DATED 31st July 2012

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

GLADEDALE (SOUTH YORKSHIRE) LIMITED

and

BANK OF SCOTLAND PLC

AGREEMENT

under Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) relating to development on land at Burton Road West Green Barnsley in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 31st day of July Two Thousand and Twelve

BETWEEN

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

(2) **GLADEDALE (SOUTH YORKSHIRE) LIMITED** (Company number 01043597) (formerly Ben Bailey Homes Limited) whose registered office is situate at Ashley House Ashley Road Epsom Surrey KT18 5AZ ("the Owner") of the second part and

(3) **BANK OF SCOTLAND PLC** (Company number SC327000) of The Mound Edinburgh EH1 1YZ ("the Mortgagee") 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 Title Absolute of freehold land under Land Registry Title Number SYK 231764

(3) The Mortgagee is the proprietor of registered charges dated 20 August 2007 and 1 September 2009 affecting the land

(4) A section 106 relating to the Land between Ben Bailey Homes Limited and the Council dated 12th December 2005 contained obligations relating to public open space ("the Original Agreement")

(5) The Owner has submitted a planning application for residential development on the Land with an amended layout and plots under planning reference 2010/0786 ("the Varied Application") and the parties have agreed to enter into this Deed to ensure that the obligations contained in the Original Agreement apply to any development undertaken pursuant to any planning permission granted for the Varied Application

(6) Having regard to the provisions of the development plan and to all other material considerations the Council has resolved to grant planning permission for the Development subject to the completion of this Agreement to make provision for regulating the Development and securing the matters herein referred to.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1 DEFINITIONS

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

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

"**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 Act 1990 and "Commence Development" is to be construed accordingly

"**the Development**" means the development of the Land for residential development as set out in the Varied Application and as permitted by the Planning Permission

"**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 Planning Permission**" means the planning permission granted or to be granted pursuant to the Varied Application

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 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.

3 LEGAL BASIS

This Agreement is made pursuant to section 106 and section 106A of the Act 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 local planning authority against the Owner

4 COMMENCEMENT

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

5 OWNER COVENANTS

The Owner covenants with the Council to observe and perform the obligations as set out in the Second Schedule upon Commencement of Development

6 MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed £500 (five hundred pounds) representing the reasonable 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 Assistant Director of Planning and Transportation except where otherwise given in this deed itself and any notices 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.

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 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.

6.8 If the Planning Permission expires or is revoked this Deed shall be annulled and of no effect and the Council will remove any entry relating to this Deed from the Council's Register of Local Land Charges.

6.9 This Deed is governed by and interpreted in accordance with the law of England and Wales.

7 INDEXATION

Any sum payable under this deed by the Owner except the costs payable under clause 6.1 above 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.

8 INTEREST

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.

9 MORTGAGEE'S CONSENT

9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner subject to clauses 9.2 to 9.4 below

9.2 A Mortgagee is not liable for any breaches of the obligations in this Deed that were committed prior to the mortgagee becoming a mortgagee in possession ("pre-existing breaches") if the mortgagee serves the Council a letter in the form shown in the Third Schedule not more than 2 months prior to or within 14 days of becoming a mortgagee in possession and the Council confirms in writing within 28 days that there are no breaches of the obligations that the Council require the Mortgagee to rectify or fails to reply to the Mortgagee within 28 days

9.3 For the avoidance of doubt the fact that the mortgagee whilst in possession may not be liable for pre-existing breaches under clause 9.2 does not affect the liability of any person taking an interest from the Mortgagee in Possession for any pre-existing breaches.

9.4 If the Council takes formal enforcement action against the landowner for breaches of obligations contained in this agreement, including any action under a pre-action protocol under the civil procedure rules, the Council agrees to notify the Mortgagee within 14 days of taking such action.

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 Burton Road West Green Barnsley for the purpose of identification shown edged red on the plan attached to the Principal Agreement

SECOND SCHEDULE

I. The Owner shall not cause or permit more than 50% of the dwellings under the Planning Permission to be occupied until an area of land for public open space has been laid out in accordance with the Approved Landscaping Scheme (drawing number 2 l3l111revision B) (annexed in the Original Agreement) the extent of the land being hatched green thereon ("the Open Space").

2. The Owner shall not cause or permit more than 75% of the dwellings under the Planning Permission to be occupied until the Open Space has been transferred to the Council for a consideration of £1.00 (one pound). The Open Space shall be transferred subject to the matters appearing in the property and charges registers of the Land at the date hereof but shall otherwise be free from encumbrances

3. The Owner shall pay the Council forthwith upon the transfer of the Open Space by the Council the sum of £51,360 (inclusive of VAT) to be used for the:maintenance of the Open Space ("the Open Space Maintenance Contribution") PROVIDED THAT the Council shall apply the Open Space Maintenance Contribution to the maintenance of the Open Space and for no other purpose.

THIRD SCHEDULE

Form of Mortgagee letter

Dear Assistant Director

Planning and Regulatory Services

Barnsley MBC

(Copy to Borough Secretary)

Re S106 [address] [date of agreement]

I am writing to you on behalf of the Mortgagee in possession concerning the land that is the subject of the above section 106 agreement. I enclose a copy of the agreement.

The section 106 provides at clause 9 that the Mortgagee is not liable for any pre-existing breaches of the obligations contained within the section 106 if this letter is sent not more than 2 months prior to or within 14 days of the Mortgagee becoming a mortgagee in possession. I confirm that this letter is sent within this time period and provide the enclosed evidence to verify this fact.

In addition the Mortgagee will have no liability for any pre-existing breaches of the section 106 obligation if, within 28 days of receipt of this letter, the Council either confirms that there are no pre-existing breaches that the Council requires the Mortgagee to rectify or fails to reply within this period.

I therefore require your response within 28 days of receipt of this letter

Yours faithfully

Mortgagee in possession
Enclosures - copy s106 agreement and evidence of date entered into possession

THE COMMON SEAL of Barnsley)
Metropolitan Borough Council was)
hereunto affixed to this Deed in the)
presence of:-)

[redacted]

Borough Secretary

AUTHORISED SIGNATORY

No. 2217 IN REGISTER

EXECUTED AS A DEED by)
Gladedale (South Yorkshire))
Limited acting by two directors)
or one director and the company)
secretary:)

[redacted]

Direc

Direct

EXECUTED as a deed for and)
on behalf of Bank of Scotland Plc)
acting by #)
as authorised attorney

[redacted]

Attorney (Sig... ...

[redacted]

(Name – in Block Capitals)

[redacted]

Signature of witness :
Name of witness :
Address :

Lloyds Banking Group
Corporate Real Estate
Business Support Unit
4th Floor, Citymark
150 Fountainbridge
Edinburgh EH3 9PE