DATED 28TH JULY **2017**

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

CONROY BROOK (DEVELOPMENTS) LIMITED

DEED OF VARIATION

Pursuant to Section 106 and 106A of the Town and Country Planning Act 1990 (as amended) relating to development on land at Cross Lane, Hoylandswaine, Sheffield in the County of South Yorkshire

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

THIS DEED OF AGREEMENT is made the 28th day of July

Two Thousand and seventeen

BETWEEN

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

(2) **CONROY BROOK (DEVELOPMENTS) LIMITED** (Company registration number 03181264) whose registered office is situate at Burdell Works, 172 New Mill Road, Brockholes Holmfirth HD9 7AZ ("the Owner") of the second part

RECITALS

(1) This Deed of Variation is supplemental to an agreement entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) the Council (2) the Owner and (3) John Michael Bradbury and Rose Ann Bradbury dated 19th May 2016 ("the Original Section 106 Agreement") a copy of which is attached hereto as Appendix 1.

(2) The Owner is the registered proprietor with Title Absolute of land following a transfer dated 20 July 2016 and is successor in title to John Michael Bradbury and Rose Ann Bradbury aforesaid as now registered under Land Registry Title Number SYK157177 ("the Land")

(3) The Owner has submitted an application to the Council ("Planning Application 2017/0100") under section 73 of the Town and Country Planning Act 1990 seeking to vary condition 2 attached to the planning permission granted by the Council under reference 2015/0911 (Planning Permission 2015/0911). Application 2017/0100 seeks to vary condition 2 of Planning Permission 2015/0911 to allow changes to the design of the detached garages associated with plot nos 4, 6 and 10 shown on the site plan approved by the Planning Permission 2015/0911. If Planning Application 2017/0100 is approved, this would result in a new planning permission being granted.

(4) The Council is minded to grant the planning permission pursuant to Planning Application 2017/0100 subject to completion of this Deed of Variation without which the planning permission would not be granted. The purpose of this Deed of Variation is to ensure that the obligations contained in the Original Section 106 Agreement shall also apply to any development undertaken under a planning permission granted by the Council under Planning Application 2017/0100

(5) Any words or phrases which are defined in the Original Section 106 Agreement (as varied) and which appear in this Deed of Variation shall have the same meaning as are associated to them in the Original Section 106 Agreement (as varied) unless a contrary intention appears from this Deed of Variation

NOW THIS DEED WITNESSETH AS FOLLOWS:-

VARIATION

1.1 It is hereby agreed between the parties hereto that the Original Section 106 Agreement is varied in the manner set out in the Schedule hereto and the Original Section 106 Agreement shall remain in full force and effect and the amendments contained in this Deed of Variation shall take effect as if they were included in the Original Section 106 Agreement.

1.2 This Deed of Variation is made pursuant to the statutory provisions and in consideration of the covenants contained herein and for the avoidance of doubt it is agreed and declared that the said covenants are ones to which section 111 of the Local Government Act 1976, sections 106 and 106A of the Town and Country Planning Act 1990, section 1 of the Localism Act 2011 and all other powers so enabling are to apply.

1.3 This Deed of Variation contains planning obligations made pursuant to section 106 and section 106A of the Town and Country Planning Act 1990 which are enforceable by the Council and shall bind the Land .

COMMENCEMENT

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

MISCELLANEOUS

1.5 The Owner shall pay to the Council on completion of this Deed the sum of £500.00 (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.

1.6 A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term hereof provided that this clause shall not affect any right of action of any person to whom this Deed is lawfully assigned or in whom it becomes vested in law.

1.7 No party shall be liable for breach of a covenant contained in this Deed after having parted with all 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.

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

SCHEDULE

The parties hereto mutually agree to vary and supplement the terms of the Original Section 106 Agreement so that the Original Section 106 Agreement shall from and including the date of the date of this Deed of Variation be read and construed as follows:

1. Clause 1 of the Original Section 106 Agreement shall be amended so as to include:

(i) a new definition of "Planning Application 2017/0100" which shall read: "means the planning application submitted to the Council under section 73 of the 1990 Act for the variation of condition 2 of planning permission 2015/0911 given the planning number 2017/0100 "

(ii) a new definition of "the Second Planning Permission" which shall read: "means a planning permission to be granted by the Council pursuant to Planning Application 2017/0100",

(iii) a revised definition of "the Development" which shall read: "means the development of the Land for residential development in accordance with the Planning Permission and/or the Second Planning Permission"; and

(iv) a revised definition of "Occupation" which shall read: "means occupation for the purposes permitted by the Planning Permission or the Second 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" is to be construed accordingly".

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

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

Executive Director of Core Services & Solicitor to the Council/Authorised Signatory

No. 482
IN REGISTER

EXECUTED AS A DEED by)
CONROY BROOK (DEVELOPMENTS))
LIMITED acting by two Directors or a)
Director and Secretary)

Director
(please print name beneath signature)

Director/Secretary
(please print name beneath signature)

Appendix 1

DATED 19th May 2016

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

JOHN MICHAEL BRADBURY AND ROSEMARY ANN BRADBURY

and

CONROY BROOK (DEVELOPMENTS) LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land at Cross Lane, Hoylandswaine, Sheffield in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Director of Legal and Governance
Town Hall,
Barnsley, S70 2TA.
PG/254/00366

THIS DEED is made the 12th day of May Two Thousand and Sixteen

BETWEEN

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

(2) **JOHN MICHAEL BRADBURY AND ROSEMARY ANN BRADBURY** of Common Side Farm, North Lane, Cawthorne, Barnsley, South Yorkshire ("the Owner") of the second part; and

(3) **CONROY BROOK (DEVELOPMENTS) LIMITED** (Company Registration Number 03181264) whose registered office is at Burdell Works, 172 New Mill Road, Brockholes, Huddersfield, West Yorkshire, HD9 7AZ ("the Developer") of the third part.

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Deed 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 Deed are enforceable

(2) The Owner is the registered proprietor with absolute title of the Land registered under Land Registry Title Number SYK157177.

(3) The Developer has a conditional contract with the Owner on 20 May 2015 to purchase the Land.

(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 erection of 10 dwellings on the Land and known to the Council by reference number 2015/0911

"**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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "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 Deed may be enforced

"**Occupation**" 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" is to be construed accordingly

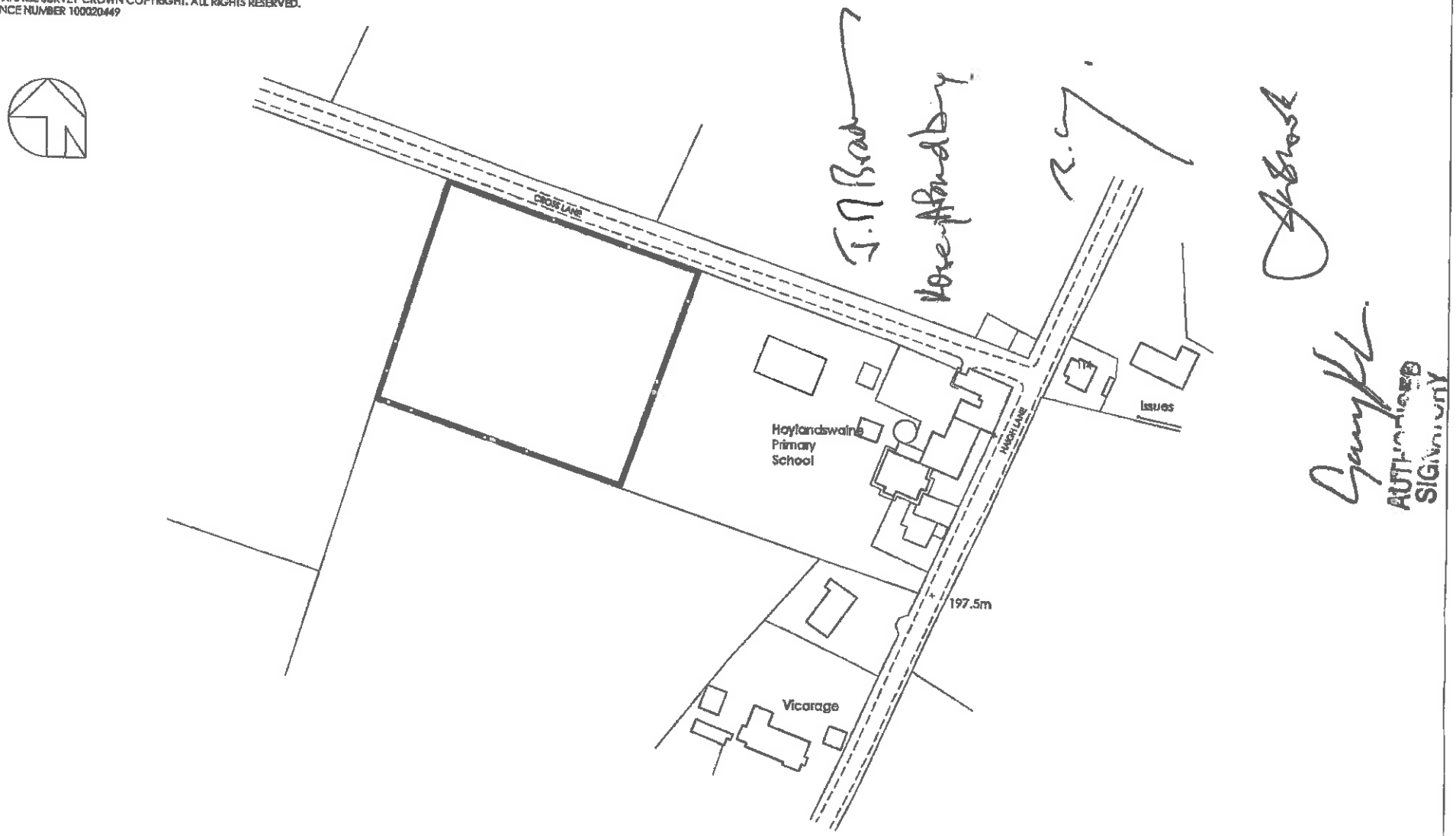
"**the Plan**" means the plan annexed hereto

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

"**the Primary School/Church Hall Contribution**" means the sum of £50,000 (fifty thousand pounds) to be used towards the funding of a community room for Hoylandswaine Primary School and/or improvements to Hoylandswaine Church Hall

CONSTRUCTION OF THIS DEED

ORDNANCE SURVEY CROWN COPYRIGHT. ALL RIGHTS RESERVED.
LICENCE NUMBER 100020449



0m 20m 40m 60m 80m

1:1250 on A3

Client: Conroy Brook (Developments) Ltd

Job: proposed residential development off Cross Lane, HOYLANDSWAINE

Title: Location Plan

Scale: 1:1250

Date: June 2015

Dwg No: 15/156-P01

MPJ DESIGN ASSOCIATES Ltd
4 CHURCH STREET
BARLBOROUGH
CHESTERFIELD. S43 4EP

tele: 01246 819259
mob: 07841 353141
martynpjones@btinternet.com

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 1 of the Localism Act 2011 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

SECOND SCHEDULE

The Primary School/Church Hall Contribution

1. The Owner hereby covenants

1.1 not to Occupy more than three Dwellings on the Development unless and until the Owner has paid 50% of the Primary School/ Church Hall Contribution to the Council

1.2 to pay 50% of the Primary School/Church Hall Contribution to the Council upon Occupation of the third Dwelling on the Development

1.3 not to Occupy more than five Dwellings on the Development unless and until the Owner has paid the remaining 50% of the Primary School/ Church Hall Contribution to the Council

1.4 to pay the remaining 50% of the Primary School/Church Hall Contribution to the Council upon Occupation of the fifth Dwelling on the Development

THIRD SCHEDULE

1. The Council covenants to use the Primary School/ Church Hall Contribution to provide a community room at Hoylandswaine Primary School and/or improvements to Hoylandswaine Church Hall and for no other purpose.

2. If the Primary School/ Church Hall Contribution or any part of it has not been spent or committed within 5 years from the date that it is fully paid, the Council covenants to return all unexpended sums to the Owner along with any interest accrued.

3. The Council covenants to issue the Planning Permission as soon as possible following completion of this Deed.

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

No. 2254
IN REGISTER

Director of Legal and Governance/Authorised Signatory

SIGNED as a DEED by JOHN MICHAEL BRADBURY)
in the presence of: Mr K. Le Breton)

Signature of Witness

Name of Witness K. A. LE BRETON

Address GREENS LATHE FARM
NORTH LANE, CAWTHORNE S75 4AQ

Occupation FARMER

SIGNED as a DEED by ROSEMARY ANN BRADBURY)
in the presence of: Mr K. Le Breton)

Signature of Witness

Name of Witness K. A. LE BRETON

Address GREENS LATHE FARM
CAWTHORNE, BARNSLEY, S75 4AQ

Occupation FARMER

Executed as a Deed by)
CONROY BROOK (DEVELOPMENTS))
LIMITED)
acting by two directors or a director/secretary)

Director

Director/ Secretary