

Dated 10th February 2023

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

GREGORY PROJECTS (BARNSLEY) LIMITED

DEED

**Pursuant to Section 111 Local Government Act 1972 (as amended) in relation to Land
at Dearne Valley Parkway, Hoyland, Barnsley S74 0QA**

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

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This Deed is made on

10th February

2023

Between

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Church Street Barnsley S70 2DR of (hereinafter referred to "the Council"); and
- (2) **GREGORY PROJECTS (BARNSELY) LIMITED** (Company Number 13389481) of 12 Cardale Court, Cardale Park, Beckwith Head Road, Harrogate, United Kingdom, HG3 1RY. (hereinafter referred to as "the Developer")

Whereas

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 for the area within which the Land is situated.
- (B) The Council is the owner of an estate in fee simple absolute in possession of the part of the Land registered under freehold title number SYK648592 The Council also acquired on 2 September 2022 the part of the Land previously registered under freehold title number SYK663225. The registration of this transfer is ongoing at the date of this Deed.
- (C) The Council in its capacity as landowner and the Developer entered into the Agreement for Lease on 25 January 2022 which contains obligations to enter into this Deed.
- (D) The Developer submitted the Planning Application to the Council for permission to carry out the Development.
- (E) The Council has decided to grant planning permission for the Development subject to the completion of this Deed without which planning permission for the Development would not be granted.

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

1. **DEFINITIONS AND INTERPRETATION**

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

Act

the Local Government Act 1972 (as amended);

Agreement for Lease	means the agreement for lease of the Land dated 25 January 2022 and made between the Council and the Developer;
Development	means erection of 3no industrial/warehouse units (use classes B2 and B8 and E (g)(ii) and E (g)(iii)) totalling 11,585 sqm floorspace and associated works including provision of access, parking and landscaping;
Land	means the freehold land described in the First Schedule hereto against which this Agreement may be enforced and shown edged red on the Plan and which falls within title SYK648592 and part of which was previously registered as part of title SYK663225;
Lease	means the lease (as defined in the Agreement for Lease) of the Site which may be granted by the Council and accepted by the Developer pursuant to the terms of the Agreement for Lease;
Lease Completion Date	means the date of the completion of the Lease pursuant to the Agreement for Lease;
Mortgage	means any mortgage or legal charge which may be granted by the Developer in respect of the Developer's leasehold interest in the Land upon completion of the Lease;
Mortgagee	means any mortgagee or chargee of the Developer's leasehold interest in the Land following the granting of a Mortgage;
Plan	the plan which is annexed to this Deed.

Planning Agreement

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

Planning Application

the application (including plans and drawings) submitted by the Developer to the Council for permission to carry out the Development (reference: 2021/0479).

Planning Permission

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

**Supplemental
Agreement**

Planning

an agreement to be entered into with the Council pursuant to the terms of Section 106 of the Town and Country Planning Act 1990 (as amended), the sole term of which shall be to bind any further interest in the Land (including freehold interest), acquired by the Developer following completion of the Section 106 Agreement, to the terms of the Section 106 Agreement provided that this agreement may not impose any additional obligations or costs on the Developer and will not seek to re-impose any obligations already discharged under the Section 106 Agreement

2. INTERPRETATION

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

3. **COMMENCEMENT AND LEGAL EFFECT**

The provisions hereof shall take effect on the date hereof.

- 3.1. Save as provided for by this Deed nothing in this Deed shall be treated as giving rise to any rights or to third parties under the Contracts (Rights of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned, novated or becomes vested in law nor shall it affect any rights of any successor body to the Council..
- 3.2. If any provision of this Deed is held to be invalid illegal or unenforceable under any enactment or rule of law that term or provision shall to that extent be deemed not to form part of this Deed and the enforceability of the remainder of this Deed shall remain unaffected.
- 3.3. If the Planning Permission expires through operation of law or is otherwise quashed or revoked such that it may no longer be implemented this Deed shall forthwith determine and cease to have effect.

4. **NOVATION**

- 4.1. In the event that the Developer notifies the Council of its intention to novate its interest in the Agreement for Lease to another party (the "Transferee"), in accordance with the terms of the Agreement for Lease, before the Lease Completion Date then prior to such novation taking place the Developer shall procure that the Transferee shall provide to the Council the covenants set out in clause 5 of this Deed. Upon the Transferee providing these covenants, the Developer shall be released from any liability pursuant to the Deed and the Section 106 Agreement.

5. **COVENANTS**

- 5.1. The Developer hereby covenants to provide to the Council a duly executed engrossment of the Planning Agreement in the form of that appended to the Second Schedule hereto not later than four days prior to the Lease Completion Date.
- 5.2. In complying with the obligation contained in Clause 5.1, the Developer:
- 5.2.1. shall make such amendments to the form of the Planning Agreement as may be required by Clause 6 of this Deed;
- 5.2.2. shall procure that any Mortgagee also duly executes the engrossment of the Planning Agreement; and

- 5.2.3. shall provide the engrossment to the Council in sufficient parts to enable each party to the Planning Agreement to retain an original part of the Planning Agreement once completed.
- 5.3. The Developer shall authorise the Council to complete the Planning Agreement immediately following the completion of the Lease and shall procure that any Mortgagee also so authorises the Council to complete the Planning Agreement.
- 5.4. The Developer covenants to give the Council written notice as soon as reasonably practicable of any intention on the part of the Developer to grant a Mortgage upon completion of the Lease and in any event shall confirm any such intention not later than seven days prior to the Lease Completion Date.
- 5.5. The Developer covenants not to grant a Mortgage prior to the completion of the Planning Agreement unless it has complied with the requirements of clause 6 of this Deed.
- 5.6. In the event that the Developer acquires a further interest in the Land (including a freehold interest), the Developer covenants to provide to the Council a duly executed Supplemental Planning Agreement not later than four days prior to the completion of the acquisition of the further interest in the Land. Clauses 5.2 to 5.5 and clause 6 shall then apply in this event mutatis mutandis.
- 5.7. The Council hereby covenants as follows (save in the case of clause 5.6):
- 5.7.1. Following receipt of a duly executed engrossment of the Planning Agreement from the Developer in accordance with clause 5.1 and 5.2, the Council shall hold the Planning Agreement in escrow pending the completion of the Lease in accordance with the terms of the Agreement for Lease
- 5.7.2. to issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter (and in any event no later than three days of completion of this Agreement);
- 5.7.3. immediately following the completion of the Lease in accordance with the terms of the Agreement for Lease, the Council shall seal and complete the Planning Agreement.
- 5.8. The Council hereby covenants that following receipt of a duly executed Supplemental Planning Agreement, in accordance with clause 5.6, it shall seal and complete the Supplemental Planning Agreement as soon as reasonable practicable.

6. MORTGAGEE

6.1. The Parties agree that in the event that the Developer notifies the Council of its intention to grant a Mortgage in accordance with the covenants given in Clause 5.4 the Developer shall secure the Mortgagee's agreement to the addition of the relevant details of the Mortgagee into the form of the Planning Agreement by the insertion of the relevant details into the form of the Planning Agreement (as appended as the Second Schedule to this Deed):

6.1.1. The addition of the Mortgagee as a party on pages 1 and 2;

6.1.2. The addition of a Recital detailing the Mortgagee's interest on page 2;

6.1.3. The addition of the Mortgagee's attestation clause on page ; and

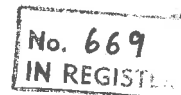
6.1.4. The addition of the following wording as a new clause 19 on page 11:

" *The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed **PROVIDED THAT** the Council acknowledges that the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner"*

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

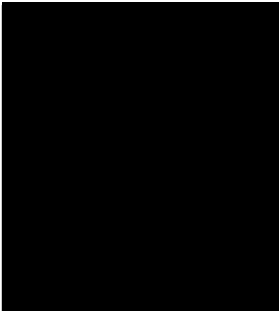


~~Executive director Core Services/~~
~~Legal Services Director/~~
Authorised Signatory



EXECUTED as a **DEED** by)
GREGORY PROJECTS (BARNSELEY) LIMITED)
)
acting by a Director:)

Director:



In the presence of;

Witness Signature:

Witness Name:

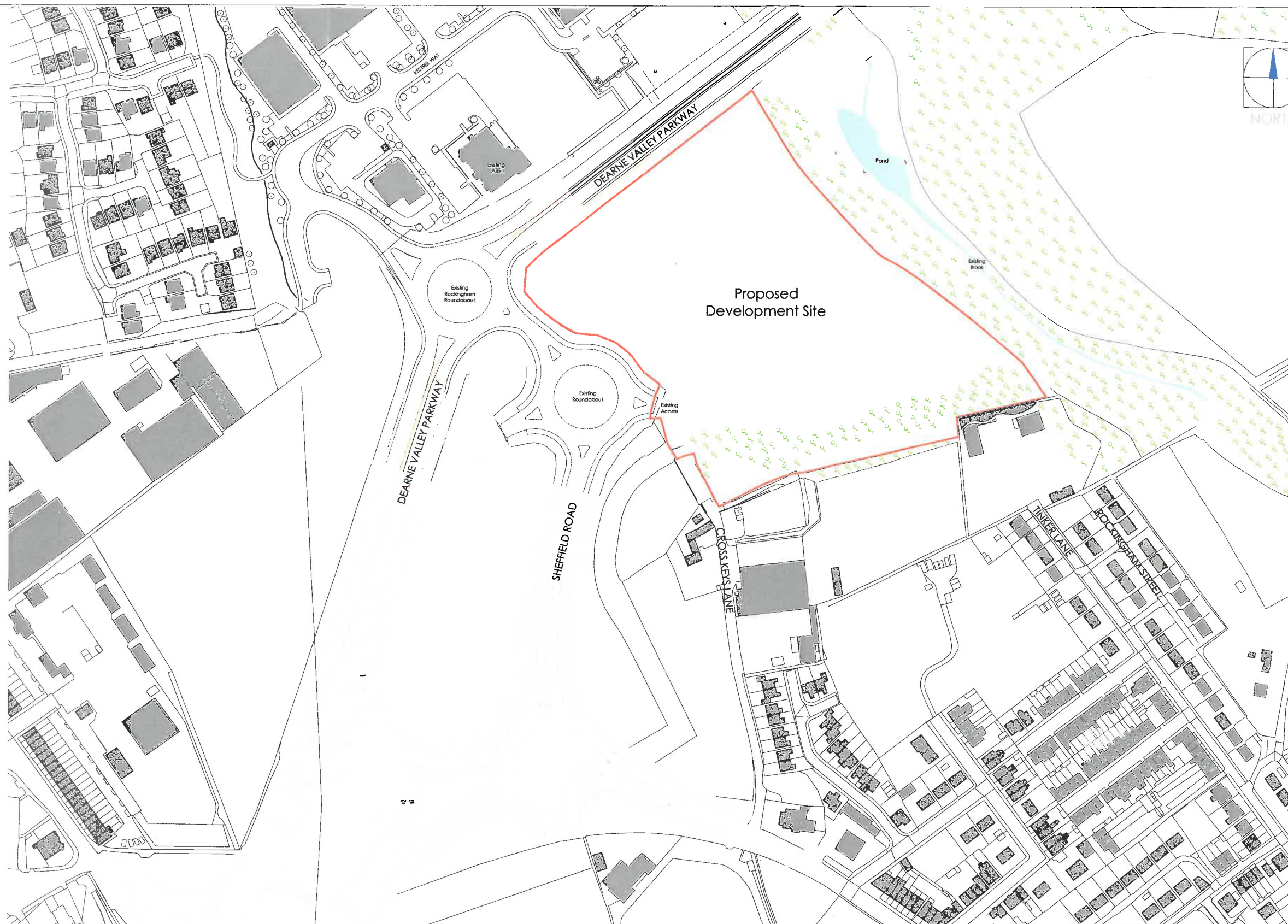
Witness Address:

Witness Occupation:



FIRST SCHEDULE

all that known as land at Land at Dearne Valley Parkway, Hoyland, Barnsley S74 0QA and shown edged red on the Plan and which falls within title SYK648592 and part of which was previously registered as part of title SYK663225



0 25 50 75 100 125 m
SCALE 1:2500

Rev	Date	Description	Rev By	Chk'd By
Job-Dwg No		LOCATION PLAN		
15315 - (P)100		Rev -		
☒ 2 St. Johns North, Wakefield, WF1 3QA t. 01924 291800 ☐ Carvers Warehouse, 77 Dale Street, Manchester, M1 2HG t. 0161 2388555 ☐ The Old Rectory, 79 High Street, Newport Pagnell, MK16 8AB t. 01908 211577 ☐ 101 London Road, Reading, RG1 5BY t. 01189507700 ☐ 10 Gee's Court, St Christophers Place, London, W1U 1JJ t. 0207 4091215				

SECOND SCHEDULE

S106 AGREEMENT

2023

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

GREGORY PROJECTS (BARNSELY) LIMITED

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

Land at Dearne Valley Parkway, Hoyland, Barnsley S74 0QA

DATE

2023

PARTIES

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA (the "Council").
- (2) **GREGORY PROJECTS (BARNSELY) LIMITED** (Company Number 13389481) of 12 Cardale Court, Cardale Park, Beckwith Head Road, Harrogate, United Kingdom, HG3 1RY. (hereinafter referred to as "the Owner")

BACKGROUND

- (A) By virtue of section 1 of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations hereby created are enforceable.
- (B) The Council is the proprietor of the freehold title to the part of the Site which is registered at the Land Registry under Title Number SYK648592. The Council also acquired on 2 September 2022 the freehold title to the part of the Site previously registered under freehold title number SYK663225. The registration of this transfer is ongoing at the date of this Deed.
- (C) The Owner is the owner of a 125 year lease of the Site dated []
- (D) The Council has granted the Planning Permission to the Owner on []
- (E) The Principal Agreement requires that the Owner enter into this Agreement with the Council to secure planning obligations.
- (F) The Council considered that the provisions herein should have effect in order to secure the proper planning and quality of the Development and that the planning obligations contained in this Deed necessary to make the Development acceptable in planning terms, directly related to the Development and fairly and reasonably related in kind and scale to the Development.
- (G) The Owner by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

1990 Act the Town and Country Planning Act 1990.

Agreed Price means the sum of £25,000.00 (twenty five thousand pounds) per required biodiversity unit;

Application	the application for planning permission for the Development which was submitted to the Council on behalf of the Developer and which was given reference number 2021/0479.
"Approved BEMP" and "Approved Supplementary BEMP"	means approved in writing by the Council and shall include the level of the Required Biodiversity Gain, in terms of biodiversity units, accepted by the Council as achieved by the Approved BEMP and (where applicable) the Approved Supplementary BEMP.
Biodiversity Contribution	means the sum of £188,750 (one hundred and eighty eight thousand seven hundred and fifty pounds) calculated by multiplying the Agreed Price by the Required Biodiversity Gain (subject to paragraphs 1 to 5 of Schedule 2);
"BEMP Biodiversity Shortfall"	means the amount of biodiversity units remaining when the number of biodiversity units to be delivered by the Approved BEMP has been deducted from the Required Biodiversity Gain
"Biodiversity Shortfall"	means the amount of biodiversity units remaining when the number of biodiversity units to be delivered by the Approved BEMP and the Approved Supplementary BEMP has been deducted from the Required Biodiversity Gain
"BEMP"	means a Biodiversity Ecological Management Plan to be prepared by the Owner which relies on a detailed ecological assessment and is agreed in writing by the Council in accordance with paragraph 1 of Schedule 2, incorporating the following detail; (i) short, medium and long term aims and objectives (ii) A scheme of works (including a timetable for implementation) and or measures which are designed to secure the delivery of the Required Biodiversity Gain (or part thereof) (iii) management responsibilities; and maintenance schedules for any compensation works (iv) a scheme to monitor whether the Required Biodiversity Gain (or part thereof) has been delivered in accordance with the plan with monitoring reports to the Council at stated intervals. (v) Ownership and or contractual arrangements to ensure that the delivery of the requirements of the BEMP are secured throughout the 30 year period
Commencement of Development	the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office,

	erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly.
Contribution	the Biodiversity Contribution or the Reduced Biodiversity Contribution (if applicable).
Default Interest Rate	4% per annum above the base rate from time to time of the Bank of England.
Development	erection of 3no industrial/warehouse units totalling 11,585 sqm floorspace and associated works including provision of access, parking and landscaping,
Expert	a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
Index Linked	increased in accordance with the following formula: (a) Amount payable = the payment specified in this Deed x (A/B) where: (b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and (c) B = the figure for the Retail Price Index published by the Office for National Statistics that applied when that index was last published prior to the date of this Deed.
NPPF	the National Planning Policy Framework, July 2021 (or as redefined by any amendment, replacement or re-enactment thereof).
Occupation	occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration, marketing, display or security operations and the term Occupy and Occupied shall be construed accordingly.
Plan	drawing labelled "Plan" appended hereto at Schedule 1.
Planning Obligations	the obligations, conditions and stipulations set out at Schedules 2 and 3 of this Deed and the term Planning Obligation shall be construed accordingly.
Planning Permission	a planning permission permitting the Development granted by Council pursuant to the Application.
Principal Agreement	means the deed entered into under Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 19972 and all other powers enabling dated [] and made between (1) the Council and (2) the Owner
"Reduced Biodiversity Contribution"	means the Biodiversity Contribution which has (where applicable) been reduced in accordance with paragraph 5 of schedule 2 to this agreement.

- | | |
|----------------------------|---|
| Required Biodiversity Gain | means 7.55 biodiversity units (based on the Development), calculated in accordance with the DEFRA Biodiversity Metric v3.1 which it is agreed between the Owner and the Council would provide net gain for biodiversity based on the Development |
| “Supplementary BEMP” | means a scheme in relation to land outside the Development Site which contains the detail required in a BEMP and identifies the land to be subject to the scheme and relies on a detailed ecological assessment and links back to the terms of BEMP Biodiversity Shortfall (the biodiversity units to be calculated in accordance with the DEFRA Biodiversity Metric v3.1 or latest version). The Scheme will set out how the BEMP Biodiversity Shortfall (or part thereof) is to be achieved on land within the administrative area of the Council but outside the Site. |
| Site | all that Site known as land at at Dearne Valley Parkway, Hoyland, Barnsley S74 0QA shown edged red on the Plan and which falls within title SYK648592 and part of which was previously registered as part of title SYK663225. |
| Statutory Undertaker | any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking. |
| Working Day | any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday. |
- 1.2 Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
 - 1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
 - 1.4 Any words denoting natural persons shall include legal persons and vice versa.
 - 1.5 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.
 - 1.6 The expression Owner shall include their successors in title and assigns.
 - 1.7 The expression Council shall include any successor authority to its statutory functions under the 1990 Act.
 - 1.8 Where a party includes more than one person any obligations of that party shall be joint and several.
 - 1.9 Clause headings shall not affect the construction of this Deed.
 - 1.10 Any phrase introduced by the terms ‘including’ ‘include’ ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. STATUTORY BASIS

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

3. CONDITIONS PRECEDENT

- 3.1 Clause 4 of this Deed is conditional upon and does not become effective unless and until the Commencement of Development.

4. COVENANTS & DECLARATIONS

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

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
- 5.2 If the Planning Permission:
 - 5.2.1 expires before the Commencement of Development; or
 - 5.2.2 is at any time revoked or modified (without the consent of the Owner) pursuant to Part IV of the 1990 Act

this Deed shall determine and cease to have effect.

- 5.3 No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it shall also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

6. REGISTRATION

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

6.2 Following either:

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

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

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

7. NON-FETTER AND WAIVER

7.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.

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

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

8. SECTION 73 OF THE 1990 ACT

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

- (a) if the Council considers that the Planning Obligations contained in this Deed are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to Planning Permission in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act (and for the avoidance of any doubt it is hereby agreed by the Council that the operation of this clause 8(a) shall never require the duplication of any of the Planning Obligations contained in this Deed) ; or
- (b) if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 8 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 8(a) shall be disregarded.

9. INTEREST

If any sum or amount has not been paid to the Council by the date it is due then the sum payable shall attract interest on that sum or amount at the Default Interest Rate and such interest shall accrue on a daily basis for the period from the due date to and including the actual date of payment.

10. INDEXATION

10.1 A Contribution payable to the Council shall be Index Linked.

10.2 Where reference is made in this Deed to an index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owner in writing.

11. VAT

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

12. SEVERANCE

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

13. CHANGE OF OWNERSHIP

The Owner agrees with the Council to give the Council written notice within 10 Working Days of any change in proprietorship of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan.

14. NOTIFICATION

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

14.1.1 delivered by hand; or

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

14.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:

14.2.1 to the Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2021/1661;

14.2.2 to the Owner at 12 Cardale Court, Cardale Park, Beckwith Head Road, Harrogate, United Kingdom, HG3 1RY marked for the attention of Barry Gregory

at or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 14.

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

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

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

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

14.5 This Clause 14 does not apply to the service of any proceedings or other documents in any legal action.

15. DISPUTE RESOLUTION

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

15.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error, error of law and/or fraud) shall be final and binding on the parties.

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

15.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 15.2 above, shall be appointed or identified by the following persons:

(a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

15.3.2 the Expert shall act as an expert and not as an arbitrator

15.3.3 the Expert shall be required to give notice of their appointment to each of the parties (Expert's Notice) and thereafter:

(a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;

- (b) the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;
 - (c) the Expert shall disregard any representations made out of this time; and
 - (d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;
 - (e) to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination
- 15.3.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
- 15.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and
- 15.3.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 15.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 15.4.1 either party may apply to the relevant body as per Clause 15.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
 - 15.4.2 Clause 15.3 shall apply to the new Expert as if they were the first Expert appointed.

16. THIRD PARTY RIGHTS

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

17. COSTS

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

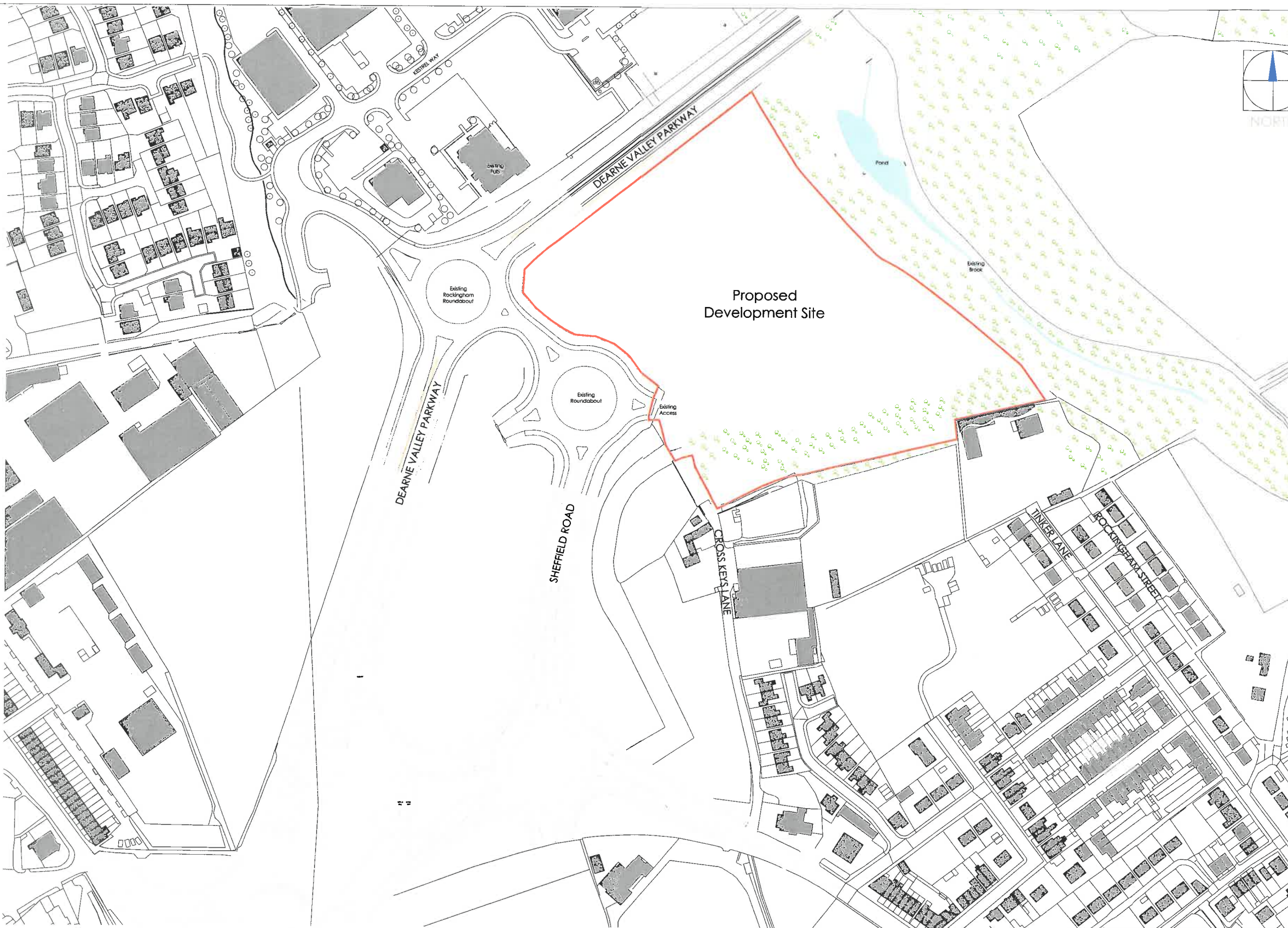
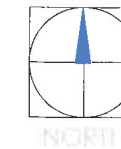
18. JURISDICTION

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

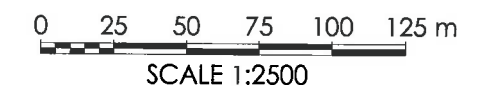
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

The Site Plan



Note:
Information is based on OS map and received information and is subject to full topographical and building survey.
Assumed site boundary and site constraints subject to confirmation.
All Legal easements and extent of existing underground services locations are subject to confirmation.



Rev	Date	Description	Rev By	Chk'd By

Project Title		PROPOSED INDUSTRIAL DEVELOPMENT				Drawing Title		LOCATION PLAN	
Client		Dearne Valley Parkway Barnsley				Job-Dwg No		15315 - (P)100	
Status		FOR PLANNING				Rev		-	
Scale		1:2500		Drawing Size		A3			
Date		02.2021		Drawn By		NBB		Checked PSM	
				</					

SCHEDULE 2

Financial Contributions and Biodiversity

1. BIODIVERSITY OFF- SETTING MEASURES

1 Prior to the Commencement of Development either;

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

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

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

2 In the case of paragraph 1.2 or If the Approved BEMP does not fully meet the Required Biodiversity Gain as determined by the Council acting reasonably and expressed in its approval of the BEMP then the Owner shall, within 30 Working Days of receipt of the Council's approval under paragraphs.1.1 or 1.2 submit either

2.1 a draft Supplementary BEMP to the Council for its approval setting out how the BEMP Biodiversity Shortfall is to be achieved (such approval not to be unreasonably withheld or delayed). Any draft Supplementary BEMP submitted and approved, in accordance with this paragraph 2, shall be implemented by the Owner as approved (the "Approved Supplementary BEMP") or

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

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

4 If the Approved BEMP and/or the Approved Supplementary BEMP does not fully meet the Required Biodiversity Gain as determined by the Council, then the Owner shall pay the Reduced Biodiversity Contribution to the Council in accordance with paragraphs 4 – 8 (inclusive) of this Schedule.

5 The Biodiversity Contribution shall (where applicable) be reduced pro rata, at the Agreed Price, by the Biodiversity Shortfall (the "Reduced Biodiversity Contribution"). The following formula shall be used:

Reduced Biodiversity Contribution = Agreed Price x Biodiversity Shortfall

6 In the event that a BEMP and a Supplementary BEMP is not approved by the Council, in accordance with paragraphs 9 – 11 of this Schedule, or is not submitted pursuant to paragraphs 1.2 and 2.2 then the Biodiversity Contribution

shall be paid in full by the Owner to the Council prior to the Occupation of the Development in accordance with paragraphs 7 and 8 hereto.

7 If paragraph 6 applies, the Owner shall not allow or permit the Occupation of the Development until the Biodiversity Contribution has been paid to the Council.

8 Save for where the payment of a full Biodiversity Contribution falls to be paid, the Development shall not be Occupied until there is an Approved BEMP which alone or together with an Approved Supplementary BEMP or together with the Reduced Biodiversity Contribution meets the Required Biodiversity Gain;

9 Where a BEMP or Supplementary BEMP is submitted to the Council the Council shall give notice of its approval or rejection as soon as reasonably practicable but being within a period no longer than 30 Working Days after its receipt and in the event of its rejection set out the reasons for rejection and indicate the measures required to produce an acceptable submission

10 In the event that the Council rejects a submission under paragraph 9 the Owner will submit a revised submission to the Council for approval whereupon the Council will issue an approval or rejection in accordance with 9

11 In the event of a further rejection of a submission under paragraph 10 the Owner may continue to make further submissions to the Council in which case the procedure set out in paragraph 9 and 10 above shall apply. In the alternative any dispute or disagreement may be referred to an arbitrator in accordance with the Disputes Procedure in clause 15 of this agreement.

SCHEDULE 3

Council's Covenants

1. The Council shall issue separate receipts on request for any sum paid to it under this Deed;
2. The Council shall place any Contribution in an interest bearing account or in separate accounts as the Council shall at its discretion decide.
3. The Council shall not apply the Contribution for any purpose other than for the purposes set out within this Deed;
4. In the event that any Contribution (or any part or parts thereof) are not expended or committed within 30 (thirty) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee as soon as reasonably practicable;
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

Executed as a deed by affixing the common seal
of **BARNSELY METROPOLITAN BOROUGH COUNCIL**
in the presence of a duly authorised signatory:

Signature

Print Name

EXECUTED as a DEED (but not delivered)
until the date hereof) by)
GREGORY PROJECTS (BARNSELY))
LIMITED)
acting by a director

in the presence of a witness.....

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation: