

**Planning Obligation by Deed of Agreement  
under Section 106 of the Town and  
Country Planning Act 1990**

relating to the development of land  
at Oughtibridge Mill, Sheffield S35 0DN

Date: 20 NOVEMBER 2017

**BY**

(1) ASE II DEVELOPMENTS LIMITED

(2) SHEFFIELD CITY COUNCIL

**AND**

(3) BARNSELY METROPOLITAN BOROUGH COUNCIL

Walton & Co  
2 Queen Street  
Leeds  
LS1 2TW

DATE

20 NOVEMBER

2017

## PARTIES

- (1) **ASE II DEVELOPMENTS LIMITED** (Company Registration Number 09587671) of Sloane Square House, 1 Holbein Place, London SW1W 8NS (hereinafter referred to as "**the Owner**") of the first part; and
- (2) **SHEFFIELD CITY COUNCIL** of Town Hall, Pinstone Street, Sheffield S1 2HH (hereinafter referred to as "**SCC**") of the second part; and
- (3) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Wellington House, Wellington Street, Barnsley S70 1WA (hereinafter referred to as "**BMBC**")

## INTRODUCTION AND BACKGROUND

- 1 SCC and BMBC are the local planning authorities for the purposes of the Act and the local education authorities for the areas in which the Site is situated.
- 2 On 23 February 2016 BMBC's Planning & Regulatory Board resolved to authorise the delegation to SCC pursuant to Section 101(1)(b) of the Local Government Act 1972 of BMBC's decision making functions as local planning authority for a forthcoming outline planning application and planning related activities relating to the Site, including related applications pursuant to Section 73 of the Act and the negotiation and enforcement of any planning obligations and the determination of the Applications is authorised by the said delegation of authority.
- 3 The Applications have been submitted to each of SCC and BMBC.
- 4 The purpose of the Applications is to obtain a permission pursuant to Section 73 of the Act which is in the same terms as the Original Planning Permission save for the omission of condition 22 (affordable housing)
- 5 If granted the Applications will result in the issuing of a new planning permission by SCC (as local planning authority for that part of the Site within its administrative area and also on behalf of BMBC as local planning authority for that part of the Site within BMBC's administrative area) in the form of the Planning Permission.

73 of the Act and under SCC Reference 17/02624/OUT and BMBC Reference 2017/0863 to remove condition 22 (affordable housing) from the Original Planning Permission;

**“Chief Planning Officer”**

means the Chief Planning Officer of SCC or BMBC (as appropriate) or such other officer exercising the functions of the Chief Planning Officer from time to time;

**“Commencement of Development”**

means for the purposes of this Deed only the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development or a phase of Development (as the context requires) begins to be carried out pursuant to the Planning Permission other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purposes of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, , the diversion and laying of services, the erection of any temporary means of enclosure and the temporary display of site notices or advertisements and **“Commence”** **“Commencement”**, **“Commence Development”** and **“Commence the Development”** shall be construed accordingly;

**“Councils”**

means SCC and BMBC;

**“Development”**

means the development of the Site pursuant to the Planning Permission;

**“Dwelling”**

means any dwelling (including a house flat or maisonette) falling within Use Class C3 of

the Town and Country Planning (Use Classes) Order 1987 (as amended) which is constructed as part of the Development and **“Dwellings”** shall be construed accordingly;

**“First Occupation”**

means first beneficial occupation of any of the Dwellings but such occupation shall not include occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations;

**“Index”**

the Retail Prices Index published by the Office for National Statistics from time to time;

**“Occupation”**

means beneficial occupation of a Dwelling but such occupation shall not include occupation by personnel engaged in construction, occupation for marketing or display or occupation in relation to security operations and **“Occupied”** shall have a corresponding meaning;

**“Original Planning Permission”**

means the planning permission(s) granted on 28 October 2016 under SCC Reference 16/01169/OUT and BMBC Reference 2016/0350 for the demolition of existing buildings and structures and erection of residential development (Use Class C3) with means of site access including a new vehicular bridge and a pedestrian/cycle bridge across the River Don, and associated landscaping and infrastructure works;

**“Plan”**

means the plan attached to this Deed and carrying the STEN Architecture Drawing Number 1526:01;

**“Planning Permission”**

means the outline planning permission subject to conditions to be granted pursuant to the Applications;

**“Site”**

means the land known as Oughtibridge Mill which is more particularly described in the First Schedule;

**“Working Days”**

means Monday to Friday inclusive but excluding days which are public holidays (Christmas Day, Boxing Day, New Year’s Day, Good Friday, Easter Sunday and any other statutory bank holiday)

**2 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 Subject always to Clause 9.8, 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 Councils the successors to their respective statutory functions.

**3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act so as to bind the Site and to the extent that the covenants in this Deed are not made under Section 106 of the Act they are made under Section 111 of the Local Government Act 1972 and the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by SCC and/or BMBC (as the context requires) as local planning authorities in respect of the Site and against the Owner and successors in title of the Owner in respect of the Site.

**4 CONDITIONALITY**

4.1 This Deed shall take effect upon the date of grant of the Planning Permission but the Owner's covenants in the Third Schedule shall take effect upon the Commencement of Development, save for paragraphs 2.1 and 2.2 of the Third Schedule which shall take effect upon the date of grant of the Planning Permission

**5 THE OWNER'S COVENANTS**

5.1 The Owner covenants with the Councils that the Site shall be subject to the obligations restrictions and provisions as set out in the Third Schedule.

**6 COUNCILS' COVENANTS**

6.1 The Councils covenant with the Owner to comply with the restrictions and provisions as set out in the Fourth Schedule.

**7 INDEXATION OF CONTRIBUTIONS**

7.1 All financial contributions payable to the Councils pursuant to this Deed shall be increased to reflect any increase in the Index occurring in the period from and including the date of this Deed to and including the date of actual payment.

7.2 Should the Index cease to exist, or should it be replaced or rebased, then the term "Index" shall include reference to any index which replaces the Index or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed).

**8. INTEREST**

Should any financial contribution payable to the Councils pursuant to this Deed not have been paid to either Council despite having become due then the Owner shall pay interest

thereon at the interest rate of four per cent per annum above the base lending rate of Barclays Bank plc for the period from the due date to and including the date of payment.

## **9. MISCELLANEOUS**

- 9.1 Upon completion of this Deed the Owner shall pay to the Councils their respective reasonable legal costs incurred in the negotiation, preparation and execution of this Deed in the following proportions:
- (a) £1,500 shall be payable to SCC; and
  - (b) £1,000 shall be payable to BMBC.
- 9.2 A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 9.3 This Deed shall be registrable as a local land charge by the Councils.
- 9.4 The parties agree with one another to act reasonably and in good faith in fulfilment of the objectives of this Deed and in particular where the agreement, approval, consent or expression of satisfaction is required by the Owner from SCC and/or BMBC 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 each of the Councils by their respective Chief Planning Officers or any other officer exercising the functions of the Chief Planning Officer from time to time.
- 9.5 Following the performance and satisfaction of all the obligations contained in this Deed SCC and BMBC as appropriate shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 9.6 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.
- 9.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 9.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed:
- (a) to the extent that such breach relates to any part of the Site in which that person has had no interest since the date of this Deed; and/or
  - (b) which occurs after that person has parted with their interest in the Site or if it be part only of the Site the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest for which they shall continue to be liable.

- 9.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with the Original Planning Permission or any other planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 9.10 The obligations contained in this Deed shall not be binding on or enforceable against:
- (a) with the exception of paragraph 5 of the Third Schedule, the tenants or owner/occupiers of Dwellings nor their mortgagee or chargee, nor any person deriving title from them.
  - (b) a mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge over the Site or any part or parts thereof unless (but subject always to the preceding and remaining provisions of this Deed) such mortgagee or chargee has entered into possession of the Site or any part thereof to which such obligation relates; and/or
  - (c) a statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunication services or public transport services.
- 9.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers, duties and obligations of the Councils under all statutes, by-laws, statutory instruments, orders and regulations in the exercise of their functions as local authorities.

## 10 **WAIVER**

No waiver (whether express or implied) by the Councils or the Owner 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 either or both of the Councils or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## 11 **JURISDICTION**

This Deed is governed by and interpreted in accordance with the laws of England

## 12 **DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## 13 **DISPUTES**

- 13.1 Where the parties are in dispute or disagreement as to their respective rights duties or obligations or as to the failure of the Councils to give or confirm their consents where required under this Deed or as to any other matter or thing arising out of or connected with this Deed or its meaning or construction then the parties shall use their reasonable

endeavours to resolve the same within 20 Working Days of the dispute or disagreement arising.

- 13.2 Failing the resolution of any such dispute or disagreement within the said 20 Working Days the dispute or disagreement may be referred for determination in accordance with the provisions of this Clause 13 on the reference of either of the parties to the dispute or disagreement.
- 13.3 The dispute or disagreement shall be referred to the decision of a reputable Chartered Surveyor unconnected to any of the parties and qualified to deal with the subject matter of the dispute or disagreement who shall either be jointly appointed by the parties within a period of 5 Working Days following a failure of the parties to resolve the dispute or disagreement pursuant to clause 13.2 above or failing agreement on such nomination appointed by the President for the time being of the Royal Institution of Chartered Surveyors (or, in his absence, his deputy).
- 13.4 The determination of the independent Chartered Surveyor (including any determination as to the responsibility for payment of his costs and those of the parties) shall be final and binding upon the parties.
- 13.5 The reference shall be deemed to be a reference to any expert (and not an arbitrator).
- 13.6 The terms of reference of the Chartered Surveyor as an expert shall include the following:
- (a) he shall call for representations from all parties with 10 Working Days of a reference to him under this Deed and shall require the parties to exchange representations within this period;
  - (b) he shall allow the parties 10 Working Days from the expiry of the 10 Working Days period referred to in sub-clause (a) above to make counter representations;
  - (c) any representations or counter representations received out of time may be disregarded at the discretion of the independent Chartered Surveyor;
  - (d) he shall provide the parties with a written decision (including his reasons) within 10 Working Days of the last date for receipt of counter-representations;
  - (e) he shall be entitled to call for such independent expert advice as he shall think fit; and
  - (f) his costs those of the parties and the costs of any independent expert advice called for by the Chartered Surveyor shall be included in his award.

## 14 NOTICES

- 14.1 Any notices served under this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

## FIRST SCHEDULE

### **Details of the Site**

The freehold land situated at Oughtibridge Mill, Sheffield, S35 0DN that is registered under Land Registry Title Numbers SYK332284 and SYK599587 and shown edged red on the Plan.

**SECOND SCHEDULE  
NOT USED**

THIRD SCHEDULE  
The Owner's Covenants with the Councils

1. **Definitions**

1.1 For the purposes of this Third Schedule and also the Fourth Schedule of this Deed the following definitions shall apply in addition to those set out in Clause 1 of this Deed:

**"Affordable Housing"** has the meaning given to it in Annex 2 of the NPPF;

**"Affordable Housing Contribution"** means the sum of £1,750,000 (one million seven hundred and fifty thousand pounds) such sum to be used by SCC solely for the provision of new Affordable Housing within its district;

**"BMBC Dwellings"** means those Dwellings to be constructed as part of the Development on land situated within the BMBC Site and **"BMBC Dwelling"** shall be construed accordingly;

**"BMBC Site"** means that part of the Site falling within the administrative district of BMBC at the date of this Deed;

**"Bus Stop Contribution"** means the sum of £40,000 (forty thousand pounds) such sum to be used by SCC for the purposes of:

- (a) carrying out improvements to the existing westbound and eastbound bus stops situated on the A6102 Langsett Road which are identified on the Bryan G Hall Drawing Reference 15/215/TR/003 attached to this Third Schedule; and
- (b) providing two new bus stops (one eastbound and one westbound) as close as is reasonably possible to the access to the proposed new pedestrian bridge on the A6102 Langsett Road;

**"Education Contribution"** means a financial contribution to be used by the Councils solely for the purposes of providing additional primary school places and additional secondary school places in accordance with the provisions of the Fourth Schedule to this Deed and which payment shall be calculated in accordance with the formula set out within Paragraph 2.1 of this Schedule.

**"NPPF"** means the National Planning Policy Framework (March 2012) or any modification or replacement thereof in force from time to time;

**"Qualifying Dwellings"** means those BMBC Dwellings to be constructed within the BMBC Site, or a Residential Phase, with two or more bedrooms;

**“Reserved Matters Submission”** means any reserved matters application relating to the BMBC Site or a Residential Phase submitted to the Council pursuant to the Planning Permission and “Reserved Matters Submissions” shall be construed accordingly;

**“Residential Phase”** means any residential phase of the Development that is situated wholly or partly within the BMBC Site;

**“Travel Plan”** means any detailed travel plan submitted and approved pursuant to Condition 16 of the Planning Permission;

**“Travel Plan Contribution”** means the sum of £5,000 (five thousand pounds) such sum to be used by SCC for the purpose of monitoring the implementation of the Travel Plan;

**“TRO”** means a traffic regulation order pursuant to the Road Traffic Regulation Act 1984 to reduce the speed limit from 50 miles per hour to 40 miles per hour within the vicinity of the Site, as set out in detail in paragraph 7.15 of the Bryan G Hall Transport Assessment (March 2016) submitted as part of the Application;

**“TRO Contribution”** means the sum of £5,000 (five thousand pounds) such sum to be used by SCC for the purposes of proposing and, if appropriate, making and implementing the TRO.

## **2. Calculation and Payment of Education Contribution**

- 2.1 On or prior to the date of submission of a Reserved Matters Submission the Owner shall submit to the Councils details of the proposed Education Contribution for the BMBC Site or Residential Phase (as appropriate) for approval. The Education Contribution shall be calculated in accordance with the following formula:

$$A \times (B + C) = D(\pounds)$$

where

A = the number of Qualifying Dwellings proposed within a Reserved Matters Submission for the BMBC Site or a Residential Phase (as appropriate)

B = the primary contribution per Qualifying Dwelling in the sum of £2548

C = the secondary contribution per Qualifying Dwelling in the sum of £2743

D = the Education Contribution payable in respect of the BMBC Site or a Residential Phase thereof

- 2.2 The Owner covenants not to Commence Development in respect of any Residential Phase until details of the Education Contribution payable in respect of that Residential Phase has been submitted to and approved by the Councils and the first instalment has been paid to BMBC in accordance with paragraph 2.3.1 or 2.4.1 of this Schedule as appropriate.

2.3 Where the BMBC Site is to be developed in one Residential Phase the Owner shall pay the Education Contribution to BMBC in three equal instalments as follows:

2.3.1 One third of the Education Contribution to be paid upon Commencement of Development;

2.3.2 A further third of the Education Contribution to be paid upon First Occupation of any BMBC Dwelling; and

2.3.3 The final third of the Education Contribution to be paid upon First Occupation of 100 BMBC Dwellings.

2.4 Where the BMBC Site is to be developed in two or more Residential Phases the Owner shall pay the Education Contribution for each Residential Phase to BMBC in three equal instalments as follows:

2.4.1 One third of the Education Contribution to be paid upon Commencement of Development for that Residential Phase;

2.4.2 A further third of the Education Contribution to be paid upon First Occupation of any BMBC Dwelling within that Residential Phase; and

2.4.3 The final third of the Education Contribution to be paid upon First Occupation of 50% of the BMBC Dwellings within that Residential Phase.

### **3. Payment of Highways and Travel Contributions**

3.1 The Owner shall pay the TRO Contribution to SCC in full upon the Commencement of Development.

3.2 The Owner shall pay the Travel Plan Contribution to SCC in full upon First Occupation.

3.3 For the purposes of paragraph 3.2 of this Third Schedule the Owner will not cause or permit the First Occupation of any Dwelling until the Travel Plan Contribution has been paid to SCC in full.

3.4 The Owner shall pay the Bus Stop Contribution to SCC in full upon the Commencement of Development.

### **4. Affordable Housing Contribution**

4.1 The Owner shall pay a first instalment of £437,500 of the Affordable Housing Contribution to SCC upon First Occupation.

- 4.2 The Owner shall pay a second instalment of £437,500 of the Affordable Housing Contribution to SCC upon the Occupation of 85 Dwellings.
- 4.3 The Owner shall pay a third of £437,500 of the Affordable Housing Contribution to SCC upon the Occupation of 175 Dwellings.
- 4.4 The Owner shall pay a fourth and final instalment of £437,500 of the Affordable Housing Contribution to SCC upon the Occupation of 260 Dwellings.
- 4.5 The Owner covenants to notify the Councils of the date of each of the following:
- First Occupation;
  - Occupation of the 85th Dwelling;
  - Occupation of the 175th Dwelling; and
  - Occupation of the 260th Dwelling

no later than 5 Working Days from the relevant date of Occupation in each case and should the Owner fail to notify the Councils as required above in respect of any instalment then (notwithstanding the preceding provisions of this Deed permitting payment of the Affordable Housing Contribution in equal instalments) the next instalment of the Affordable Housing Contribution shall immediately be paid in full to SCC.

## **5. Restrictions on Occupation**

- 5.1 For the purposes of this Third Schedule where the payment of any monies to SCC or BMBC is required to be made on or before a specified number of Occupations of Dwellings the Owners will not cause or permit the Occupation of that specified number of Dwellings to be exceeded until those monies have been paid.

## **6. Notification**

- 6.1 Should the Development in respect of the BMBC Site be constructed in one phase then the Owner covenants to:
- 6.1.1 notify the Councils within 21 days of the Commencement of Development;
  - 6.1.2 notify the Councils within 21 days of the date of First Occupation of any BMBC Dwelling; and

6.1.3 notify the Councils within 21 days of the date of First Occupation of the 100<sup>th</sup> BMBC Dwelling to be Occupied;

and should the Owner fail to notify the Councils in accordance with this paragraph then notwithstanding the preceding provisions of this Deed permitting payment of the Education Contribution in equal instalments the entire Education Contribution shall immediately become payable on request.

6.2 Should the Development in respect of the BMBC Site be constructed in more than one phase then the Owner covenants to:

6.2.1 notify the Councils within 21 days of the Commencement of Development for each phase;

6.2.2 notify the Councils within 21 days of the date of First Occupation of any BMBC Dwelling for each phase; and

6.2.3 notify the Councils within 21 days of the date of First Occupation of 50% of the BMBC Dwellings to be Occupied for each phase;

and should the Owner fail to notify the Councils in accordance with this paragraph then notwithstanding the preceding provisions of this Deed permitting payment of the Education Contribution in equal instalments the entire Education Contribution in respect of the relevant phase shall immediately become payable on request.

## 7. Community Infrastructure Levy

7.1 For the purposes of this paragraph 7 of this Third Schedule, "CIL" means a tax, tariff or charge introduced by SCC or BMBC (as the context requires) pursuant to regulations enabled by the Planning Act 2008 or any subsequent legislation to fund the delivery of infrastructure known as the "community infrastructure levy" or known by any other name.

7.2 If, after the date of this Deed either, a CIL is introduced that is applicable to that part of the Development to be carried out on the BMBC Site or a CIL is already in place at the date of this Deed but subsequently becomes applicable to that part of the Development to be carried out on the BMBC Site then the parties will use reasonable endeavours to agree variations to this Deed with the intent that:

7.2.1 the planning benefits secured by the Deed as set out in this Third Schedule should continue to be secured and delivered; and

7.2.2 the Owner should not be in a position where it is in a financially worse position because of the effect of a CIL that is now applicable to that part of the Development to be carried out on the BMBC Site than it would be if it performed the obligations in this Deed and no such CIL had taken effect.

FOURTH SCHEDULE  
**Councils' Covenants with the Owner**

SCC (and BMBC as appropriate) hereby covenant with the Owner in the following terms:

**1. Agreement of the calculation(s) for the Education Contribution**

1.1 The Councils shall use reasonable endeavours to agree the Education Contribution for the BMBC Site or Residential Phase (as appropriate) within 15 Working Days of submission of such details and to notify the Owner of the same.

**2. Revisions to SCC's primary and secondary catchment boundaries**

2.1 SCC covenant to commence the statutory process to amend their school catchment areas in time for the start of the 2018/19 academic year with a view to bringing the BMBC Dwellings within the primary catchment areas of Wharncliffe Side Primary School and/or Oughtibridge Primary School and the secondary catchment areas of Bradfield School and/or Forge Valley School. SCC covenants to provide written confirmation to the Owner of the outcome of the process within 15 Working Days of a conclusion to the statutory process being reached.

2.2 Provided that the BMBC Dwellings are brought into the catchment areas referred to in paragraph 2.1 of this Schedule then upon receipt of the Education Contribution (or any part thereof) BMBC shall pay such over to SCC for SCC to apply the money towards providing primary school places at Wharncliffe Side Primary School and/or Oughtibridge Primary School and secondary school places at Bradfield School and/or Forge Valley School.

2.3 Should the BMBC Dwellings not be brought into the catchment areas referred to in paragraph 2.1 of this Schedule then upon receipt of the Education Contribution (or any part thereof) BMBC shall apply the money towards providing school places within a distance of five miles of the Site in respect of primary school places and within a distance of eight miles of the Site in respect of secondary school places. For the avoidance of doubt this does not preclude such places being provided within the administrative boundary of SCC but in such circumstance the places shall only be provided at the schools identified in paragraphs 2.1 and 2.2 above unless the Owner agrees otherwise in writing.

**3. Expending of financial contributions**

3.1 SCC shall use the Bus Stop Contribution, the Travel Plan Contribution, the TRO Contribution and the Affordable Housing Contribution received from the Owner:

- 3.1.1 solely for the purposes specified in the definitions set out in Paragraph 1.1 of the Third Schedule as being the purposes for which those payments are to be made; and
- 3.1.2 within 5 (five) years of the date of receipt by SCC (or in the case of payment by instalments within 5 (five) years of the date of receipt by SCC of the final instalment).
- 3.2 If SCC has not committed or expended the whole or any part of the contributions referred to in Paragraph 3.1 of this Schedule and received under this Deed (nor any interest accrued thereon) towards the relevant purpose(s) within a period of 5 (five) years from the date of receipt thereof (or in the case of payment by instalments within 5 (five) years of the date of receipt by SCC of the final instalment) then it shall refund any unexpended balance of the sum(s) to the person(s) by whom they were paid together with any interest accrued thereon for the period from the date of payment to the date of refund.
- 3.3 SCC shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the aforementioned contributions (and any interest accrued thereon) in accordance with the terms of this Deed.
- 3.4 BMBC shall use the Education Contribution received from the Owner solely for the purposes specified in paragraph 2 of this Fourth Schedule as being the purposes for which those payments are to be made.
- 3.5 If BMBC has not committed or expended the whole or any part of the Education Contribution received under this Deed towards the relevant purpose(s) within a period of 10 (ten) years from the date of receipt of the final instalment thereof then it shall refund any unexpended balance of the sum(s) to the person(s) by whom they were paid.
- 3.6 BMBC shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the Education Contribution in accordance with the terms of this Deed.
- 3.7 If BMBC pays the Education Contribution to SCC pursuant to paragraphs 2.2 or 2.3 then the obligations in paragraphs 3.4 to 3.6 shall be performed and observed by SCC instead of BMBC to the extent of the payments received from BMBC.
- 3.8 For the purposes of the foregoing, a sum shall be deemed to be "*committed*" if it has been committed for payment by a contract or appropriated by a statutory or administrative process

4. TRO process

4.1 That upon receipt of the TRO Contribution but subject always to Clause 9.11 of this Deed SCC shall diligently progress the TRO and, if appropriate, use all reasonable endeavours to ensure the TRO is fully implemented by the date of First Occupation.

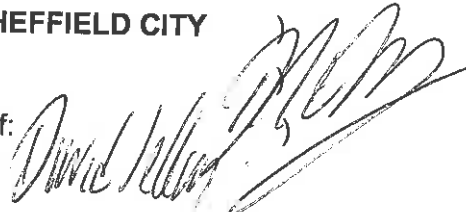
5. **Discharge of obligations**

5.1 At the written request of the Owner, the Councils shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

**THE COMMON SEAL OF SHEFFIELD CITY COUNCIL**

was affixed in the presence of:



Authorised Signatory:



17/945/3935

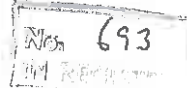
THE COMMON SEAL OF )  
BARNSELY METROPOLITAN )  
BOROUGH COUNCIL )

Was affixed in the presence of: )



Authorised Signatory:

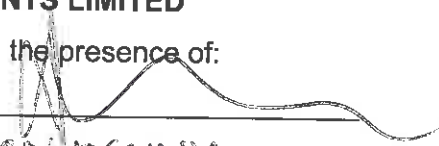
PRB 23/12/16



**EXECUTED AS A DEED BY ASE II DEVELOPMENTS LIMITED**

acting by a director in the presence of:

Signature of Director:



Name of Director: JON KENNY

Signature of witness:



Name (in BLOCK CAPITALS): ROSIE DANISON

Address: CEG, SLOANE SQ HOUSE, 1 HOLBETHN PLACE  
LONDON, SW1W 8NS