DATED 14th July 2016

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

ARNCLIFFE HOMES LIMITED

and

AMBERTON PROPERTIES (BARNSLEY) LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development at Ardsley House Ardsley, Doncaster Road Barnsley S71 5EH in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Director of Legal and Governance
Town Hall,
Barnsley, S70 2TA.

© CONTRACT

THIS DEED OF AGREEMENT is made the 14th day of July Two Thousand and Sixteen

BETWEEN

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

(2) **AMBERTON PROPERTIES (BARNSLEY) LIMITED** (Company registration number 08904548) whose registered office is Charter House Suite 2 25 High Street Banbury Oxfordshire OX16 5EG ("the Owner") of the second part and

(3) **ARNCLIFFE HOMES LIMITED** (Company registration number 02621807) whose registered office is Arncliffe House Bramley Grange Skeltons Lane Thorner Leeds LS14 3DW("the Developer") of the Third Part

RECITALS

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

(2) The Owner is the registered proprietor with absolute title of the Land registered under Land Registry Title Number SYK156067 and the Developer has an interest in the Land pursuant to a conditional agreement to purchase dated 17th July 2013 and made between the Owner (1) the Developer (2) as varied by a supplemental agreement dated 26th January 2016 and made between the Owner (1) the Developer (2) a second supplemental agreement dated 10 June 2016 and made between the Owner (1) the Developer (2) .

(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 application submitted to the Council for the demolition of existing hotel and erection of twenty seven dwellings on the Land and known to the Council by reference number 2015/0961

"**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 save that the Term "Material Operation" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office and erection of fencing to site boundary and reference to "Commence Development" is to be construed accordingly

"**the Development**" means the development of the Land 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

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

"**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 Occupy" 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 and the expression "Occupants" shall be construed accordingly

"the Open Spaces Contribution" means the sum of £50,891.39 (fifty thousand eight hundred and ninety one pounds and thirty nine pence) to be applied towards the provision and/or improvement of open spaces within five miles of the boundary of the Land

"the Plan" means the plan annexed hereto

"the Planning Permission" means a planning permission to be granted pursuant to the Application substantially in the form of the draft annexed in the Fourth Schedule

"Statutory Undertaker" means any company operations 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 gas water and/or drainage and any authorised successor to any such Undertaking

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.



KPP ARCHITECTS
KILMARTIN PLOWMAN & PARTNERS LIMITED

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P. MACCA

REV	DRAWN	DATE	DESCRIPTION

KPP ARCHITECTS
KILMARTIN PLOWMAN & PARTNERS LIMITED
LODGE HOUSE 12 TOWN STREET
HORSFORTH LEEDS LS18 4RJ
T : 0113 239 8400 F : 0113 239 0475
E : architects@kpp-leeds.co.uk
W : www.kpp-leeds.co.uk

PROJECT: FORMER ARDSLEY HOUSE HOTEL
DONCASTER ROAD
BARNSLEY

TITLE: EXISTING SITE PLAN

SCALE: 1:500 @A2	DRAWN: PU
STATUS: PLANNING	DATE: MAY'15
PROJECT: 2020	DRAWING: 201	REVISION: -

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

3.1 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

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 in the case of paragraph 1.3 of the Second Schedule and 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 to observe and perform its obligations in the Second Schedule; and

3.3.2 The Council covenants with the Owner to comply with its obligations in the Third 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 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 owner-occupier or tenant of any of the Dwellings;

(c) if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking

MISCELLANEOUS

4.1 The Owner shall pay to the Council on completion of this Deed the sum of £1,000 (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.

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

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

4.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Planning and Regulatory Services 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

INDEXATION

5 Any sum payable under this deed by the Owner remaining unpaid six months following the date hereof shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

INTEREST

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

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

FIRST SCHEDULE

All that land at Ardsley House Doncaster Road Ardsley, Barnsley, S71 5EH, and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

1 The Owner covenants

1.1 to pay 50% of the Open Spaces Contribution to the Council upon Commencement of Development

1.2 to pay the remaining 50% of the Open Spaces Contribution to the Council upon Occupation of thirteen Dwellings or eighteen months after Commencement of Development whichever is earlier

1.3 not to Commence Development until 50% of the Open Spaces Contribution is paid to the Council

1.4 not to Occupy more than thirteen Dwellings until the remaining 50% of the Open Spaces Contribution has been paid to the Council

THIRD SCHEDULE

The Council hereby covenants with the Owner and the Developer

General

1. The Council will on the reasonable written request of the Owner and/or the Developer at any reasonable time or times after any of the planning obligations under this Agreement has been fulfilled issue written confirmation thereof and/or at any reasonable times 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. To issue separate receipts on written request for any sum or contribution paid to the Council under this Agreement.

Contributions

3. To apply Open Spaces Contribution towards the purposes specified in this Agreement the need for which directly arises from the Development and not to apply the Open Spaces Contribution for any other purposes and the Council shall (on the reasonable written 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 Open Spaces Contribution or any part or parts thereof are not expended within ten years of the date of payment (or the date of payment of the final instalment if applicable) of such payment then upon written request the sum or sums not expended plus interest accrued will be repaid to the payee of the Open Spaces Contribution.

04 July 2016

RECOMMENDATION SHEET

App. No 2015/0961

Applicant:	**Agent:**
Mr Arncliffe Homes and Amberton Properties Ltd c/o Agent	Kilmartin Plowman and Partners Ltd KPP Architects Lodge House 12 Town Street Horsforth Leeds LS18 4RJ

Description:	**Location:**
Demolition of existing hotel and erection of 27 no. dwellings with associated car parking and landscaping.	Ardsley House Hotel Doncaster Road Ardsley Barnsley S71 5EH

Outline:

Recommendation: Approved Subject to Legal Agreement

Conditions:

1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
Reason: In order to comply with the provision of Section 91 of the Town and Country Planning Act 1990.

2 The development hereby approved shall be carried out strictly in accordance with the amended plans and specifications as approved unless required by any other conditions in this permission.

Plans;
2020-202-H - Site Plan
2020-210-C - GA's & Elevations plots 1, 4, 26
2020-211-C - GA's & Elevations plots 7,8, 22,23
2020-212-C - GA's & Elevations plots 2
2020-213-C - GA's & Elevations plots 20, 25
2020-214-C - GA's & Elevations plots 3
2020-215-C - GA's & Elevations plots 6, 17, 21, 24
2020-216-B - GA's & Elevations plots 13-14, 15-16
2020-217-C - GA's & Elevations plots 9-10, 11-12

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

2020-218-C - GA's & Elevations plots 5
2020-219-E - GA's & Elevations plots 27
2020-220-C - GA's & Elevations plots 18-19

Reason: In the interests of the visual amenities of the locality accordance with Core Strategy Policy CSP 29, Design.

3 The development hereby approved shall be carried out in accordance with the recommendations set out in section 4.0 of the 'Extended Phase 1 Habitat Survey and Bat Surveys' prepared by SLR Global Solutions dated November 2014 (REF: 402.05154.00001.00002).

Reason: in the interest of protected species and in accordance with CSP 36 'Biodiversity and Geodiversity'.

4 No development shall take place until full details of the proposed external materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
Reason: In the interests of the visual amenities of the locality and in accordance with Core Strategy Policy CSP 29, Design.

5 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the position of boundary treatment to be erected. The boundary treatment shall be completed before any dwelling is occupied. Development shall be carried out in accordance with the approved details and shall thereafter be retained.
Reason: In the interests of the visual amenities of the locality and the amenities of occupiers of adjoining property and in accordance with Core Strategy Policy CSP 29, Design.

6 No development shall take place until details of the proposed means of disposal of surface water drainage, including details of any balancing works and off-site works, have been submitted to and approved by the local planning authority. Discharge from the northern section of the site into the public surface water sewer network via the existing surface water connection shall be restricted to a maximum of 42.7 (forty two point seven) litres per second.

Furthermore, unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.

Reason: To ensure proper drainage of the area in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

7 No development shall take place until details of the proposed means of disposal of foul water drainage, including details of any balancing works and off-site works, have been submitted to and approved by the local planning authority. The peak pumped foul water discharge shall not exceed 3 (three) litres per second. Furthermore, no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.

Reason: To ensure proper drainage of the area in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

8 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the

development being brought into use, and shall be retained for that sole purpose at all times.

Reason: To ensure that satisfactory off-street parking/manoeuvring areas are provided, in the interests of highway safety and the free flow of traffic and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement.

9 Prior to commencement of development full highway engineering construction details, (including highway retaining structures, and phasing of the highway works) shall be submitted to and approved in writing by the Local Planning Authority. Development shall proceed in accordance with the approved details.
Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.

10 Pedestrian intervisibility splays having the dimensions of 2 m by 2 m shall be safeguarded at the drive entrance/exit such that there is no obstruction to vision at a height exceeding 1m above the nearside channel level of the adjacent highway.

Reason: In the interest of road safety in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement.

11 No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority, full details of both hard and soft landscaping works, including details of the species, positions and planted heights of proposed trees and shrubs; together with details of the position and condition of any existing trees and hedgerows to be retained. The approved hard landscaping details shall be implemented prior to the occupation of the building(s).
Reason: In the interests of the visual amenities of the locality and in accordance with Core Strategy Policy CSP 36, Biodiversity and Geodiversity.

12 No hedges or trees on the site (except those shown to be removed on the approved plan), or their branches or roots, shall be lopped, topped, felled, or severed. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such a size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
Reason: To safeguard existing trees/hedges, in the interests of the visual amenities of the locality and in accordance with UDP Policies GS22, Woodland, Hedgerows and Trees and GS22A.

13 No development or other operations being undertaken on site shall take place until the following documents have been submitted to and approved in writing by the Local Planning Authority:
Tree protective barrier details
Tree protection plan

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

Arboricultural method statement
The documents shall be in accordance with British Standard 5837:2012 (Trees in relation to design, demolition and construction - Recommendations)
The development shall be carried out in accordance with the approved details and the approved fencing shall be installed before machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced off in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.
Reason: To ensure the continued wellbeing of the trees in the interests of the amenity of the locality.

14 No development shall take place until a Historic England Level 3/4 survey of the historic Ardsley House structure, including a structural watching brief during soft strip and demolition works, is submitted to, and approved by, the Local Planning Authority. The works shall be carried out in accordance with the approved document.

Reason: In the interest of the Historic Environment and in accordance with CSP 30.

15 Prior to demolition a 'confirmatory' dusk/ dawn bat detector survey should take place, the findings of which shall be submitted to, and approved in writing by, the Local Planning Authority. Furthermore, a sensitive demolition protocol should be followed in order to minimise the risk of killing or injuring bats during building works. Sensitive demolition will involve the careful hand-removal of ridge tiles, facia boards, soffit boxes, hanging tiles, lead flashing and loose roof tiles. Should bats, or signs of bats (such as droppings) be found, work should stop locally and an ecologists consulted.

Reason: in the interest of protected species and in accordance with CSP 36 'Biodiversity and Geodiversity'.

16 No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
-The parking of vehicles of site operatives and visitors
-Means of access for construction traffic
-Loading and unloading of plant and materials
-Storage of plant and materials used in constructing the development
-The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
-Wheel washing facilities
-Measures to control the emission of dust and dirt during construction
-Measures to control noise levels during construction
Reason: In the interests of highway safety, residential amenity and visual amenity and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement, and CSP 29, Design.

17 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
Reason: In the interests of the amenities of local residents and in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

Informative(s)

1	The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at: https://www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on website at: www.gov.uk/government/organisations/the-coal-authority
2	The granting of planning permission does not in any way infer that consent of the landowner is given. Therefore the consent of all relevant landowners is required before proceeding with any development including that of the Council as landowner. If it should transpire that the applicant does not own any of the land included in this consent then it is the responsibility of the applicant to seek all necessary consents and approvals of the landowner.
3	The granting of planning permission does not effect the status of species such as owls and bats which have protection under other legislation. These may be present, and it is the applicant's responsibility to seek advice on how to avoid

Signed
Date
Committee **Sub-Committee**
Delegated **Section** **Date**
Signed
Principal Planning Officer
Date
Signed
Development Control Manager
Date

	damaging operations. Further advice can be obtained from the Countryside Unit in the Planning & Transportation Services, on 01226-772576, or directly from www.naturalengland.org.uk

FOURTH SCHEDULE

Draft Planning Permission

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

Director of Legal and Governance/Authorised Signatory

No. 2353 IN REGISTER

Executed as a deed by
AMBERTON PROPERTIES (BARNSLEY) LIMITED
acting by a director

Signature of Director:

in the presence of:

Signature of witness
Name (in BLOCK CAPITALS JAMES HODGSON
Address 64 ST JAMES'S STREET
LONDON, SW1A 1NF

Executed as a deed by
ARNCLIFFE HOMES LIMITED
acting by a director

Signature of Director: P. MACER

in the presence of:

Signature of witness
Name (in BLOCK CAPITALS JUSTINE BOULTON
Address 12 KINGSLEY AVENUE
BIRKENSHAW
BD11 2NQ