

DATED 26th November 2020

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

- and -

(2) THE RIVERSIDE GROUP LIMITED

AGREEMENT
under Section 106 Town and Country Planning Act 1990
(as amended)
relating to
land at Holden House, Race Street, Barnsley, S70 1BG

26th November.

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Church Street, Barnsley S70 2TA ("**Council**"); and
- (2) **THE RIVERSIDE GROUP LIMITED** (a charitable registered society under the Co-Operative and Community Benefit Societies Act 2014 (registration number 030938R) whose registered office is 2 Estuary Boulevard, Speke, Liverpool L24 8RF ("**Owner**").

together the "**Parties**" and reference to "**Party**" shall be construed accordingly.

WHEREAS:

1. By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and by whom the planning obligations hereby created are enforceable.
2. The Owner is the leasehold proprietor with absolute leasehold title of the Land registered at HM Land Registry under Title Number SYK34277.
3. The Owner submitted the Application for planning permission to the Council on 17 January 2020.
4. The Owner by entering into this Agreement does so to create planning obligations in respect of the Land and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.
5. The Parties have agreed to enter into this Agreement in order to secure the planning obligations contained in the Agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following expressions shall have the following meanings:

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

"Affordable Rented Housing" has the same meaning as the term "affordable housing for rent" contained in paragraph (a) of Annex 2 of the

National Planning Policy Framework;

**"Affordable Rented
Dwellings"**

means all of the Dwellings proposed to be provided pursuant to the Planning Permission consisting of 17no self-contained flats to be made available as Affordable Rented Housing to persons in accordance with the Registered Provider's policy;

"Application"

means the planning application (reference number 2020/0069) validated by the Council on 28 April 2020 for the conversion of Holden House into 17no self-contained flats and associated internal and external alterations;

**"Commencement of
Development"**

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act **SAVE THAT** the term "*material operation*" shall not include operations in connection with any work of or associated with demolition, site clearance, remediation works, archaeological investigation, diversion and laying of drainage and services, environmental investigation, site and soil surveys, erection of a contractor's work compound, erection of a site office and erection of fencing and hoardings to the site boundary and "**Commence Development**" shall be construed accordingly;

"Council's Approved List"

means the following Registered Providers:

1. Berneslai Homes Limited;
2. South Yorkshire Housing Association Limited;
3. Yorkshire Housing Limited;
4. Guinness Northern Counties Limited;
5. Equity Housing Group Limited;
6. Leeds and Yorkshire Housing Association

Limited;

7. Chevin Housing Association Limited; and

8. Wakefield and District Housing Limited;

or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time;

"Development"

means the development of the Land in accordance with the Application;

"Dwellings"

means the residential units that may be built on the Land as part of the Development and "Dwelling" shall be construed accordingly;

"Expert"

means an independent person of at least 10 years' standing in the area of expertise relevant to the dispute to be agreed between the parties or, failing agreement, to be nominated at the request and option of any of them, at their joint expense, by or on behalf of the President for the time being of the Law Society;

"Head of Planning and Building Control"

means the Head of Planning and Building Control of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Agreement;

"Index"

means the 12 (twelve) month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;

"Interest Rate"

means interest at 4 (four) per cent above the base lending rate of the Bank of England from time to time and in every case compounded on the first day of June and December in

each year;

"Land"

means all that land at Holden House, Race Street, Barnsley, S70 1BG shown edged red on Plan 1;

"National Planning Policy Framework"

means the National Planning Policy Framework published by the Ministry of Communities and Local Government in February 2019 (as amended in June 2019) (or any future guidance or initiative that replaces or supplements it);

"Occupation"

means occupation for the purposes of 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 **"Occupant"** **"Occupy"** and **"Occupier"** shall be construed accordingly;

"Plan 1"

means the plan appended to this Agreement at Appendix 1 and labelled Site Plan;

"Planning Permission"

means a planning permission that may be granted by the Council in pursuance of the Application;

"Practical Completion"

means the date of issue of a certificate of practical completion by an architect (or such other person authorised by the Owner) which confirms that a specified Dwelling has been constructed in compliance with building regulations and is completed so as to be fit for habitations as a residential housing unit;

"Registered Provider"

means the Council or any other registered provider as defined by Section 80 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and being on the register maintained by The Regulator of Social Housing (as defined in Section 80A of the Housing and Regeneration Act 2008 or such replacement statutory body in function) under the provisions of Section 111 of the Housing and

Regeneration Act 2008;

"Sustainable Travel Fund" means the sum of £5,164.26 (five thousand one hundred and sixty four pounds and twenty six pence) to be paid to the Council and used by the Council towards purposes identified in the SPD 'Sustainable Travel' (November 2019) the need for which is required in order to mitigate impacts arising from the Development;

1.2 Where the context so requires:

- 1.2.1 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine and neuter genders and extend to include a corporation sole or aggregate.
- 1.2.2 References to any party or body in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act.
- 1.2.3 Wherever there is more than one person named as a party and where more than one party undertakes a covenant all their covenants can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 1.2.4 Any covenant by a party not to do any act or thing shall be deemed to include a covenant not to cause, permit, procure or suffer the doing of that act or thing.
- 1.2.5 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.
- 1.2.6 References to Clauses, Paragraphs, and Schedules are references to clauses, paragraphs, and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement.
- 1.2.7 Clause headings are for reference only and shall not affect the construction of this Agreement.

2. **LEGAL BASIS**

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other powers so enabling.

3. **CONDITIONALITY**

- 3.1 The planning obligations comprised in this Agreement shall not become effective until the Commencement of Development.

- 3.2 Subject to clause 3.1:

3.2.1 The Owner hereby covenants with the Council that the Land shall be bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule; and

3.2.2 The Council covenants with the Owner to comply with its obligations in the Second Schedule and where applicable in the First Schedule.

4. **MISCELLANEOUS**

- 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:

4.1.1 occurring after he or it has parted with all or part of his or its interest in the Land (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);;

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

- 4.2 It is agreed that any mortgagee and/or chargee and/or their respective successors in title shall have no liability under this Agreement unless and until it becomes a mortgagee in possession of the Land or the part of the Land in relation which its charge relates in which case it too will be bound by the obligations as if it were a person deriving title from the Owners or the Owner's' successors in title as the case may be.

- 4.3 The Affordable Rented Housing provisions in paragraph 1 of the First Schedule to tThis Agreement shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a

Receiver)) of the whole or any part of the Affordable Rented Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

- 4.3.1 such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Rented Dwellings and shall have used reasonable endeavours over a period of three months from the date of written notice to complete a disposal of the Affordable Rented Dwellings to another Registered Provider or to the Council for consideration of not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 4.3.2 If such disposal has not taken place within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Rented Dwellings free from the said Affordable Rented Housing provisions in this Agreement which shall determine absolutely.
- 4.4 Each of the parties to this Agreement shall act in good faith and shall co-operate with each of the other parties to facilitate the discharge and performance of all obligations on them contained in this Agreement and the Owner shall comply with any reasonable requests of the Council to provide documentation within its possession (such documentation to be provided by the Owner at its own expense) for the purposes of monitoring compliance with the obligations contained in this Agreement.
- 4.5 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Agreement such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 4.6 This Agreement shall be registered as a Local Land Charge by the Council.
- 4.7 Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 4.8 This Agreement 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 and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.

- 4.9 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.
- 4.10 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission in this Agreement shall include the new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.
- 4.11 Insofar as any Clause or Clauses of this Agreement are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.
- 4.12 Nothing in this Agreement 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 Agreement.
- 4.13 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights, powers, duties and obligations in any capacity as a local authority.

5. NOTIFICATION

- 5.1 All notices, requests and demands or other written communications to or upon the Parties pursuant to this Agreement shall be deemed to have been properly given or made if dispatched by first class letter to the Party to which such notice, request, demand or other written communication is to be given or made under this Agreement and addressed as follows (or to such other address as the Party to whom the notices, requests, demands or other written communication is to be given or made shall from time to time notify in writing to the other Parties as its address for the purposes of this Clause 6.1):

- 5.1.1 To the Council care of the Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ quoting the Application reference number 2020/0069; and

To the Owner at Riverside, 1- 4 Walton Road , Liverpool L4 4ND marked for the attention of Shaun Minton/Laura Pitcher quoting "Holden House" and the Application reference number 2020/0069.

6. THIRD PARTIES

- 6.1 No person who is not a Party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999.

7. WAIVER

- 7.1 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 Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

8. JURISDICTION

- 8.1 This Agreement is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England.

9. DELIVERY

10. The provisions of this Agreement (other than this Clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

11. DISPUTE PROVISIONS

- 11.1 Any dispute arising between the parties relating to any matter contained in this Agreement may be referred to the Expert by any party.
- 11.2 The Expert will act as an expert and not as an arbitrator.
- 11.3 Each party will bear its own costs and the Expert's costs will be paid as determined by him.
- 11.4 The Expert will be required to give notice to each of the parties, inviting each of them to submit to him written representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision.
- 11.5 The Expert's decision will be given in writing as expediently as possible with reasons and in the absence of manifest error will be final and binding on the parties.

12. **INDEXATION**

12.1 The Sustainable Travel Fund shall be increased to reflect any increase in the Index occurring in the period from and including the date of this Agreement to and including the date on which the Sustainable Travel Fund is payable.

12.2 **INTEREST**

12.3 If the Council does not receive payment of any money due under this Agreement on the due date the Owner will pay interest on the money concerned to the Council at the Interest Rate from the due date until the date of actual receipt by the Council provided that this sub-clause shall not prejudice any other right or remedy of the Council for the recovery of any money due.

13. **LEGAL COSTS**

13.1 The Developer shall pay to the Council on completion of this Agreement its reasonable legal fees properly incurred in the negotiation, preparation and execution of this Agreement in the sum of £1,000.00 (no VAT payable), inclusive of disbursements.

IN WITNESS whereof the Parties hereto have executed this Agreement as a deed the day and year first before written

FIRST SCHEDULE
The Owner's Obligations

The Owner hereby covenants with the Council in the following terms:

1. AFFORDABLE RENTED HOUSING

Affordable Rented Housing

- 1.1 Subject to clause 3.4, that the Dwellings shall not be Occupied otherwise than as Affordable Rented Dwellings let by the Owner in its capacity as a Registered Provider or by an alternative Registered Provider on the Council's Approved List.
- 1.2 The provisions of this Schedule shall not be binding on any tenant or occupant of a Dwelling exercising a preserved right to buy, right to acquire or similar statutory right to purchase or any successor in title of such a person or their mortgagee.

2. SUSTAINABLE TRAVEL FUND

- 2.1 To pay the Sustainable Travel Fund to the Council before the Occupation of any Dwelling within the Development
- 2.2 The Owner shall not cause or permit the Occupation of any Dwelling within the Development until they have paid the Sustainable Travel Fund to the Council.

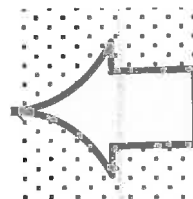
SECOND SCHEDULE

(The Council's Covenants)

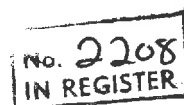
The Council covenants with the Owner:

1. that on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof;
2. to place the Sustainable Travel Fund in an interest bearing account or in separate accounts as the Council shall at its discretion decide;
3. not to apply the Sustainable Travel Fund for any purpose other than for the purposes set out in this Agreement within the Council's area and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied; and
4. that in the event the Sustainable Travel Fund or any part or parts thereof are not expended or committed within 10 (ten) years of the date of payment (or the date of payment of the final instalment if applicable) then the sum or sums not expended or committed plus interest accrued will be repaid to the Owner or its nominee.

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



~~Borough Secretary~~/Authorised Signatory



Signed as a deed by

Name of Attorney... LISA HOGARTY

Signature of Attorney... [Handwritten Signature]

In the presence of:

Witness signature: [Handwritten Signature]

Name: DANIELE CAMPBELL

Address:

Occupation: FACILITIES



DWF Law LLP
2nd Floor
Central Square South
Newcastle
NE1 3AZ

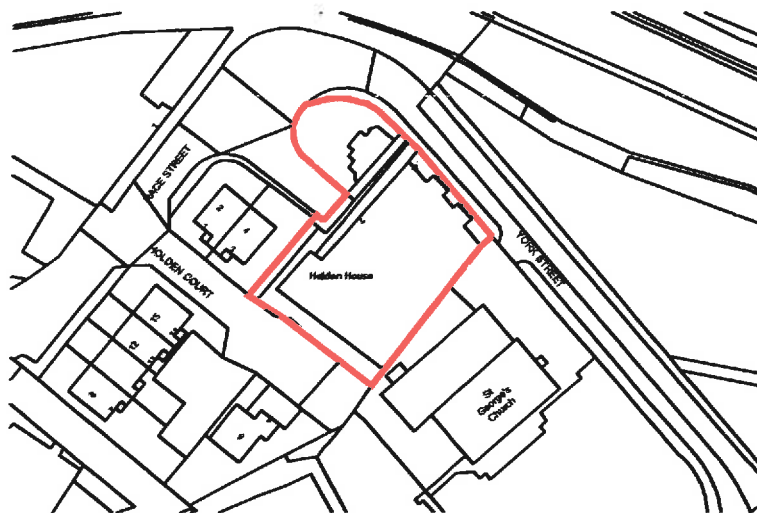
as attorney (appointed under a power of attorney dated 20 April 2020) for
The Riverside Group Limited

APPENDIX 1

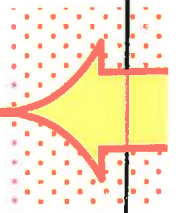
SITE PLAN

SITE PLAN

Rev	Date	Description
-	-	-



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Jan
AT

Client
RIVERSIDE

Job No
6078

Project
BEDSITS TO FLATS
HOLDEN HOUSE, 2 RACE STREET, BARNSELEY, S70 1BG

Drawing No
105

Title
LOCATION PLAN

Scale
1:1250

Date
JAN 20

Status
PLANNING

Rev
-

Drawn
NW



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