

DATED 13 January 2026 ~~2025~~

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

-and-

REBECCA JANE SCOTT (2)

-and-

MULGRAVE RESIDENTIAL LIMITED (3)

AGREEMENT

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

relating to Land off Watermill Gardens, Penistone, Sheffield

LPA Reference: 2023/0898

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

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Ref: CAS/MUL02754.10

THIS AGREEMENT (signed as a deed) is made the 13 day of January 2025 2026

BETWEEN:

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA (“**Council**”) of the first part; and
- (2) **REBECCA JANE SCOTT** of Dinmore House, Pateley Bridge Road, Burnt Yates, Harrogate HG3 3ET (“**Owner**”) of the second part;
- (3) **MULGRAVE RESIDENTIAL LIMITED** (Company No. 10130392) whose registered office is situate at Unit D Chessingham Park, Common Road, Dunnington, York YO19 5SE (“**Developer**”) of the third part;

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

1 DEFINITIONS AND INTERPRETATION

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

“**1990 Act**” means the Town and Country Planning Act 1990 as amended;

“**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 2.8.8, 2.8.9 or 2.10 of the First Schedule, the lower of the following two amounts:

- (a) 30% (thirty percent) 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 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”

means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in Annex 2 of the National Planning Policy Framework;

“Affordable Housing Commuted Sum”

means if applicable the difference between the Open Market Value of the relevant Affordable Housing Unit and its Transfer Value on the date that it is disposed of on the open market free from the restrictions in this Agreement (as calculated in accordance with the Council's Supplementary Planning Document 'Affordable Housing' (Adopted July 2022)) to be used by the Council in lieu of Affordable Housing on the Land, for the provision of, or improvements to existing, Affordable Housing elsewhere within the Council's administrative area;

“Affordable Housing Contribution”

means the sum of £58,500.00 (fifty-eight thousand and five hundred pounds) Index Linked to be paid to the Council by the Owner in lieu of the provision of 1 (one) unit of Affordable Housing on the Land and used by the Council towards procuring the provision of Affordable Housing within the Council's administrative district the need for which is to mitigate the effects of the Development;

“Affordable Housing Units”

means 4 (four) Dwellings of Affordable Housing comprising of the Affordable Housing for Rent Dwellings and the First Homes to be provided in accordance with paragraphs 1 and 2 of the First Schedule and reference to “Affordable Housing Unit” shall be construed accordingly and for the avoidance of doubt any references to “Affordable Housing Unit(s)” in paragraph 1 of the First Schedule excludes First Homes;

“Affordable Housing Unit Prices”	means the Transfer Value or such other discounted sum agreed with the Registered Provider that is financially viable for a Registered Provider to be able to purchase an Affordable Housing for Rent Dwellings;
“Affordable Housing for Rent Dwellings”	has the same meaning as the term "affordable housing for rent" contained in paragraph (a) of Annex 2 of the National Planning Policy Framework and comprises 2 (two) Affordable Housing Units consisting of 2 (two) x 2 (two) bed houses (H4 house type (781 sq.ft.)) to be provided on plots 8 and 9 as shown on Plan 2; or such other house types/sizes or locations that may be agreed in writing between the Owner and the Council from time to time such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy and reference to “Affordable Housing for Rent Dwelling” shall be construed accordingly;
“Affordable Rent”	means an affordable rent of no more than 80% (eighty percent) of the Market Rent;
“Application”	means the application reference number 2023/0898 registered by the Council on 28 th September 2023 for the erection of 17 no. dwellings with associated parking, drainage and landscaping;
“Armed Service 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 5 (five) 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 or injury was caused wholly or partly by their service and “Armed Service Members” shall be construed accordingly;
“BEMP”	means a biodiversity enhancement management plan to be submitted to and approved by the Council in accordance

with condition 11 to the Planning Permission and the following:

- (a) Report prepared by RDF Ecology (dated November 2024) titled 'Preliminary Ecological Appraisal Water Mill, Penistone;
- (b) The Statutory Biodiversity Metric – Calculation Tool (date of metric completion – 26th November 2024);

in relation to securing landscape, ecological and biodiversity/habitat creation/management within the Off-Site BEMP Land and the On-Site BEMP Land in order to achieve a net change in area units of 0.19 (zero point one nine) habitat units, and 0.75 (zero point seven five) hedgerow units together with setting out:

- (c) the ecological management to be undertaken on the Off-Site BEMP Land and the On-Site BEMP Land for the BEMP Management Period;
- (d) a mechanism for the joint periodical review by the Owner and the Council of the ecological management to be undertaken and for amendments to be agreed in respect of the remaining part of the BEMP Management Period;

“BEMP Improvements”

means the improvements to be made in accordance with the:

- (a) BEMP within the Off-Site BEMP Land (“**Off-Site BEMP Improvements**”); and
- (b) BEMP within the On-Site BEMP Land (“**On-Site BEMP Improvements**”);

“BEMP Land”

means the area of land within which the BEMP Improvements will be implemented comprising the land shown for identification purposes edged and hatched green on Plan 3;

“BEMP Management Period”

means a period of 30 (thirty) years from the date on which the first work is carried out on the:

- (a) Off-Site BEMP Land in relation to providing the Off-Site BEMP Improvements in accordance with the BEMP; and
- (b) On-Site BEMP Land in relation to providing the On-Site BEMP Improvements in accordance with the BEMP;

“Chargee”

means any 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 Registered Provider or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

“Commencement of Development”

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That the term “*material operation*” shall not include operations in connection with any work of or associated with demolition site clearance archaeological investigations investigations for the purpose of assessing ground conditions remediation works environmental investigation site and soil surveys diversion and laying of services construction of any access roads erection of contractors work compound erection of site office erection of fencing to site boundary and/or the temporary display of site notices or advertisements;

“Community Interest Company”

means a business with primary social objectives whose surpluses are principally reinvested for that purpose in the community;

- “Compliance Certificate”** means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser unless paragraph 2.8.2 of the First Schedule applies;
- “Contributions”** means collectively the Affordable Housing Contribution, the Off-Site Open Space Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Sustainable Travel Contribution and if applicable the Affordable Housing Commuted Sum and/or the Additional First Homes Contribution and/or the Off-Site Biodiversity Contribution and reference to **“Contribution”** shall be construed accordingly;
- “Council's Approved List”** means the following Registered Providers:
- (a) ACIS Group
 - (b) Anchor Hanover
 - (c) Auxesia Homes
 - (d) Berneslai Homes
 - (e) Great Places Housing Group
 - (f) Guinness Northern Counties H.A. The Guinness Group
 - (g) Habinteg Housing Association
 - (h) Heylo
 - (i) Home Group
 - (j) 54° North Homes
 - (k) Park Properties Housing Association Ltd
 - (l) Places for People
 - (m) Riverside Housing Group

- (n) Sanctuary Housing
- (o) South Yorkshire H.A.
- (p) Together Housing Association Ltd
- (q) Vico Homes (formerly Wakefield and District Housing Association)
- (r) Yorkshire Housing;

or such other Registered Provider(s) that may be agreed in writing between the Developer and the Council from time to time;

“Development”

means the development of the Land in accordance with the Planning Permission;

“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 2.9 of the First Schedule;
- (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 reference to **“Disposed”** and **“Disposing”** shall be construed accordingly;

“Dwellings”

means the residential units that may be built on the Land as part of the Development and reference to **“Dwelling”** shall be construed accordingly;

“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); and
- (b) any or all of criteria (i) (ii) and (iii) below are met:
 - (i) the purchaser meets the First Homes Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the First Homes Local Connection Criteria); and/or
 - (ii) the purchaser has a mortgage or a Sharia-compliant home purchase plan covering a minimum of 50% (fifty percent) of the discounted purchase price; and/or
 - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member;

“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 purchaser, 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:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner;
- (b) 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;
- (c) 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;
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 2.10 of the First Schedule 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 2.9 of the First Schedule;

“Expert”

has the meaning given in clause 3.4.2;

“First Homes”

means 2 (two) of the Affordable Housing Units consisting of 2 (two) x 2 (two) bed houses (H4 house type (781 sq.ft.)) to be provided on plots 15 and 16 as shown on Plan 2 or such other house types/sizes or locations that may be agreed in writing between the Owner and the Council from time to time to be provided on the Land as first homes as defined in the Department for Levelling Up, Housing and Communities 'First Homes' guidance published in May 2021 (or any future guidance or initiative that replaces or supplements it) and 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 First Home Sale Price and which on its first Disposal does not exceed the Price Cap such units to be provided in accordance with the Planning Permission, and the provisions of the First Schedule and reference to “**First Home**” shall be construed accordingly;

“First Homes Local Connection Criteria”

means either (a) or (b) below:

(a) local connection means:

- (i) normally resident in the administrative area of the Council for at least six (6) out of the last 12 (twelve) months or 3 (three) out of the last 5 (five) years; or
- (ii) by virtue of family association normally meaning that the applicant has parents, grandparents, adult children, grandchildren, a brother or a sister currently living within the administrative area of the Council who have been normally resident within the administrative area of the Council for at least 6 (six) out of the last 12 (twelve) months or 3 (three) out of the last 5 (five) years; or
- (iii) the applicant is currently employed in the administrative area of the Council; or
- (iv) serving or former Armed Service Members who who need to move because of a serious injury, medical condition or disability which is wholly or partly attributable to their military service; or

(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 “First Homes Local Connection Criteria”, which shall apply to that disposal;

“First Homes Owner”

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

- (a) the Owner or the Developer; 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

a tenant or sub-tenant of a permitted letting under paragraph 2.9 of the First Schedule;

“First Home Sale Price”

means the price of the First Homes to be agreed with the Council prior to the disposal of any of the First Homes but that shall be a price equal to the Open Market Value of an equivalent Market Dwelling less a discount equal to at least 30% (thirty percent) of the Open Market Value;

“First Time Buyer”

means a prospective purchaser as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 who has not been the owner of any other housing (whether as outright owner or with mortgages or other loan finance) either in whole or part at any previous time within the United Kingdom and who cannot otherwise afford to rent or buy housing generally available on the open market within the administrative district of the Council and reference to “**First Time Buyers**” shall be construed accordingly;

“Head of Planning and Building Control”

means the Head of Planning and Building Control of the Council for the time being or such other officer of the

Council nominated by him or her for the purposes of this Agreement;

“Homes England”

means the Homes and Communities Agency trading as Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008;

“Income Cap (Local)”

means £80,000.00 (eighty thousand pounds) 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 £80,000.00 (eighty thousand pounds) 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;

“Independent Surveyor”

means a member of the Royal Institution of Chartered Surveyors appointed by the Owner at its own cost but first approved by the Council;

“Index”

means the 12 (twelve) month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution thereof;

“Index Linked”

means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of this Agreement or any publication substituted for it;

“Initial Registered Provider Transfer Terms”

has the meaning given in paragraph 1.7 of the First Schedule;

“Land”	means all that land off Watermill Gardens, Penistone, Sheffield shown for identification purposes only edged red on Plan 1;
“Management Company”	means a limited company with the purpose of managing the Public Open Space within the Development in accordance with the POS Management Scheme;
“Market Rent”	means the average local market rent for a Dwelling in Barnsley with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion;
“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 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”	means the National Planning Policy Framework published by the Ministry of Housing, Communities and Local Government in December 2024 (or any future guidance or initiative that replaces or supplements it);
“Occupation” and “Occupy” and “Occupied”	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
“Off-Site BEMP Land”	means the area of land within which BEMP Improvements will be implemented comprising the land shown for identification purposes edged and hatched green on Plan 3;

“On-Site BEMP Land”	means the land within the Public Open Space within which On-Site BEMP Improvements will be implemented;
“Off-Site Biodiversity Contribution”	means only in the event that the proviso to paragraph 3.1.1 of Schedule 1 is applicable the sum of £19,250.00 (nineteen thousand two hundred and fifty pounds) Index Linked to be paid by the Owner to the Council under paragraph 8 of Schedule 1 to be applied by the Council as a financial contribution towards the creation, enhancement, and long-term management (for a minimum period of 30 (thirty) years) of biodiversity habitat located off-site from the Land, in accordance with the Council’s biodiversity net gain objectives and relevant statutory guidance;
“Off-Site Open Space Contribution”	means the sum of £31,712.07 (thirty one thousand seven hundred and twelve pounds and seven pence) Index Linked calculated in accordance with Appendix 2 of the SPD 'Open Space Provision on New Housing Developments' (May 2019) to be paid to the Council by the Owner and used by the Council in lieu of the provision of publicly accessible child and youth facilities and/or informal open space and/or formal recreation open space on the Land for the provision of, or improvements to, public open space within the vicinity of the Land the need for which is to mitigate the effects of the Development;
“Open Market Dwellings”	means the residential units that may be built on the Land as part of the Development excluding the Affordable Housing Units and reference to “Open Market Dwelling” shall be construed accordingly;
“Open Market Value”	means an amount for which the property or piece of land should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion as agreed between the Owner and the Council or in the absence of agreement as determined by an Independent Surveyor

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

“Plan 1”

means the plan attached to this Agreement (showing the Land edged red) and marked “Plan 1” appended to this Agreement as Annex 1;

“Plan 2”

means the plan attached to this Agreement (showing the location of the Affordable Housing Units, the On-Site BEMP Land and the Public Open Space) and marked “Plan 2” appended to this Agreement as Annex 2;

“Plan 3”

means the plan attached to this Agreement (showing the Off-Site BEMP Land edged and hatched green) and marked “Plan 3” appended to this Agreement as Annex 3;

“Planning Permission”

means a planning permission that may be granted by the Council in pursuance of the Application;

“POS Management Scheme”

means a scheme for the future maintenance and management of the Public Open Space to be submitted by the Owner to the Council in accordance with the provisions of paragraph 6.2 of the First Schedule and approved by the Council (together with any variation of such scheme agreed in writing from time to time between the Owner and the Council) and the said POS Management Scheme will include the following details;

- (a) the identity of the Management Company proposed to be engaged to carry out the maintenance and management of the On-Site BEMP Land for the BEMP Management Period and the Public Open Space;
- (b) what if any interest in the Public Open Space is proposed to be granted to the Management Company;

- (c) the schedule and program of maintenance works to be undertaken in relation to the Public Open Space;
- (d) any arrangements for ensuring that individual householders have a say or influence over the activities of the Management Company and whether this is to be achieved via the householders being given membership of the Management Company or the Management Company being set up as a Community Interest Company;
- (e) the arrangements for ensuring that individual householders are given detailed breakdowns of the costs properly incurred and showing how the total cost is translated into their individual liability;
- (f) any restrictions on year on year increases in any service charge and whether such restriction is to be fixed to a relevant cost index;

“Practical Completion”

means either:

- (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 buildmark cover note by the National House-Building Council;

“Price Cap”

means the amount for which the First Home is sold after the application of the First Home Sale Price which on its first Disposal shall not exceed £250,000.00 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State;

“Primary Education Contribution”

means the sum of £64,000.00 (sixty-four thousand pounds), Index Linked, to be paid to the Council by the Owner and

used by the Council to support the enhancement and/or provision of educational facilities, places, and services at schools within the PRI-PA11 primary planning area. It will be applied in accordance with the Council's Supplementary Planning Document: Financial Contributions to Schools, or any successor guidance, to mitigate the impact of the proposed development;

“Protected Tenant”

means as the case may be any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (excluding the First Homes); or
- (b) has exercised any statutory right to buy (or any equivalent contractual or voluntary right) in respect of a particular Affordable Housing Unit (excluding the First Homes); or
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit (excluding the First Homes) is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit (excluding the First Homes) and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit (excluding the First Homes); or
- (d) has acquired an Affordable Housing Unit (excluding the First Homes) from a Registered Provider through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration

Act 2008, or any amendment or replacement thereof; and

- (e) any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in the paragraphs above;

“Public Open Space”

means those parts of the Land to be laid out as open space to include the On-Site BEMP Land in accordance with a condition(s) annexed to the Planning Permission as shown on Plan 2;

“Public Open Space Works”

means the works to be carried out for the laying out of the Public Open Space in accordance with a condition(s) annexed to the Planning Permission;

“Reasonable Endeavours”

means it is agreed by the Parties that the Party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable;

“Registered Provider”

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

“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 of £48,000.00 (forty-eight thousand pounds), Index Linked, to be paid to the Council by the Owner and used by the Council to support the enhancement and/or provision of educational facilities, places, and services at schools within the Penistone secondary planning area. It will be applied in accordance with the Council’s Supplementary Planning Document: Financial Contributions to Schools, or any successor guidance, to mitigate the impact of the proposed development;

“Secretary of State”

means the Secretary of State for Housing, Communities and Local Government or any substitute or any Inspector appointed by him/her;

“Statutory Undertaker”

means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;

“Sustainable Travel Contribution”

means the sum of £17,000.00 (seventeen thousand pounds) Index Linked calculated in accordance with section 5 of the SPD 'Sustainable Travel' (July 2022) to be paid to the Council by the Owner and used by the Council towards purposes identified in the SPD 'Sustainable Travel' (July 2022) the need for which is to mitigate the effects of the Development;

“Transfer Value”

means in relation to an Affordable Housing Unit a minimum of 50% (fifty percent) of the Open Market Value of an equivalent open market unit (unless otherwise first agreed in writing by the Council);

“Working Days”

means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year's Day excepted).

1.2 Where the context so requires:

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.2 references to the Owner and the Developer in this Agreement shall include the successors in title and assigns of the Owner and the Developer and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.3 where a Party includes more than one person any obligations of that Party shall be joint and several;
- 1.2.4 any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.5 a reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it;
- 1.2.6 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement; and
- 1.2.7 clause headings are for reference only and shall not affect the construction of this Agreement.

2 RECITALS

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The Owner is the registered proprietor with absolute title of the Land and the Off-Site BEMP Land both of which have been given title number SYK633115 by HM Land Registry (which title also include land that is not the subject of the Application and which is not bound by this Agreement).
- 2.3 The Developer has an interest in the Land by way of a conditional contract, dated 13th February 2023, made between the Owner and the Developer.

- 2.4 The Application was submitted to the Council on behalf of the Owner for planning permission for the Development.
- 2.5 The Council would not grant the Planning Permission for the Development unless the covenants contained herein were entered in to by the Owner.
- 2.6 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and the Off-Site BEMP Land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.
- 2.7 The Parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

3 OPERATIVE PROVISIONS

- 3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 The planning obligations comprised in this Agreement shall not become effective until the following conditions are satisfied:
- 3.2.1 the Planning Permission has been granted; and
- 3.2.2 (except where stated otherwise in this Agreement) the Commencement of Development.
- 3.3 Subject to clause 3.2:
- 3.3.1 The Owner hereby covenants with the Council that the Land and the Off-Site BEMP Land shall be permanently from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule and the Developer acknowledges that its interest in the Land will be bound by the and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule; and

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

3.4 It is agreed and declared as follows:

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

- (a) occurring after he or it has parted with his or its interest in the Land or the Off-Site BEMP Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
- (b) if he shall be an occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling (or a Chargee of an individual Dwelling lending money to such occupier purchaser or tenant);
- (c) (save for the provisions in paragraph 1 of the First Schedule) if he shall be an occupier or tenant of any of the Affordable Housing Units or a purchaser of an individual Affordable Housing Unit (or a mortgagee of a Registered Provider or an individual Affordable Housing Unit lending money to such occupier purchaser or tenant);
- (d) if it is a Statutory Undertaker which has an interest in any part of the Land or the Off-Site BEMP Land for the purposes of its undertaking.

3.4.2 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person (“Expert”).

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

- 3.4.4 Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.
- 3.4.5 Where any notice or confirmation is to be served on the:
- (a) Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2023/0898.
 - (b) Owner under the terms of this Agreement such notice or confirmation shall be marked for the attention of Rebecca Jane Scott of Dinmore House, Pateley Bridge Road, Burnt Yates, Harrogate HG3 3ET, quoting the Application reference number 2023/0898.
 - (c) Developer under the terms of this Agreement such notice or confirmation shall be marked for the attention of Iain Godfrey, Technical Director of Mulgrave Residential Limited at Unit D Chessingham Park, Common Road, Dunnington, York YO19 5SE, quoting the Application reference number 2023/0898.
- 3.4.6 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) (other than a modification under section 73 or 96A of the 1990 Act) or revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.8 The obligations hereby created shall be registered as a Local Land Charge.

- 3.4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 3.4.10 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land or the Off-Site BEMP Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.
- 3.4.11 The Developer shall forthwith pay to the Council its reasonable legal fees of £1,500.00 (one thousand and five hundred pounds) incurred in the preparation negotiation and completion of this Agreement.
- 3.4.12 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 3.4.13 The Parties shall act reasonably and in good faith in the performance of their obligations in this Agreement.
- 3.4.14 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 3.4.15 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement or deed to be entered into pursuant to Section 106 or 106A of the 1990 Act.
- 3.4.16 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.

- 3.4.17 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 3.4.18 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

FIRST SCHEDULE
("the Owner's Covenants")

The Owner hereby covenants with the Council:

1. AFFORDABLE HOUSING

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

1.1.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges;

1.1.2 any Chargee provided that the Chargee shall have first complied with the obligations at paragraph 1.2 of this Schedule; or

1.1.3 any purchaser from a mortgagee of an individual Affordable Housing for Rent Dwelling pursuant to any default by the individual mortgagor.

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

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

1.2.2 if the Council does not serve its response to the notice served under paragraph 1.2.1 of this Schedule within 30 (thirty) Working Days then the Chargee shall be entitled to dispose of the Affordable Housing for Rent Dwellings free of the restrictions set out in this Schedule as Open Market Dwellings;

1.2.3 if the Council or any other person cannot within 40 (forty) Working Days of the date of service of its response under paragraph 1.2.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.2 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule as Open Market Dwellings;

PROVIDED THAT at all times the rights and obligations in this paragraph 1.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

- 1.3 The plot locations of the Affordable Housing for Rent Dwellings have been agreed between the Council and the Owner and are indicated on Plan 2 subject to any variations that may be agreed in writing between the Council and the Owner.
- 1.4 Subject to paragraph 1.10 of this Schedule not to cause or permit more than 11 (eleven) of the Open Market Dwellings to be Occupied until the Affordable Housing for Rent Dwellings have been constructed to the same external standard as the Open Market Dwellings and transferred to a Registered Provider at the Affordable Housing Unit Prices and on terms that accord with Homes England funding requirements current at the date of this Agreement.
- 1.5 The Affordable Housing for Rent Dwellings shall be transferred to a Registered Provider with the benefit of the following:
 - 1.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing for Rent Dwellings; and
 - 1.5.2 full and free rights to the passage of water soil electricity gas and other services through the pipes channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing for Rent Dwellings all such services to be connected to the mains.
- 1.6 The Owner shall provide the Council with written notice:
 - 1.6.1 of the Commencement of Development; and
 - 1.6.2 of Occupation of the first Dwelling; and
 - 1.6.3 of Practical Completion and Occupation of the 11th (eleventh) Open Market Dwelling.
- 1.7 The Owner shall use its Reasonable Endeavours to market the Affordable Housing for Rent Dwellings to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing for Rent Dwellings to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval ("**Initial Registered Provider Transfer Terms**") **PROVIDED THAT** it is agreed for the avoidance of doubt that the Owner shall not transfer the Affordable Housing

- for Rent Dwellings to a Registered Provider not appearing on the Council's Approved List subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time.
- 1.8 The Owner will thereafter use Reasonable Endeavours to exchange contracts with the Registered Provider for the sale of the Affordable Housing for Rent Dwellings and will keep the Council informed on the Owner's progress.
- 1.9 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use Reasonable Endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of the Owner's progress.
- 1.10 If any of the Affordable Housing for Rent Dwellings have not been contracted for sale to a Registered Provider within 6 (six) calendar months of the date of Practical Completion of the last Affordable Housing for Rent Dwelling or such earlier date agreed in writing by the Council and the Council is satisfied that paragraphs 1.7 to 1.9 of this Schedule have been complied with then the Owner shall pay the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Housing for Rent Dwellings not already transferred to a Registered Provider and upon such payment the Owner will be free to offer such dwellings for sale on the open market free from obligations in this Schedule as Open Market Dwellings.
- 1.11 No more than 11 (eleven) Open Market Dwellings shall be Occupied until either the Affordable Housing for Rent Dwellings have been transferred to a Registered Provider or the Affordable Housing Commuted Sum has been paid to the Council in relation to any Affordable Housing for Rent Dwellings not so transferred.
- 1.12 Any agreement to sell or transfer the Affordable Housing for Rent Dwellings to a Registered Provider shall contain the following minimal provisions:
- 1.12.1 The grant by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing for Rent Dwellings; and
- 1.12.2 A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Open Market Dwellings.

2 **First Homes**

Unless otherwise agreed in writing by the Council, the Owner for and on behalf of itself and its successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council as below save that:

2.1 paragraphs 2.4, 2.5, 2.6 and 2.7 of this Schedule shall not apply to a First Homes Owner; and

2.2 paragraphs 2.8 and 2.9 of this Schedule apply as set out therein, save that where a First Home is owned by a First Homes Owner they shall apply to a First Homes Owner, but only in respect of the relevant First Home owned by that First Homes Owner; and

2.3 paragraph 2.10 of this Schedule applies as set out therein.

2.4 **Quantum**

2.4.1 2 (two) of the Affordable Housing Units as indicated on Plan 2 (subject to any variations that may be agreed in writing between the Council and the Owner) and as identified as First Homes in accordance with the Planning Permission and approved plans have been reserved and set aside as First Homes and shall be provided and retained as First Homes in perpetuity subject to the terms of paragraph 2 of this Schedule.

2.5 **Appearance**

2.5.1 The First Homes shall not be visually distinguishable from the Open Market Dwellings based upon their external appearance.

2.5.2 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 Open Market Dwellings but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted.

2.6 **Type & Distribution**

2.6.1 The mix and distribution of First Homes provided within the Land shall be in accordance with the Planning Permission and approved plans.

2.7 **Development Standard**

2.7.1 All First Homes shall be constructed:

- (a) in accordance with the Planning Permission and approved plans or such other standard as may be agreed in writing by the Council; and
- (b) to no less than the external standard applied to the Open Market Dwellings.

2.8 First Homes – Delivery Mechanism

2.8.1 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:

2.8.1.1 the Eligibility Criteria (National); and

2.8.1.2 the Eligibility Criteria (Local) (if any).

2.8.2 If after a First Home has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local) (if any), paragraph 2.8.1.2 of this Schedule shall cease to apply.

2.8.3 Subject to paragraphs 2.8.6 to 2.8.10 of this Schedule, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% (fifty percent) of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

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

2.8.4.1 The Council has been provided with evidence that:

(c) the intended purchaser meets the First Homes Eligibility Criteria (National) and unless paragraph 2.8.2 of this Schedule applies meets the First Homes Eligibility Criteria (Local) (if any); and

(d) the Dwelling is being Disposed of as a First Home at the First Home Sale Price; and

(i) a definition of the “Council” which shall be “Barnsley Metropolitan Borough Council”;

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

“means the provisions set out in paragraphs 2.8.1 to 2.8.9 of the First Schedule to the Section 106 Agreement;”

- (iii) a definition of “Section 106 Agreement” in the following terms:

“means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated. [] made between (1) Barnsley Metropolitan Borough Council; (2) Rebecca Jane Scott; and (3) Mulgrave Residential Limited”

- (iv) 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;

- (v) a copy of the First Homes Provisions are attached to the transfer as an Annexure.

2.8.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within 28 (twenty-eight) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 2.8.3 and 2.8.4.1 of this Schedule have been met.

2.8.5 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 Metropolitan Borough Council of Town Hall Barnsley South Yorkshire S70 2TA or a conveyancer that the provisions of [clause/paragraph] 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"

A copy of the restriction shall be supplied to the Council within 56 (fifty-six) days of entry on the Register.

2.8.6 The owner of a First Home (which for the purposes of this paragraph shall include the Owner, the Developer 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:

2.8.6.1 the Dwelling has been actively marketed as a First Home for 6 (six) months in accordance with paragraphs 2.8.1 and 2.8.2 of this Schedule (and in the case of a first Disposal the 6 (six) months shall be calculated from a date no earlier than 6 (six) months prior to Practical Completion) and 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 2.8.3 and 2.8.4.1 of this Schedule; or

2.8.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 2.8.6.1 of this Schedule 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.

2.8.7 Upon receipt of an application served in accordance with paragraph 2.8.6 of this Schedule the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the First Home Sale Price.

2.8.8 If the Council is satisfied that either of the grounds in paragraph 2.8.6 of this Schedule have been made out it shall confirm in writing within 28 (twenty-eight) days of receipt of the written request made in accordance with paragraph 2.8.6 of this Schedule that the relevant Dwelling may be Disposed of:

2.8.8.1 to the Council at the First Home Sale Price; or

2.8.8.2 (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 2.8.10 of this Schedule 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.

- 2.8.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied acting reasonably that either of the grounds in paragraph 2.8.6 of this Schedule have been made out then it shall within 28 (twenty eight) days of receipt of the written request made in accordance with paragraph 2.8.6 of this Schedule serve notice on the Owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than 6 (six) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 2.8.6 of this Schedule following which the Council must within 28 (twenty-eight) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 2.8.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the First Home Sale Price in accordance with paragraphs 2.8.8 or 2.8.9 of this Schedule the owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 2.8.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 2.8.11.1 within 28 (twenty-eight) working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 2.8.5 of this Schedule where such restriction has previously been registered against the relevant title;
- 2.8.11.2 apply all monies received towards the provision of Affordable Housing within the administrative district of the Council.
- 2.8.12 Any person who purchases a First Home free of the restrictions in this First Schedule pursuant to the provisions in paragraphs 2.8.9 and 2.8.10 of this Schedule shall not be liable to pay the Additional First Homes Contribution to the Council.

2.9 First Homes – 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 2.9.1 – 2.9.4 of this Schedule:

- 2.9.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than 2 (two) 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 2 (two) years.
- 2.9.2 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 of paragraphs 2.9.2.1 to 2.9.2.6 of this Schedule:
- 2.9.2.1 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; or
 - 2.9.2.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting; or
 - 2.9.2.3 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; or
 - 2.9.2.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown; or
 - 2.9.2.5 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; or
 - 2.9.2.6 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.
- 2.9.3 A letting or sub-letting permitted pursuant to paragraph 2.9.1 or 2.9.2 of this Schedule 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.

2.9.4 Nothing in this paragraph 2.9 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.

2.10 **First Homes – Mortgagee Exclusion**

The obligations in paragraphs 2.8 and 2.9 of this Schedule 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:**

2.10.1 such Mortgagee or Receiver shall first give written notice to the Council of its intention to Dispose of the relevant First Home; and

2.10.2 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 Open Market Value and subject only to paragraph 2.10.3 of this Schedule;

2.10.3 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;

2.10.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:

2.10.4.1 as soon as reasonably practicable issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 2.8.5 of this Schedule; and

2.10.4.2 apply all such monies received towards the provision of Affordable Housing.

2.11 Affordable Housing Contribution

2.11.1 To pay the Affordable Housing Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 2.11.1(a) and 2.11.1(b) of this Schedule.

(a) To notify the Council prior to the Occupation of more than 4 (four) of the Dwellings and not to Occupy more than 4 (four) of the Dwellings until £29,250.00 (twenty-nine thousand two hundred and fifty pounds) of the Affordable Housing Contribution as Index Linked has been paid to the Council.

(b) To notify the Council prior to the Occupation of more than 12 (twelve) of the Dwellings and not to Occupy more than 12 (twelve) of the Dwellings until the balance of £29,250.00 (twenty-nine thousand two hundred and fifty pounds) of the Affordable Housing Contribution as Index Linked has been paid to the Council.

3 Biodiversity

3.1 Prior to the Occupation of more than:

3.1.1 1 (one) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) the Owner shall implement and provide the Off-Site BEMP Improvements in accordance with the BEMP (subject to any variations that may be agreed in writing between the Council the Owner in relation to the BEMP from time to time) and not Occupy more than 1 (one) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the Off-Site BEMP Improvements have been implemented and provided and **PROVIDED THAT** it is agreed that only in the event that that it is not possible to secure the provision of the Off-Site BEMP Improvements in accordance with this paragraph 3.1.1 the Owner will pay the Off-Site Biodiversity Contribution to the Council in accordance with the provisions of paragraph 8 of this Schedule.

3.1.2 15 (fifteen) of the Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) the Owner shall implement and provide the On-Site BEMP Improvements in accordance with the BEMP (subject to any variations that may be agreed in writing between the Council the Owner from time to time) and not Occupy more than 15 (fifteen) of the Dwellings (or such other number of Dwellings that may

be agreed in writing by the Council) until the On-Site BEMP Improvements have been implemented and provided.

3.2 The Owner will:

3.2.1 procure the carrying out of a review and monitoring in years 1 (one), 2 (two), 3 (three), 5 (five), 10 (ten), 15 (fifteen), 20 (twenty), 25 (twenty-five) and 30 (thirty) in accordance with the requirements of the BEMP to ensure that the BEMP is meeting its landscape and biodiversity objectives; and

3.2.2 review the BEMP, in relation to both its landscape and biodiversity requirements, on the 5th (fifth) anniversary of the Occupation of:

(a) in relation to the Off-Site BEMP Land, the 1st (first) Dwelling (or such other number of Dwellings that may be agreed in writing by the Council) and on each subsequent 5th (fifth) anniversary of the previous BEMP review for the BEMP Management Period; and

(b) in relation to the On-Site BEMP Land, the 15th (fifteenth) Dwelling (or such other number of Dwellings that may be agreed in writing by the Council) and on each subsequent 5th (fifth) anniversary of the previous BEMP review for the BEMP Management Period;

and submit the results of each such review to the Council within 10 (ten) Working Days (or within such other period of time that may first be agreed in writing by the Council).

3.3 Following discussions with the Council following a BEMP review referred to in paragraph 3.2.2 of this Schedule, the Owner shall have regard to any reasonable recommendations made by the Council in relation to each 5 (five) year BEMP review and incorporate, where reasonable, such relevant revisions to the BEMP and/or to the management structure set out in the BEMP for the ensuing 5 (five) year period in accordance with those recommendations. The Owner shall comply with all reasonable recommendations following each review and procure the execution of any steps thereby reasonably necessitated within 20 (twenty) Working Days (or within such other period of time that may first be agreed in writing by the Council) of the conclusion of the review, unless or to the extent otherwise agreed by the Council.

3.4 The:

3.4.1 Owner shall maintain the Off-Site BEMP Land to the reasonable satisfaction of the

Council in accordance with the BEMP as may be amended from time to time in accordance with paragraphs 3.1.1 of this Schedule and limb (d) of the definition of BEMP) until the expiry of the BEMP Management Period.

- 3.4.2 The Owner or a Management Company (in accordance with the provisions of paragraph 4.5 of this Schedule) shall maintain the On-Site BEMP Land to the reasonable satisfaction of the Council in accordance with the BEMP as may be amended from time to time in accordance with paragraphs 3.1.2 of this Schedule and limb (d) of the definition of BEMP) until the expiry of the BEMP Management Period.
- 3.5 In the event of any failure by the Owner to manage and maintain the Off-Site BEMP Land or the On-Site BEMP Land (including any failure to carry out any remedial works required to address any defaults) in accordance with the provisions of the BEMP, the Council may in its absolute discretion be entitled to serve notice of such default to the Owner specifying a reasonable period within which the Owner must remedy those defects and may thereafter enter and remain on the Off-Site BEMP Land or the On-Site BEMP Land as the case may be (by its employees or by contractor or otherwise) and carry out such works and/or implement such measures as the Council considers reasonably necessary **PROVIDED THAT** where a dispute has been raised in accordance with clause 3.4.2 of this Agreement the Parties will adhere to such timetable and determination as may be directed by the appointed Expert.
- 3.6 The Owner shall pay to the Council the reasonable costs incurred by the Council in carrying out any works and/or implementing any measures required pursuant to paragraph 3.5 of this Schedule, with such costs to be paid to the Council within 10 (ten) Working Days of receipt of an invoice for the same **PROVIDED ALWAYS** that the Council shall not be entitled to take action under paragraph 3.5 of this Schedule nor recover reimbursement unless the Council shall have given written notice to the Owner stating the nature of the breach, the steps required to remedy the breach and a reasonable time period for remedying the breach and shall afford the Owner the opportunity to remedy the breach in accordance with the steps and time period in the written notice **AND PROVIDED FURTHER THAT** in the event of dispute which is determined by an Expert the costs of the Council shall only be paid where the Expert directs payment to be made.
- 3.7 The Owner hereby grants to the Developer, its agents and contractors, with or without plant and machinery, at no cost all rights easements consents and licences that may be reasonably required to enable the Developer its agents and contractor or otherwise to enter onto into and/or over the Off-Site BEMP Land, with or without plant and machinery, in order for the Developer to comply with any obligations that it may be required to comply with in paragraphs 3.1 to 3.6

(inclusive) of this Schedule in relation to implementing and providing the Off-Site BEMP Improvements in accordance with the BEMP.

4 Education Contribution

4.1 Primary Education Contribution

4.1.1 To pay the Primary Education Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 4.1.1(a) and 4.1.1(b) of this Schedule.

(a) To notify the Council prior to the Occupation of more than 4 (four) of the Dwellings and not to Occupy more than 4 (four) of the Dwellings until £32,000.00 (thirty-two thousand pounds) of the Primary Education Contribution as Index Linked has been paid to the Council.

(b) To notify the Council prior to the Occupation of more than 12 (twelve) of the Dwellings and not to Occupy more than 12 (twelve) of the Dwellings until the balance of £32,000.00 (thirty-two thousand pounds) of the Primary Education Contribution as Index Linked as Index Linked has been paid to the Council.

4.2 Secondary Education Contribution

4.2.1 To pay the Secondary Education Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 4.2.1(a) and 4.2.1(b) of this Schedule.

(a) To notify the Council prior to the Occupation of more than 4 (four) of the Dwellings and not to Occupy more than 4 (four) of the Dwellings until £24,000.00 (twenty-four thousand pounds) of the Secondary Education Contribution as Index Linked has been paid to the Council.

(b) To notify the Council prior to the Occupation of more than 12 (twelve) of the Dwellings and not to Occupy more than 12 (twelve) of the Dwellings until the balance of £24,000.00 (twenty-four thousand pounds) of the Secondary Education Contribution as Index Linked as Index Linked has been paid to the Council.

5 Off-Site Open Space Contribution

5.1 To pay the Off-Site Open Space Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 5.2. and 5.3 of this Schedule.

5.2 To notify the Council prior to the Occupation of more than 4 (four) of the Dwellings and not to Occupy more than 4 (four) of the Dwellings until £15,856.07 (fifteen thousand eight hundred and fifty-six pounds and seven pence) of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.

5.3 To notify the Council prior to the Occupation of more than 12 (twelve) of the Dwellings and not to Occupy more than 12 (twelve) of the Dwellings until the balance of £15,856.00 (fifteen thousand eight hundred and fifty-six pounds) of the Off-Site Open Space Contribution as Index Linked as Index Linked has been paid to the Council.

6 Public Open Space

6.1 To provide the Public Open Space in accordance with the Planning Permission and a condition(s) thereto to the reasonable satisfaction of the Council.

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

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

6.4 The Owner shall not permit the Occupation of more than 15 (fifteen) Dwellings (or such other number of Dwellings that may be agreed in writing by the Council) until the Public Open Space has been completed in accordance with the Planning Permission and a condition(s) thereto to the reasonable satisfaction of the Council.

6.5 Following the completion of the Public Open Space Works or an individual element of the Public Open Space Works (as the case may be) to the Council's reasonable satisfaction to contractually engage a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) for the purpose of undertaking the future management and maintenance of the Public Open Space, or the particular element of Public Open Space that has been completed, prior to the sale of the

penultimate Dwelling on terms agreed between the Owner and the Management Company in consultation with the Council and all further management and maintenance shall be thereafter carried out by the Management Company in accordance with the principles set out in paragraphs 6.5.1 and 6.5.2 of this Schedule **PROVIDED THAT** it is agreed that it shall be a term of Management Company's contractual engagement that the Management Company will:

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

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

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

AND FURTHER PROVIDED THAT it is agreed that the Owner will comply with the provisions set out in paragraphs 6.5.1 and 6.5.2 of this Schedule until such time as a Management Company has been contractually engaged to undertake the future management and maintenance of the Public Open Space, or the particular element of Public Open Space as the case may be.

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

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

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

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

6.8.2 covenant that upon any subsequent sale of such Dwelling they will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 6.8.1 and 6.8.2;

PROVIDED THAT it is agreed that nothing shall require the payment of such pro rata proportion of the reasonable costs and expenses properly incurred by the Management Company in respect of its administration and of insuring and maintaining the Public Open Space by the occupier of any Affordable Housing Unit and such costs shall instead be payable by the relevant Registered Provider.

- 6.9 It is agreed that in the event that the Management Company ceases operating and/or maintaining the Public Open Space the Owner will maintain or will procure the maintenance of the Public Open Space in accordance with the approved POS Management Scheme and the provisions set out in paragraphs 6.5.1 and 6.5.2 of this Schedule until such time as a new Management Company has been engaged to undertake the future management and maintenance of the Public Open Space, or the particular element of Public Open Space.
- 6.10 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 that the Public Open Space has not been dedicated to the public nor is any use by the public of any part of the Public Open Space to be taken in any way as an intention by the Owner to dedicate the same as highway.
- 6.11 The Owner will procure in either case that public access is allowed to the Public Open Space but subject to the following provisions:
- 6.11.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Council's prior written approval;
- 6.11.2 the Owner may erect notices on the Public Open Space and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being; and
- 6.11.3 access may be denied by the Owner for and during the maintenance, repair, cleansing or renewal of the Public Open Space or for and during the construction of any building or land abutting it subject to the Council's prior approval.
- 6.12 The Owner may close the Public Open Space or any part thereof for reasonable periods by reason of:
- 6.12.1 emergency;

- 6.12.2 cleansing, maintenance and repair;
- 6.12.3 at the direction of the emergency services or other lawful authority; and/or
- 6.12.4 construction activities whilst the Development is being built if in the interests of health and safety.

7 Sustainable Travel Contribution

- 7.1 To pay the Sustainable Travel Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 7.2. and 7.3 of this Schedule.
- 7.2 To notify the Council prior to the Occupation of more than 4 (four) of the Dwellings and not to Occupy more than 4 (four) of the Dwellings until £8,500.00 (eight thousand and five hundred pounds) of the Sustainable Travel Contribution as Index Linked has been paid to the Council.
- 7.3 To notify the Council prior to the Occupation of more than 12 (twelve) of the Dwellings and not to Occupy more than 12 (twelve) of the Dwellings until the balance of £8,500.00 (eight thousand and five hundred pounds) of the Sustainable Travel Contribution as Index Linked as Index Linked has been paid to the Council.

8 Off-Site Biodiversity Contribution

- 8.1 Only in the event that the proviso to paragraph 3.1.1 of this Schedule is applicable to pay the Off-Site Biodiversity Contribution to the Council in the phased instalments and before the deadlines specified in paragraphs 8.1.1. and 8.1.2 of this Schedule.
 - 8.1.1 To notify the Council prior to the Occupation of more than 4 (four) of the Dwellings and not to Occupy more than 4 (four) of the Dwellings until £9,625.00 (nine thousand six hundred and twenty-five hundred pounds) of the Off-Site Biodiversity Contribution as Index Linked has been paid to the Council.
 - 8.1.2 To notify the Council prior to the Occupation of more than 12 (twelve) of the Dwellings and not to Occupy more than 12 (twelve) of the Dwellings until the balance of £9,625.00 (nine thousand six hundred and twenty-five hundred pounds) of the Off-Site Biodiversity Contribution as Index Linked as Index Linked has been paid to the Council.

SECOND SCHEDULE
("the Council's Covenants")

The Council hereby covenants with the Owner:

General

- 1 The Council will on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.
- 2 Wherever this Agreement requires the approval agreement determination or consent of the Council such approval agreement determination or consent is not to be unreasonably withheld or delayed.

Contributions

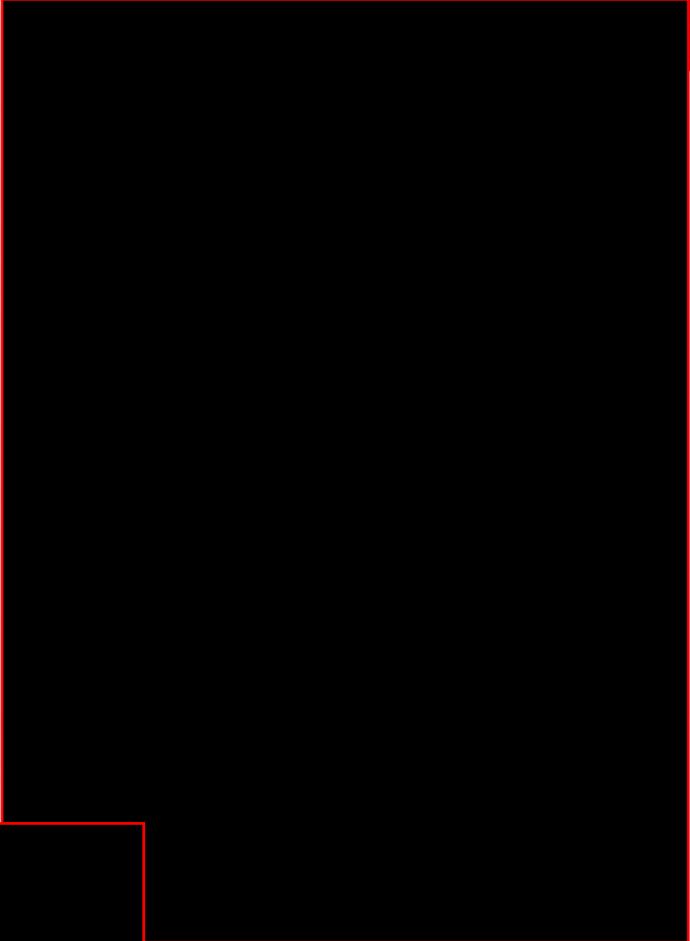
- 3 To apply the Contributions towards the purposes specified in this Agreement and not to apply the Contributions for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.

Repayment

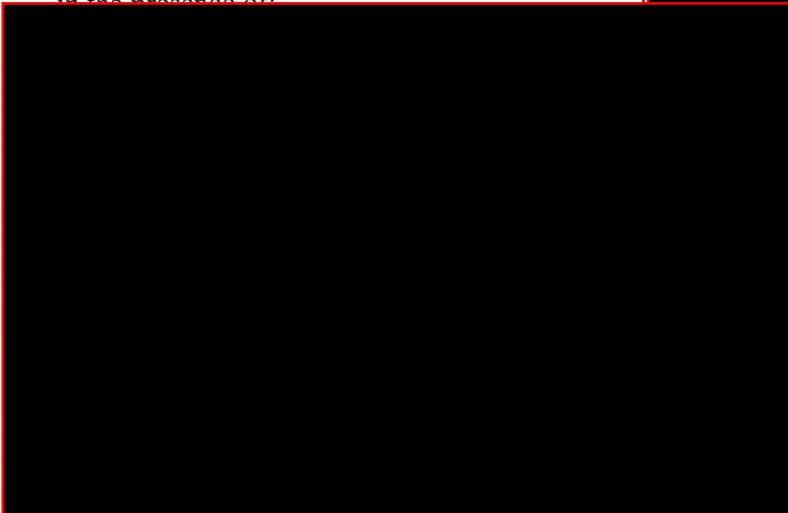
- 4 That in the event the Contributions or any part or parts thereof are not expended within 10 (ten) years of the date of payment (or the date of payment of the final instalment if applicable) of such payment then the sum or sums not expended plus interest accrued will be repaid to the Owner or its nominee.

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year first before written

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



EXECUTED as a DEED by)
REBECCA JANE SCOTT)
in the presence of:)



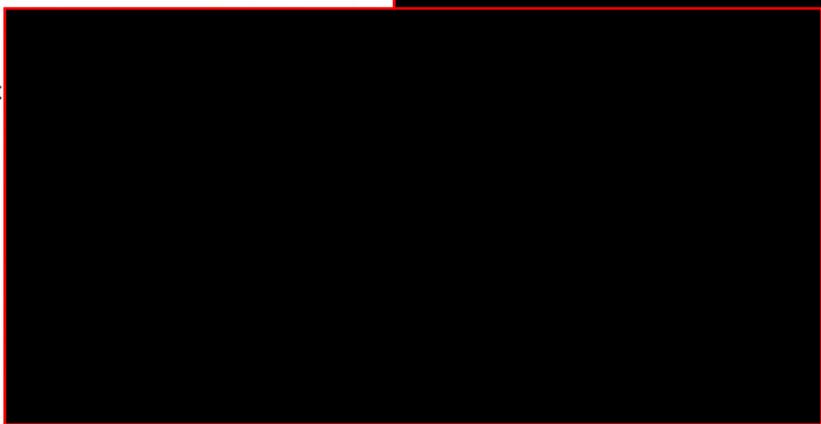
EXECUTED AS A DEED (but not delivered)
until the date hereof) by)
MULGRAVE RESIDENTIAL LIMITED)
acting by a director in the presence of a witness)



Signature of witness:

Name of witness:

Address:

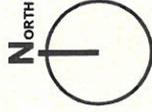
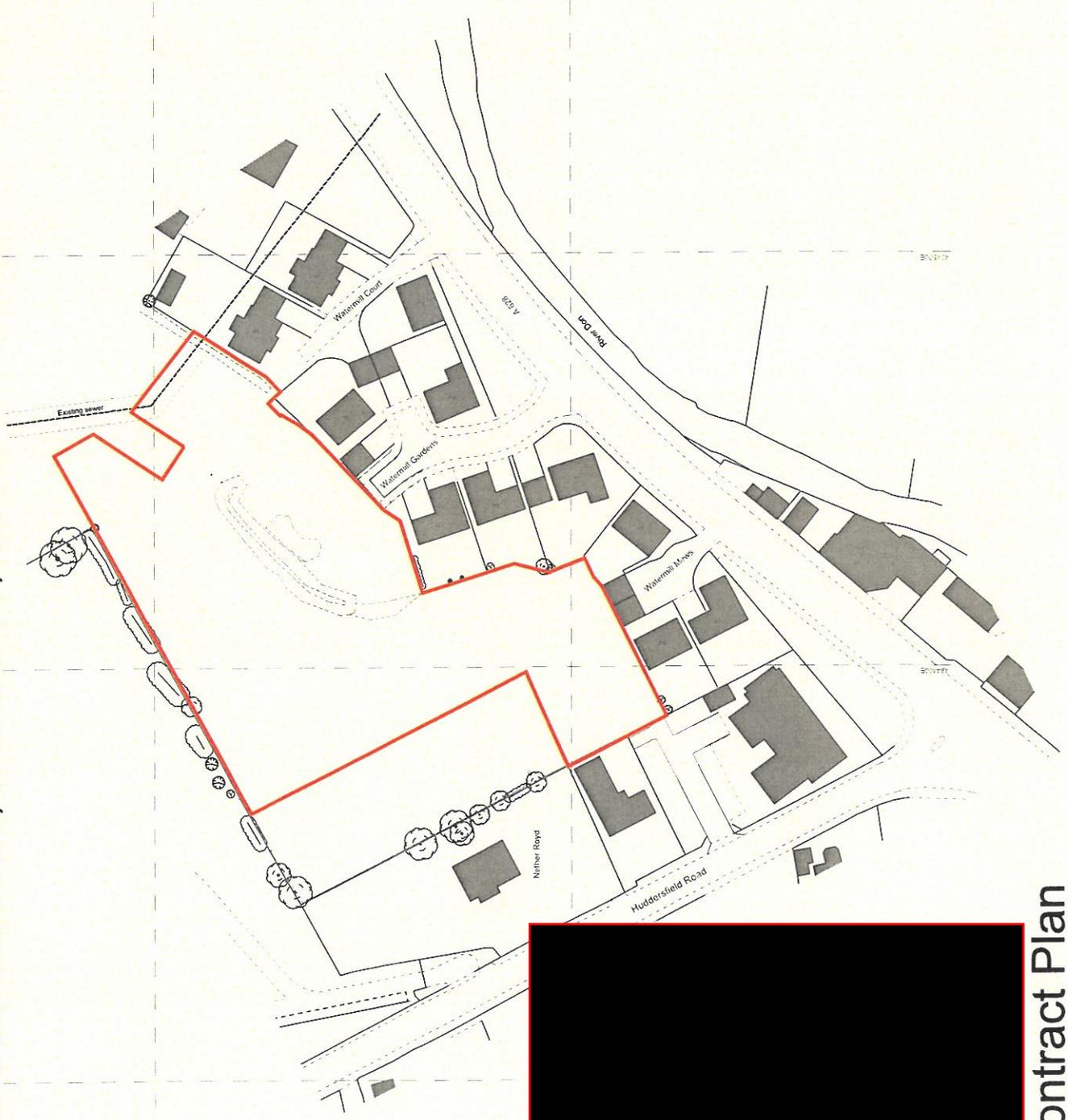


Occupation:

**Annex 1
(Plan 1)**



Land off Watermill Gardens, Penistone, South Yorkshire



Rev	By	Note	Date

Status	Planning	Batch	Planning	Tender	Construction	A1 Built

PRA Architecture
 55 The Tannery, Lawrence Street, YO10 0WH, Tel: 01904 983772
 Email: pra@pra-architecture.com, W: www.pra-architecture.com

PROJECT: Land off Watermill Gardens, Penistone
 TITLE: Proposed Contract Plan
 CLIENT: Mulgrave Developments Ltd
 DATE: 20.01.25 SCALE: 1:1000@A3
 DRAWING: 1206.06 REVISION: -
 DRAWN: JD CHECKED: JD

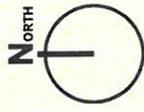
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**Annex 2
(Plan 2)**



Land off Watermill Gardens, Penistone, South Yorkshire

- Affordable Housing Tenure
- Affordable Housing For Rent, First Homes.
- Management Company Areas
- Public Open Space.



Schedule of Accommodation

House Types					
H4	2 B 2 St	781	04	03.124	
Fenham	4 B 2 St	1305	03	03.330	
Chatsworth	4 B 2 St	1554	01	01.554	
Brompton	3 B 2 St	1665	02	03.330	
Kirby	6 B 2 St	2758	02	05.516	
Site Total			17	22.127	

Gross Site Area = 0.74 Ha (1.82 Acres)
 Nett Site Area = 0.66 Ha (1.63 Acres)
 13,574 SqFt Per Acre
 25.75 DPH

Rev	By	Note	Date

PRA Architecture
 55 The Terrace, Lawrence Street, York, YO1 1JW T: 01904 63772
 E: info@pra-architecture.com W: www.pra-architecture.com

PROJECT Land off Watermill Gardens, Penistone, S Yorkshire
 TITLE Proposed Site Layout
 CLIENT Midgrave Developments Ltd
 DATE 03.12.24 SCALE 1:500@A2
 DRAWING 1206/05 REVISION -
 DRAWN JD CHECKED JD

Proposed Site Layout - POS & AFFORDABLE HOME LOCATIONS



**Annex 3
(Plan 3)**

Watermill Gardens, Penistone



Rev	By	Note	Date

Status	Planning

PRA Architecture
 55 The Tannery - Lawrence Street - York - YO10 3WH T:01904 653772
 E:ma@pra-architecture.com W: www.pra-architecture.com

PROJECT Watermill Gardens, Penistone
 TITLE Plan 3 - Off Site BNG Boundary
 CLIENT Mugrave Developments Ltd
 DATE 30.01.2025 SCALE 1:2000@A3
 DRAWING 1285.09 REVISION -
 DRAWN JD CHECKED JD

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