worker

**Eligibility Criteria (National)**

means criteria which are met in respect of a purchase of a First Home if:

(a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

(b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed the Income Cap (National).

### **Exempt Disposal**

means the Disposal of a First Home in one of the following circumstances:

- (c) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (d) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (e) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (f) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 7 of Schedule 5 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 6 of Schedule 5;

### **Expert**

a person of at least 15 years post qualification continual and continuing experience in the subject matter of the dispute

### **First Home**

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap and for the avoidance of doubt and in respect of this Deed only reference to First Home does not include the Affordable Units. The Council does acknowledge that First Homes are to be considered a tenure of affordable housing pursuant to the National Planning Policy Framework document;

### **First Home Owner**

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

- (a) the developer Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 6 of Schedule 5

### **First Time Buyer**

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

### **First Home Valuer**

means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity;

### **General Housing Unit**

A Dwelling which is not an Affordable Unit or a First Homes 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);

### **Income Cap (Local)**

£80,000 or such other local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home

### **Income Cap (National)**

means:

(a) in the case of a First Home situated within the administrative area of any London Borough Council (including the City of London), ninety thousand pounds (£90,000); and

(b) in the case of any other First Home, eighty thousand pounds (£80,000)

or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

### **Index Linked**

Increased in accordance with the following formula:

(a) Amount payable = the payment specified in this Deed x (A/B)

(b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and

(c) B = the figure for the Retail Price Index published by the Officer for National Statistics that applied when that index was last published prior to the date of this Deed,

### **Inspector**

means the planning inspector appointed for the purposes of the Appeal by the Secretary of State;

### **Key Worker**

means a person employed or with a confirmed job offer in one of the following categories of employment:

NHS staff, police officers, firefighters, transport workers and teachers

or such other categories of employment as may be designated and published by the Council from time to time as the "First Homes Key Worker criteria" and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time

of the relevant disposal of the First Home shall be the "Key Worker" criteria which shall apply to that disposal;

### **Local Connection Criteria**

means either (a) or (b) below:

- (a) criteria which are met by a person who satisfies one or more of (i) and (vii) below prior to exchange of contracts for the relevant First Home:
  - (i) they have lived for 3 out of the last 5 years in Barnsley or have lived in Barnsley for 6 months out of the last 12 months;
  - (ii) they are currently employed in the Barnsley area;
  - (iii) they have close family who have lived in Barnsley for 3 out of the last 5 years or have lived in Barnsley for 6 months out of the last 12 months;
  - (iv) they are Armed Service Members or former service personnel, where the application is made within 5 years of discharge from HM forces;
  - (v) they are bereaved spouses and civil partners of Armed Service Members leaving services family accommodation following the death of their spouse or civil partner;
  - (vi) they are serving or former members of the reserve forces who need to move because of a serious injury, medical condition or disability which is wholly or partly attributable to their military service;
  - (vii) they have other special circumstances that connect them to Barnsley
- (b) such other local connection criteria as may be published by the Council from time to time as its "First Homes Local Connection Criteria" and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal;

### **Market Value**

means the open market value as assessed by a First Homes Valuer of Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation;

### **Mortgagee**

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home

including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home

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

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

#### **NAR Contribution**

Means the single sum of £472,560 (four hundred and seventy two thousand five hundred and sixty pounds) to be paid to the Council to be used by the Council towards the delivery of the Northern Access Road section from Royston to local plan allocation L12;

#### **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 Recreation Contribution**

means the sum to be calculated in respect of each Phase and paid in accordance with Schedule 3 of this Deed 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

#### **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 has 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 a Valuer assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;

#### **Other Affordable Ownership Units**

Means a type of 'other affordable route to home ownership' (as defined in the NPPF) affordable housing product agreed in writing by the Council (and for the avoidance of any doubt which may be Shared Ownership Dwellings);

#### **Phase**

Means a reserved matters approval pursuant to the Planning Permission

#### **Plan**

The plan annexed to this deed with drawing number P3921 Rev A.

#### **Planning Obligation**

The obligations and conditions and stipulations set out at Schedules 2, 3 and 5 of this Deed and the term Planning Obligations shall be construed accordingly;

### **Planning Permission**

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

### **Practical Completion**

Means either;

(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

(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

And Practically Completed shall be construed accordingly;

### **Price Cap**

means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State;

### **Primary Education Contribution**

means the sum for each Phase to be calculated on the basis of the following formula:

$$A \times B = C$$

Where:

A is the number of primary school places generated by the Phase (0.21 x the number of dwellings to be constructed on the Phase rounded up or down to the next whole number);

B is the cost per primary school place (£16,000);

C is the figure arrived at when multiplying A by B

To be used for the provision of primary school places and to provide improvements to school educational facilities within the relevant planning areas as defined in the Council's "Financial Contributions to Schools" SPD (adopted May 2019);

### **Protected Tenant**

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 equivalent contractual or voluntary right) in respect of a particular Affordable Unit;

(b) has exercised any statutory right to buy (or equivalent contractual or voluntary right) in respect of a particular Affordable Unit;

(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;

(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;

(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;

(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 any person deriving title from any of the parties mentioned in (a) to (f) above;

### **Registered Provider**

Means a registered provider as defined by the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England under that Act or any other company or body as agreed in writing with the Council;

### **SDLT**

means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;

### **Secondary Education Contribution**

means the sum for each Phase to be calculated on the basis of the following formula:

$$A \times B = C$$

Where:

A is the number of secondary school places generated by the Phase (0.15 x the number of dwellings to be constructed on the Phase rounded up or down to the next whole number);

B is the cost per secondary school place (£16,000);

C is the figure arrived at when multiplying A by B.

To be used for the provision of secondary school places and to provide improvements to school educational facilities within the relevant planning areas as defined in the Council's "Financial Contributions to Schools" SPD (adopted May 2019);

### **Secretary of State**

Means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function

### **Shared Ownership Dwellings**

Housing transferred by the Registered Provider on a Shared Ownership Lease and where staircasing is permitted and reference to "Shared Ownership Dwelling" shall be construed accordingly;

### **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 north of Shaw Lane, Carlton registered under title number SYK392337 and shown edged red on the Plan;

### **SSSI Mitigation Contribution**

Means the single sum of £40,950 (forty thousand nine hundred and fifty pounds) to be used by the Council towards:- (i) multi-use dog bins and emptying for 10 years; (ii) 4 (four) 'no cycling' signs; (iii) 4 (four) 'dogs on leads' signs and (iv) c.620m of fencing, all at the Deane Valley Wetlands SSSI;

### **Statutory Undertaker**

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

### **Sustainable Travel Contribution**

means in respect of any flats to be constructed on the Development the sum for each Phase to be calculated as follows: number of flats constructed within each Phase x 6 x £100 x 0.75; and

in respect of any houses to be constructed on the Development the sum for each Phase to be calculated as follows: number of houses to be constructed within each Phase x 10 x £100 x 0.75

paid by the Owner to the Council in accordance with Schedule 3 of this Deed and to be used by the Council towards sustainable travel improvements in accordance with the Councils SPD Sustainable Travel adopted July 2022;

### **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 Reference to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.

1.6 The expression Owner shall include their successors in title and assigns.

1.7 The expression Council shall include any successor authority to its statutory functions under the 1990 Act.

1.8 Where a party includes more than one person any obligations of that party shall be joint and several.

1.9 Clause headings shall not affect the construction of this Deed.

1.10 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. STATUTORY BASIS**

2.1 The Deed secures planning obligations made pursuant to section 106 of the 1990 Act, s111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers and is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person deriving title

to the Site (or any part or parts thereof) from the Owner as if that person had been an original covenanting party to this Deed (subject always to for the avoidance of any doubt to the terms and conditions of this Deed).

2.2 This Deed is enforceable by the Council as local planning authority for the purposes of the 1990 Act.

### **3. CONDITIONS PRECEDENT**

3.1 This Deed is conditional upon and does not become effect unless and until the Planning Permission is granted.

### **4. COVENANTS AND DECLARATIONS**

4.1 The Owner covenants with the Council to comply with the Planning Obligations in this Deed at Schedules, 2, 3 and 5

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 (subject to any provisions in Schedules 2 or 5 which are intended to specifically bind 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 quashed by a court; or

5.2.3 is at any time revoked or modified (without the consent of the Owner),

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 unless and until such chargee or mortgagee has taken or entered into possession of the Site of part thereof in which case it shall also be bound by the covenants restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

5.4 No obligation in this Deed shall be binding or enforceable against any person who does not have an interest in the part of the Site to which the obligation relates.

### **6. REGISTRATION**

6.1 The 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 affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

### **7. OWNERSHIP**

7.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in any part of the Site (other than as disclosed by the land register title register for the Site (being SYK392337) dated the [6<sup>th</sup> August 2024] and an agricultural tenancy dated the 14<sup>th</sup> November 2023. S.M.T.

## 8. NON-FETTER AND WAIVER

8.1 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.

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

## 9 FUTURE PERMISSIONS

9.1 Subject to 9.2 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.

9.2 In the event that any new planning permission(s) are granted by the Council derived from the Planning Permission pursuant to section 73 of the 1990 Act and unless otherwise agreed by the parties:

(a) the Planning Obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to section 73 of the 1990 Act and the Site itself; and

(b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any such application under section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s)

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and quantum of s106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of new deed or supplemental deed pursuant to s106 of the 1990 Act and FURTHER PROVIDED (for the avoidance of any doubt) that this clause 9.2 and the operation of it shall not ever require the duplication of any of the Planning Obligations in this Deed.

## 10. 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.

## 11. INDEXATION

11.1 All Contributions payable to the Council shall be Index Linked

11.2 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.

## 12. VAT

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

### **13. 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.

### **14. 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 (of 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 individual Dwellings.

### **15. NOTIFICATION**

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

15.1.1 delivered by hand; or

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

15.2 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:

15.2.1 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;

15.2.2 to the Owner at Centrix House, 26 Crow Lane East, Newton-Le-Willows WA12 9UY

or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 15.

15.3 Any notice, request, demand or other written communication given or served in accordance with Clause 15.1 or Clause 15.2 shall be deemed to have been received:

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

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

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

15.4 This Clause 15 does not apply to the service of any proceedings or other documents in any legal action.

### **16. DISPUTE RESOLUTION**

16.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

16.2 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 other period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision shall (except in cases of manifest error, error of law and/or fraud) be final and binding on the parties.

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

16.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days (or such other period as may be agreed) of receipt of the notice in Clause 16.2 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.

16.3.2 The Expert shall act as an Expert and not as an arbitrator

16.3.3 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 (or such extended period as the Expert shall allow) of receipt of the Expert's Notice;

(b) the other parties shall have 20 Working Days from the date of receipt of such written submission (or such extended period as the Expert shall allow) to respond;

(c) the Expert may disregard any representations made out of this time; and

(d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;

(e) to the extent not provided for by this clause the Expert may in their reasonable discretion depending upon the nature and complexity of the case determine such other procedures and/or directions to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination, varying any time limit or direction and/or setting new directions and either of their own volition or upon the application of any party.

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

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

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

16.4 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:

16.4.1 either party may apply to the relevant body as part Clause 16.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

16.4.2 This clause 16 shall apply to the new Expert as if there were the first Expert appointed.

## **17. 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 1990 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 those deriving title to the Site.

## **18. COSTS**

The Owner within 7 days of the date hereof shall pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of two thousand five hundred pounds (£2,500) (no VAT payable).

## **19. ENFORCEABILITY OF PLANNING OBLIGATIONS**

If in determining the Appeal the Secretary of State or his Inspector states in his decision letter that any specific obligation (or specific obligations) contained in this Deed

19.1.1 fails to comply (in whole or in part) with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended);

then such obligation(s) shall not take effect and shall not be enforceable but this will not effect the enforceability of the other obligation(s) set out under this Deed

## **20. 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.

## **21. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.

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 PLAN**



**KEY**

NETWORK SPACE 7571Hs

JFB

Smt

Revision | A Drawn | EP Forecast | DK Date | JUN 2021

planning | urbanism | landscape



Unit of All England Court, Torque Road, Epsom, Surrey, Middlesex, WPS 248  
T: 0181 4573673 www.spawforths.co.uk info@spawforths.co.uk

**ISSUED**

Client Name: Network Space

Project Title: Shaw Lane

Drawing Title: Red Line Boundary

Drawn By: EH	Forecasted By: DK	Scale: G: A1	Date: July 2021
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Drawing No: P3921	SPA	XX	ZZ	M2	A	10 001	Revision: A
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File Path: P:\3921\JUL 20 2021\1001.dwg

Plot Area: 10000sqm  
 Date: 10/07/2021 10:00:00  
 Scale: 1:1000  
 Plot Size: 10000sqm  
 Plot Area: 10000sqm  
 Plot Area: 10000sqm

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**Red Line Boundary**



## SCHEDULE 2

### Affordable Housing

#### 1. PROVISION OF ON-SITE AFFORDABLE HOUSING

- 1.1 The Owner shall not commence construction of any Dwellings in any Dwelling Phase until the Council has approved in writing an Affordable Housing Scheme for that Phase (and which scheme may be amended from time to time with the written agreement of the Owner and the Council)
- 1.2 The Owner shall
- 1.2.1 carry out the Development in accordance with the Affordable Housing Scheme for the relevant Phase; and
- 1.2.2 ensure the Affordable Units are provided in accordance with the Planning Permission and any other applicable legislation
- 1.2.3 ensure that 7.5% of the total number of Dwellings shall be provided as Affordable Units (and for the avoidance of any doubt the Council hereby confirms that if the Development comes forward in more than one Dwelling Phase some phases may contain less than 7.5% or no Affordable Units so long as the total number across the Site shall equate to 7.5% of the total number of the Dwellings)
- 1.3 The Owner shall notify the Council of the Practical Completion of the last of the Affordable Units within each Phase within 30 days thereof.

#### 2. TRANSFER OF THE AFFORDABLE UNITS

- 2.1 The Owner shall as soon as reasonably practicable following commencement of construction of any Dwellings within each Dwelling Phase (or sooner at the Owner's discretion) issue draft heads of terms to the Registered Provider and thereafter use reasonable endeavours to contract to transfer the Affordable Units in the Phase 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 and 2.2 of this Schedule of this deed and no Registered Provider has contracted to acquire the Affordable Units within a Dwelling Phase:
- 2.3.1 within a period of 6 months from the Practical Completion of the last of the Affordable Units in that Phase; or
- 2.3.2 upon the Occupation of 40% of the General Housing Units in that Phase (whichever is the earlier),
- 2.3.3 the Owner may (at the Owner's absolute discretion) dispose of such uncontracted 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 to the General Market Housing Units in each Dwelling Phase either exchange contracts for the transfer of more than 90% of the Units or Occupy or permit to be Occupied more than 90% of the Units until the Owner has either:
- 3.1.1 notified the Council in writing that the Affordable Units in the Phase has been Practically Completed; or
  - 3.1.2 paid an Affordable Housing Contribution in relation to any applicable uncontracted Affordable Units in a Phase 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 other 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 (save in respect of manifest error; error of law; and/or fraud)
- 3.2.3 the costs of any determination by the Valuer shall be paid by the Owner.

### 4. MANAGEMENT AND OCCUPATION OF THE ON-SITE AFFORDABLE UNITS

- 4.1 Subject only to 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 Schedule 2 of this Deed which thereafter will determine absolutely in respect of such Affordable Unit(s).

**SCHEDULE 3**  
**Financial Contributions**

**1. SUSTAINABLE TRAVEL CONTRIBUTION**

- 1.1 The Owner covenants with the Council as follows:
- (i) To pay the Sustainable Travel Contribution for each Phase prior commencement of construction of any Dwellings in the relevant Phase.
  - (ii) Not to commence construction of any Dwellings in any Phase unless and until the Sustainable Travel Contribution has been paid to the Council in respect of that Phase.

**2. OFF-SITE FORMAL RECREATION CONTRIBUTION**

- 2.1 The Owner covenants with the Council as follows:
- (i) To pay 40% of the Offsite Formal Recreation Contribution for the Phase prior to the commencement of construction of any Dwellings in the Phase;
  - (ii) not to commence construction of any Dwellings in the Phase or permit the commencement of construction of any Dwellings in a Phase unless and until 40% of the Off-site Formal Recreation Contribution for the Phase has been paid to the Council;
  - (iii) to pay the remaining 60% of the Off-site Formal Recreation Contribution for the Phase to the Council prior to the Occupation of more than 50% of the Dwellings in the Phase
  - (iv) not to Occupy or permit the Occupation of more than 50% of the Dwellings in the Phase unless and until the remaining 60% of the Off-site Formal Recreation Contribution for the Phase has been paid to the Council.

The **Off-Site Formal Recreation Contribution** for each Phase is to be calculated as follows:-

- The Off-Site Formal Recreation Contribution = A + B + C + D
- Where A = No. of 1 bed Dwellings in the Phase x £560.22 Index Linked
- Where B = No. of 2 bed Dwellings in the Phase x £824.41 Index Linked
- Where C = No. of 3 bed Dwellings in the Phase x £989.01 Index Linked
- Where D = No. of 4 bed Dwellings in the Phase x 1155 Index Linked

**3. PRIMARY AND SECONDARY EDUCATION CONTRIBUTIONS**

- 3.1 The Owner covenants with the Council as follows:
- (i) to pay 50% of the Primary Education Contribution for the Phase and 50% of the Secondary Education Contribution for the Phase to the Council prior to the Occupation of any Dwellings in the Phase;

- (ii) not to Occupy or permit the Occupation of any of the Dwellings in the Phase unless and until 50% of the Primary Education Contribution for the Phase and 50% of the Secondary Education Contribution for the Phase have been paid to the Council;
- (iii) to pay the remaining 50% of the Primary Education Contribution for the Phase and remaining 50% of the Secondary Education Contribution for the Phase prior to the Occupation of more than 50% of the Dwellings in the Phase;
- (iv) not to Occupy or permit the Occupation of more than 50% of the Dwellings in the Phase unless and until the remaining 50% of the Primary Education Contribution for the Phase and the remaining 50% of the Secondary Education Contribution for the Phase has been paid to the Council.

#### **4. SSSI MITIGATION CONTRIBUTION**

- 4.1 To pay the SSSI Mitigation Contribution to the Council prior to the Occupation of any Dwellings.

#### **5. NAR Contribution**

- 5.1 To pay the NAR Contribution to the Council prior to the Occupation of any Dwellings.

**SCHEDULE 4**  
**Council's Covenants**

2. The Council shall place the Contributions and any Affordable Housing Contribution (if any) and any Additional First Homes Contribution (if any) into an interest bearing bank account or in separate accounts as the Council shall at its discretion decide;
3. The Council shall not apply the Contributions and any Affordable Housing Contribution (if any) and any Additional First Homes Contribution (if any) for any purpose other than for the purposes set out within this Deed;
4. In the event any Contribution and any Affordable Housing Contribution (if any) and any Additional First Homes Contribution (if any) (or any part or parts thereof) are not expended or contractually committed within 10 (ten) years of the date of payment (or the date of payment of the relevant part where paid in tranches) 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;
5. The Council shall respond to any request to account for the sums expended within 28 (twenty eight) Working Days of that request being made.
6. To comply with any obligations upon it arising out of any of the other Schedules to this Deed.

## SCHEDULE 5

### First Homes

#### 1 OBLIGATIONS

Unless otherwise agreed in writing by the Council, the Owner covenants with the Council as below save that:-

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

#### 2. QUANTUM OF FIRST HOMES

- 2.1 The Council hereby agrees that the First Home units may be phased across the Site (as agreed between the Owner and the Council) provided that across the entire Site 2.5% of the total number of the Dwellings on the Site (rounded up or down to the nearest whole Dwelling) shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Scheme(s) and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

#### 3. CLUSTERING

- 3.1 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent General Housing Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

#### 4 DEVELOPMENT STANDARD

All First Homes shall be constructed to:-

- 4.1 the Development Standard current at the time of the relevant reserved matters approval; and
- 4.2 no less than the standard applied to the General Housing Units.

#### 5 DELIVERY MECHANISM

- 5.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
  - 5.1.1 the Eligibility Criteria (National); and
  - 5.1.2 the Eligibility Criteria (Local) (if any).
- 5.2 Whether on a first or subsequent sale if after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion in relation to the first sale only) it has not been possible to find a willing

purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 5.1.2 shall cease to apply.

5.3 Subject to paragraphs 5.6 to 5.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

5.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

5.4.1 The Council has been provided with evidence that:

5.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.2 applies meets the Eligibility Criteria (Local) (if any)

5.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

5.4.1.3 the transfer of the First Home includes:

a) a definition of the "Council" which shall be Barnsley MB Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 5.1 to 5.9 of Schedule 5 of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) the Council [and] (2) Network Space Land Limited

d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

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

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

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

5.6 The owner of a First Home (which for the purposes of this clause shall include the developer Owner and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

~~5.6.1~~ 6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 5.1 and 5.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to

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

~~5.6~~ 6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship *S.M.*

5.7 Upon receipt of an application served in accordance with paragraph 5.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

5.8 If the Council is satisfied that either of the grounds in paragraph 5.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 that the relevant Dwelling may be Disposed of:

5.8.1 to the Council at the Discount Market Price; or

5.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

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

5.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 5.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 serve notice on the owner setting out the further steps it requires the owner of the First Home to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he/they may serve notice on the Council in accordance with paragraph 5.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

5.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 5.8 or 5.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

5.11 Upon receipt of the Additional First Homes Contribution the Council shall:

5.11.1 within 28 Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 5.5 where such restriction has previously been registered against the relevant title

5.11.2 apply all monies received towards the provision of Affordable Housing

5.12 Any person who purchases a First Home free of the restrictions in schedule 5 of this Deed pursuant to the provisions in paragraphs 5.9 and 5.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

## 6. USE

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

6.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than

once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

- 6.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:
- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 6.3 A letting or sub-letting permitted pursuant to paragraph 6.1 or 6.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 6.4 Nothing in this paragraph 6 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence

## 7. MORTGAGEE EXCLUSION

The obligations in paragraphs 1-6 of this Schedule 5 in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

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

7.4.2 apply all such monies received towards the provision of Affordable Housing

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EXECUTED as a DEED by the affixing of  
THE COMMON SEAL of BARNDSLEY  
METROPOLITAN BOROUGH COUNCIL

Officer                      Authorised              Sealing

EXECUTED as a DEED by  
NETWORK SPACE LAND LIMITED  
acting by one Director

Director signature:

Director name:

In the presence of a Witness:

Witness signature:

Witness name (in BLOCK CAPITALS):

Witness occupation:

Witness address:

[Redacted signature]

[Redacted name]

[Redacted witness signature]

[Redacted witness name]

[Redacted witness name]

Development Administrator

[Redacted address line 1]

[Redacted address line 2]