

DATED

23rd April

2020

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

And

**A SHADE GREENER LIMITED**

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990 relating to land known as Former Burton Grange Nursery, Abbey Lane Lundwood , Barnsley,

A.C. Frosdick, LL.B. DipLG,  
Executive Director Core Services  
Solicitor to the Council  
Barnsley Metropolitan Borough Council  
Town Hall,  
Barnsley, S70 2TA.

**THIS DEED OF AGREEMENT**

is made the 23<sup>rd</sup> day of April.  
Two Thousand and Twenty

**between**

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

(2) **A SHADE GREENER LIMITED** (Co. Regn. No. 06922318) of Sterling  
House, Maple Court, Tankersley, Barnsley S75 3DP, (the Owner") of the  
second part

**RECITALS**

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

(2) The Owner is the registered proprietor of the Land registered under Land  
Registry Title Number SYK638833

(3) The parties have agreed to enter into this Deed 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.

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

**DEFINITIONS**

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

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

**“the Application”** means the outline planning application with the reference number 2019/0637 submitted to the Council to construct The development

**“the Commencement of Development”** means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and “Commence Development” is to be construed accordingly

**“the Development”** means the development of the Land by the erection of 4 no. dwellings and associated works in accordance with the Planning Permission

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

**“the Green Space Enhancement Contribution”** means the sum of £11,558.88 (eleven thousand five hundred and fifty eight pounds and eighty eight pence) to be applied towards the improvement or enhancement of biodiversity in accordance with Local Plan Policy GS1 to be expended on a project within a two mile radius of the Land.

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

**“the Land”** means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

**“Occupation and Occupied”**: means occupation for the purposes permitted by the Planning Permission from which the Development benefits 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 and “Occupy” shall be construed accordingly.

**“the Plan”** means the plan annexed hereto

**“the Planning Permission”** means a planning permission to be granted pursuant to the Application

## **CONSTRUCTION OF THIS DEED**

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

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

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

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

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

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

## **LEGAL BASIS**

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

## **COMMENCEMENT**

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed

## **OWNER AND COUNCIL COVENANTS**

5.1 The Owner covenants with the Council as set out in paragraph 1 of the Second Schedule

5.2 The Council covenants with the Owner as set out in paragraph 2 of the Second Schedule

## **MISCELLANEOUS**

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1000.00 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

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

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

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under

the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery or special delivery to the principal address or registered office (as appropriate) of the relevant party.

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

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

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

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

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

## **INTEREST**

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

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

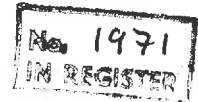
## **FIRST SCHEDULE**

All that land known as Former Burton Grange Nursery, Abbey Lane Lundwood, Barnsley, and for the purpose of identification shown edged red on the Plan

## **SECOND SCHEDULE**

- 1 The Owner covenants to pay five thousand seven hundred and seventy nine pounds and forty four pence (£5,779.44) of the Green Space Enhancement Contribution to the Council prior to or on the Commencement of Development and without prejudice to this there is to be no Commencement or Occupation of the Development until this part of the Green Space Enhancement Contribution is paid to the Council.
- 2 The Owner covenants to notify the Council in writing prior to the Occupation of more than 2 Dwellings and not to Occupy more than 2 Dwellings until the remaining five thousand seven hundred and seventy nine pounds and forty four pence (£5,779.44) of the Green Space Enhancement Contribution has been paid to the Council
- 2 The Council covenants to repay the Green Space Enhancement Contribution to the payer of the Green Space Enhancement Contribution or the payer's nominee upon written request if the Green Space Enhancement Contribution has not been expended or committed to be expended within 10 years from its receipt by the Council.

THE COMMON SEAL of BARNSELY )  
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 )

A SHADE GREENER LIMITED acting by)

Director

Witness Signature:

Witness Name: WEST HAGUE

Witness Occupation: PROPERTY OWNED

