DATED 15th March 2010

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

STRATA HOMES YORKSHIRE LIMITED

# AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land at former Longcar Junior School Longcar Lane Barnsley in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

**THIS DEED OF AGREEMENT** is made the day of Two Thousand and Ten

**BETWEEN**

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and

(2) **STRATA HOMES YORKSHIRE LIMITED** (Company Number 01596961) whose registered office is situate at Quay Point Lakeside Doncaster South Yorkshire DN4 5PL ("the Owner") of the second part

**RECITALS**

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK538429

(3) The Application has been submitted to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

**NOW THIS DEED WITNESSETH AS FOLLOWS:-**

**DEFINITIONS**

1 For the purposes of this Deed the following expressions shall have the following meanings

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

" **the Affordable Dwellings**" means the dwellings identified in the Third Schedule and on Plan 2 annexed to this Agreement by plot number, whose use and occupation shall be for Social Rented purposes only

"**the Application**" means the application for planning permission submitted to the Council for residential development with the reference number 2008/0407

"**the Commencement of Development**" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section

PLAN 2

Section 1

Section 2

Section 3

Section 4

Section 5

Longcar Lane

Racecommon Road

# Plan 3: PUBLIC OPEN SPACE

Public Open Space

Section 1

Section 2

Section 5*

Section 3

Section 4

Racecommon Road

Street Scene 3

Street Scene 4

Longcar Lane

PLAN 3

56(4) of the Town and Country Planning Act 1990 and "Commence Development" is to be construed accordingly

"**the Development**" means the development of the Land for residential development in accordance with the Planning Permission

"**the Greenspace Commuted Sum**" means the sum of £50,000 (fifty thousand pounds only)

"**Index**" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

"**Homes and Communities Agency**" means the Home and Communities Agency of 110 Buckingham Palace Road London SW1W 9SA

"**Interest**" means interest at 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate

"**Kickstart Funding**" *means Home Buy Direct and National Affordable Housing Programme* funding granted to the owner by the Homes and Communities Agency under the Homes and Communities Agency's Kickstart Scheme

"**Market Housing Units**" means that part of the development which is general market housing for sale on the open market and does not include the Affordable Dwellings or properties which are sold under the Homes and Communities Agency's Home Buy Direct scheme

"**the Open Space Commuted Sum**" means the sum of £82,960 (eighty two thousand nine hundred and sixty pounds)

"**Plan 1**" means the plan annexed hereto and so marked

"**Plan 2**" means the plan annexed hereto and so marked

"**Plan 3**" means the plan annexed hereto and so marked

"**the Planning Permission**" *means the planning permission granted or to be granted* pursuant to the Application

"**Registered Social Landlord**" means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 ("the 2008 Act") who is registered with the regulator of social housing called the Office for Tenants and Social Landlords in the 2008 Act, referred to as the Regulator of Social Housing in other enactments or instruments, and known as the Tenant Services Authority pursuant to section 3 of the Housing Act 1996 ("the 1996 Act") or section 116 of the 2008 Act and has not been removed from the register pursuant to section 4 of the 1996 Act or section 118 of the 2008 Act and who is approved by the Council

"**Social Rented**" has the meaning given to it in Annex B of Planning Policy Statement 3 or any future guidance that replaces it

## CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to its statutory functions.

## LEGAL BASIS

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as local planning authority against the Owner

## COMMENCEMENT

4.1 The provisions of this Deed shall have immediate effect upon the completion of this Deed Other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

4.2 if the Planning Permission is quashed or revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires before the Commencement of Development this Deed shall cease to have effect (except as regards any part of the Development which has by then been implemented)

**OWNER COVENANTS**

5 The Owner covenants with the Council as set out in the Second Schedule

**MISCELLANEOUS**

6.1 The Owner shall pay to the Council on completion of this Deed the legal costs of the Council in the sum of £1000 incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Planning and Transportation and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

6.10 This Deed is governed by and interpreted in accordance with the law of England and Wales.

**IINTEREST**

7 If any payment due by the Owner under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

**IN WITNESS** whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

**FIRST SCHEDULE**

All that land at the former Longcar Junior School Longcar Lane Barnsley registered at the Land Registry under title number SYK538429 for the purpose of identification shown edged red on the Plan

**SECOND SCHEDULE**

The Owner covenants with the Council that:-

Public Open Space

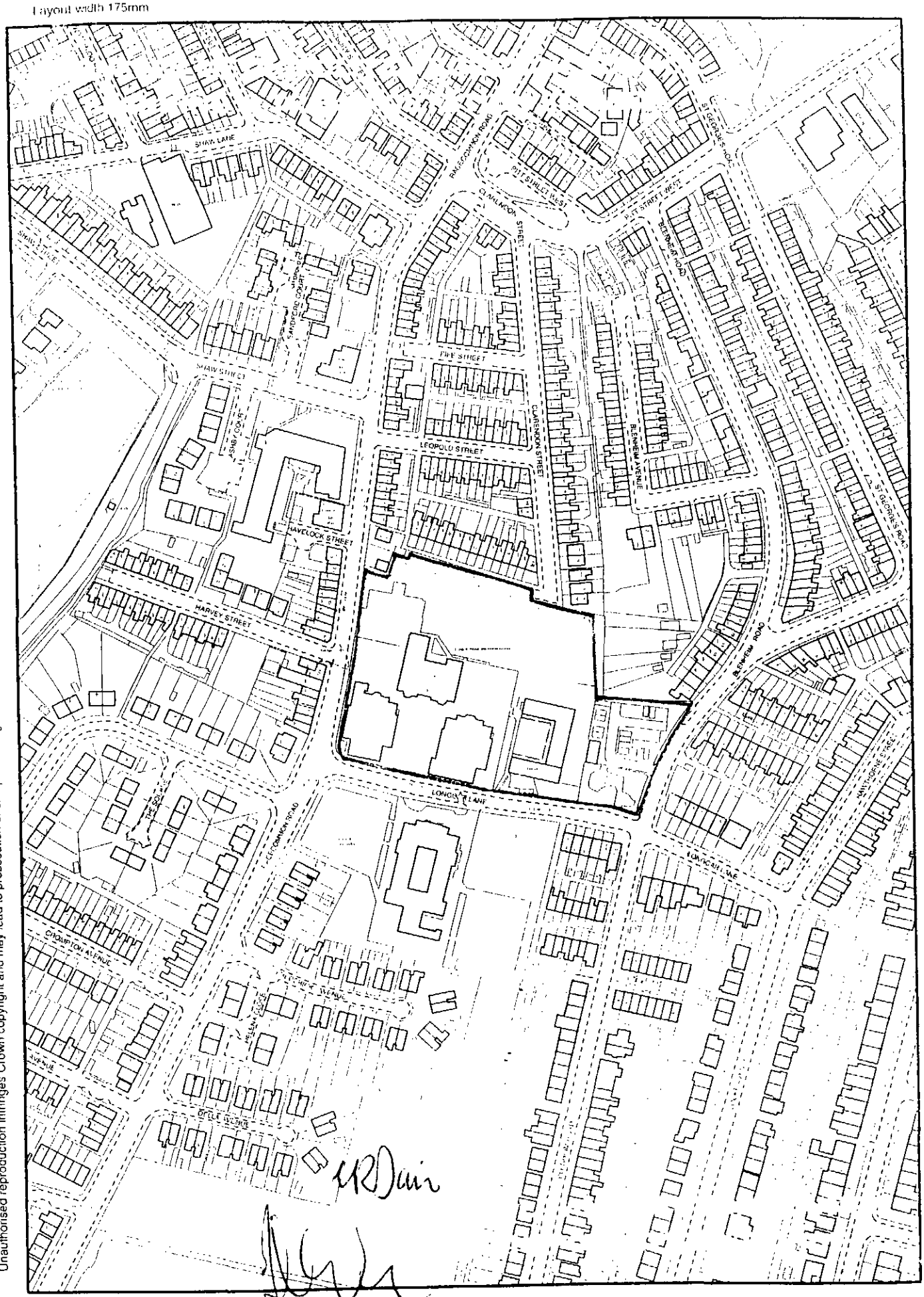
1.1 The Owner shall pay to the Council upon Commencement of Development the Open Space Commuted Sum

1.2 The Owner shall allow the general public access at all times to the areas of Public Open Space identified in Plan 3 ("the POS") upon its completion and only allow the POS to be used for public recreational purposes

Layout width 175mm

Barnsley MBC Licence Number LA100022264 - 20

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**BARNSLEY MBC - Planning and Transportation Service**
Assistant Director: Ruth Middleton, BA(Hons), DipSurv, MRTPI.
Central Offices, Kendray Street, Barnsley S70 2TN.
Tel: (01226) 770770 Fax: (01226) 772599

PLAN 1

NORTH

Scale 1:

1.3 The Owner shall maintain the POS including the hard and soft landscaping within the POS. The maintenance standards to be applied shall be subject to the written approval of the Council

1.4 The Owner shall repair and replace any hard or soft landscaping in the POS that is required to be provided as part of the Planning Permission

1.5 The Owner shall not transfer the POS to any management company until the Council have approved the suitability of that management company to maintain the POS (such approval not to be unreasonably withheld or delayed)

1.6 Subject to clause 6.7 once the POS has been transferred to a management company pursuant to paragraph 1.5 only those parties with an interest in the POS for the time being shall be liable for the obligations contained in paragraphs 1.3 and 1.4 of the Second Schedule

Greenspace

2 The Owner shall pay to the Council the Greenspace *Commuted Sum* upon Commencement of Development

Affordable Housing

3.1 The Owner shall construct the Affordable Dwellings to a design standard and quality equivalent to the design standards and quality of the Market Housing Units and to the Homes and Communities Agency Space Standards and Code for Sustainable Homes Level 3 as required by the Owner's application for Kickstart Funding

3.2 It shall not cause or permit more than 50% of the Market Dwellings to be occupied until the Affordable Dwellings have been constructed in accordance with Clause 3.1 above and the freehold interest in the Affordable Dwellings transferred (in the case of houses) and leasehold interest of at least 99 years in the Affordable Dwellings granted (in the case of flats) to a Registered Social Landlord in accordance with this Deed

3.3 The Affordable Dwellings shall be used only for Social Rented purposes subject to any statutory rights to acquire the Affordable Dwellings

THIRD SCHEDULE

| | 1 Bed Apartment | 2 Bed Apartment | 2 Bed Duplex Apartment | 3 Bed House | 4 Bed House |
|---|---|---|---|---|---|
| Number | 2 | 1 | 4 | 10 | 3 |
| Plots | 15, 17 | 29 | 24, 25, 30, 31 | 26, 28, 34, 38, 43, 44, 45, 46, 47, 48 | 39, 40, 49 |

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

Borough Secretary/Authorised Signatory

No. 930 IM REGISTER

**EXECUTED** as a **DEED** by **STRATA HOMES YORKSHIRE LIMITED** )

Acting by

Director

Director/~~Secretary~~