

DATED 20th September 2016

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

PARTNER CONSTRUCTION LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) and s111 of the Local Government Act 1972 relating to development on land at the Former Foulstone School, Nanny Mar Road, Darfield, Barnsley, S73 9AB, in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Director of Legal and Governance
Town Hall,
Barnsley,
S70 2TA.
PG/254/00376

THIS AGREEMENT (signed as a deed) is made the 20th day of September 2016

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("Council") of the first part; and
- (2) **PARTNER CONSTRUCTION LIMITED** (Company registration number 07410551) whose registered office is situate at Suite 1 Durhamgate, Green Lane, Spennymoor, County Durham, DL16 6FY (the Developer) of the second part.

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.
2. The Council is the freehold proprietor of the Site registered at H.M. Land Registry under title number SYK547831.
3. The Developer has an interest in the Site by virtue of the Contract
4. The Application was submitted to the Council for planning permission for the Development.
5. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to secure the provision of a financial contribution to compensate the Council for the loss of existing green space as a result of the Development and make provision for affordable housing.
6. The Developer by entering into this agreement do so to create planning obligations in respect of the Site 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.
7. The parties agree that the obligations contained within this Agreement comply with regulation 122 of the Community Infrastructure Levy Regulations 2010
8. The Site is also subject to a section 106 agreement dated 1st April 2016 between Peveril Securities Limited and the Council which contains an obligation to pay a Green Spaces Contribution in the same terms as the obligation to pay the Green Spaces Contribution in this Agreement. For the avoidance of doubt the Council acknowledges that whether one or both agreements come in to effect that it will only seek one payment of the Green Spaces

Contribution and it is hereby acknowledged by the parties that Peveril Securities Limited can rely on this Recital

INTERPRETATION

In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

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

"Application" means the application reference number 2015/1490 for the erection of 40 affordable dwellings and associated infrastructure on the Site;

"Commencement of Development" means the date upon which any material operation within the meaning of Section 56 (4) of the 1990 Act forming part of the Development begins to be carried out 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" shall be construed accordingly;

"Development" means the development of the Site in accordance with the Planning Permission;

"Dwelling" means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;

"Contract" means the contract entered into between the Council and the Developer relating to the acquisition of the Site of even date;

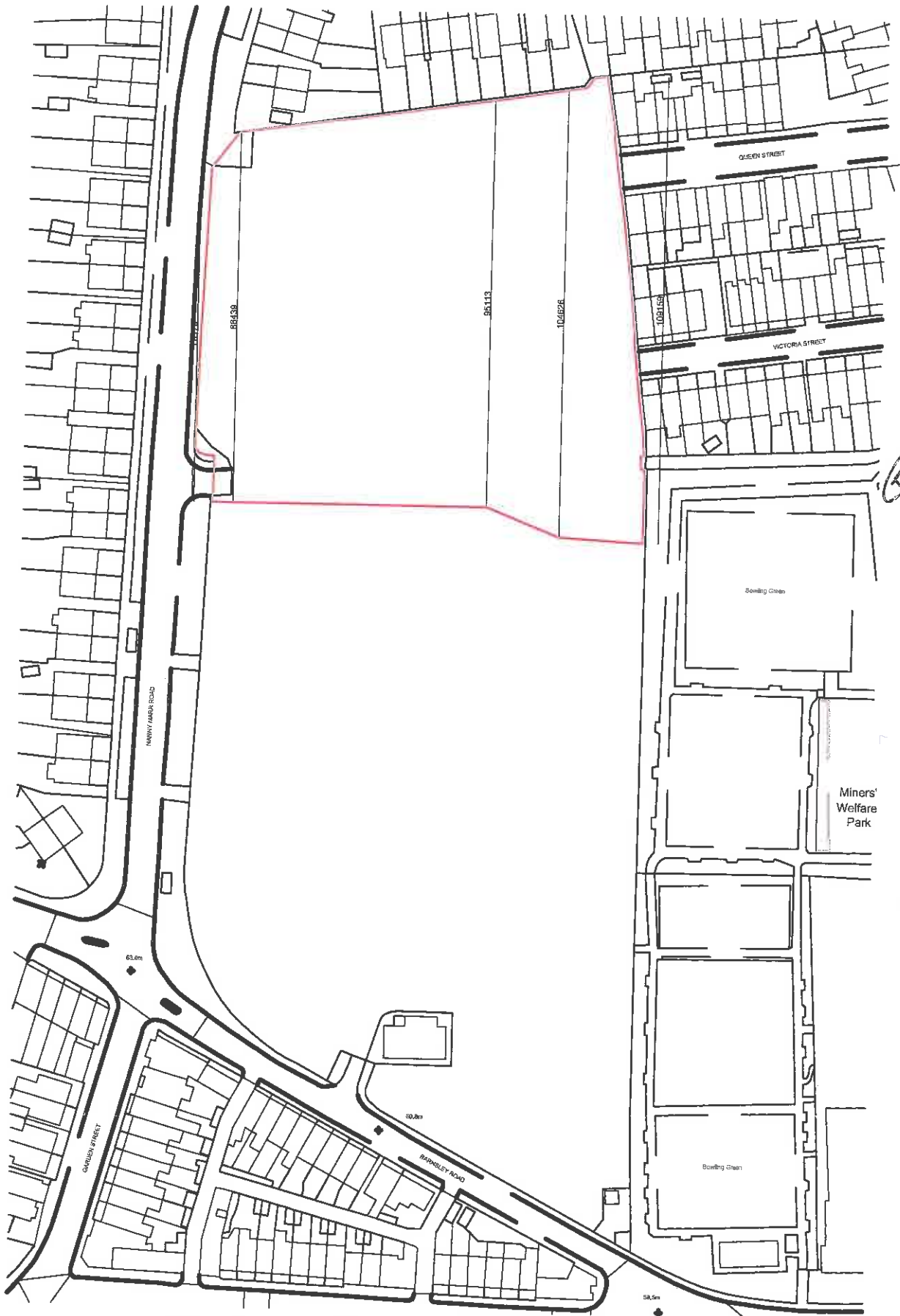
"Head of Planning and Building Control" means the Head of Planning and Building Control Services of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Deed;

"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 the rate of 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;

"Plan 1" means the plan annexed hereto and marked "Plan 1"

"PLAN 1"



Boon

Red Line Plan scale 1:1250

nicol thomas

Revision	Date	Details

nicol thomas
 architects project managers construction cost consultants CDM co-ordinators
 Registered in England and Wales, Reg No. 2149338
 Charly Assured to BS EN ISO 9001:2008 Certificate Number GB 4723
 Hayfield House Blackshaw Lane Hayfield Royton Oldham OL2 8NS
 t01705 290088 f01705 290099 ecolthomas@nicolthomas.com
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Client:	Partner Construction		
Job:	Nanny Marr Road, Davfield		
Drawing title:	Location Plan		
Drawing Number: (Job number)	M3894	(PL)	00
Scale:	1:1250 @ A4		
Date:	November 2015		
Drawn by/ checked by:	JLW		

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

"Section 106 Agreement" means an agreement under section 106 of the 1990 Act substantially in the form attached in the Second Schedule subject to such amendments as may be agreed between the parties.

"Site" means the land at the Former Foulstone School, Nanny Marr Road, Darfield, Barnsley, S73 9AB, shown edged red on Plan 1;

"Working Day" means Monday to Friday in each week excluding bank and other public holidays.

OPERATIVE PROVISIONS

- 2.1 The Developer covenants with the Council to observe the restrictions and perform the obligations contained in this Deed.
- 2.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed are entered into pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and all other enabling powers and create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Developer. For the avoidance of doubt the covenants, restrictions and requirements will not be enforced or enforceable against any individual owner-occupier of any of the Dwellings or their mortgagee.
- 2.3 The expressions "the Council" and "the Developer" shall include their successors in title and assigns.
- 2.4 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site 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.
- 2.5 This Deed shall become effective upon the date of this Agreement
- 2.6 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Developer this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date

- 2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 2.8 The obligations hereby created shall be registered as a Local Land Charge.
- 2.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.11 The Developer shall pay the Council's reasonable and proper legal fees in respect of the preparation and negotiation of this Deed of £750.
- 2.12 No person shall be liable for breach of any covenant contained in this Deed which relates to part of the Site that they do not have an interest in.
- 2.13 Where the agreement, approval, consent or expression of satisfaction is required by the Developers from the Council under the terms of this Deeds 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 Head of Planning, Building Control and Sustainability Development Services. 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.

3. DEVELOPERS COVENANTS

- 3.1 The Developer covenants
- 3.1.1 not to permit suffer or cause Commencement of Development until the Developer has acquired a freehold or long leasehold interest in the Site and entered into the Section 106 Agreement with the Council; or
- 3.1.2 if Development has Commenced prior to the Developer acquiring the freehold or long leasehold interest in the Site the Developer covenants not to continue with the Development nor permit suffer or cause the Development to continue until it has entered into the Section 106 Agreement with the Council
- 3.2 The Developer covenants that upon acquiring a freehold or long leasehold interest in the Site they shall immediately enter into the Section 106 Agreement with the Council

3.3 The covenants in clauses 3.1 and 3.2 above are conditional upon the Planning Permission having first been granted by the Council.

4. **COUNCIL COVENANTS**

The Council covenants with the Developers to use its reasonable endeavours to issue the Planning Permission within five Working Days of the completion of this Agreement.

5. **INDEXATION**

Any sum payable under this Deed by the Developer 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.

6. **INTEREST**

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

FIRST SCHEDULE
("Draft Decision Notice")

SECOND SCHEDULE

("Section 106 Agreement to be entered into upon either of the Developers acquiring a freehold or long leasehold interest in the Site")

DATED _____

2016

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

PARTNER CONSTRUCTION LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land at the Former Foulstone School, Nanny Mar Road,
Darfield, Barnsley, S73 9AB, in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Director of Legal and Governance
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THIS AGREEMENT (signed as a deed) is made the day of 2016

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**Council**") of the first part; and
- (2) **PARTNER CONSTRUCTION LIMITED** (Company registration number 07410551) whose registered office is situate at Suite 1 Durhamgate, Green Lane, Spennymoor, County Durham, DL16 6FY(the Owner) of the second part .

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.
2. The Owner is the freehold proprietor of the Site and is entitled to be registered at the Land Registry under title number SYK547831
3. The Application was submitted to the Council for planning permission for the Development.
4. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to secure the provision of a financial contribution to compensate the Council for the loss of existing green space as a result of the Development and make provision for affordable housing.
5. The Owner by entering into this agreement does so to create planning obligations in respect of the Site 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.
6. The parties agree that the obligations contained within this Agreement comply with regulation 122 of the Community Infrastructure Levy Regulations 2010
8. The Site is also subject to a section 106 agreement dated 1st April 2016 between Peveril Securities Limited and the Council which contains an obligation to pay a Green Spaces Contribution in the same terms as the obligation to pay the Green Spaces Contribution in this Agreement. For the avoidance of doubt the Council acknowledges that whether one or both agreements come in to effect that it will only seek one payment of the Green Spaces Contribution and it is hereby acknowledged by the parties that Peveril Securities Limited can rely on this Recital

INTERPRETATION

In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

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

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in annex 2 of the National Planning Policy Framework

"Affordable Housing Commuted Sum" means the sum of £385,526 (three hundred and eight five thousand five hundred and twenty six pounds) that may be used by the Council in lieu of the provision of Affordable Housing on the Site for the provision of, or improvements to, Affordable Housing in the following priority (1) the Wombwell Principal Town area as defined in the Council's Development Plan Core Strategy; (2) Urban Barnsley as defined in the Council's Development plan core strategy; (3) the Council's administrative area

"Affordable Housing Units" means six Dwellings of Affordable Housing comprising of one Intermediate Dwelling (two bedroomed house) and five Affordable Rented Dwellings (2no two bedroomed houses 2no three bedroomed houses and 1no two bedroomed bungalow) to be provided in accordance with paragraph 1 of the First Schedule and "Affordable Housing Unit" shall be construed accordingly

"Affordable Rent" means an affordable rent of no more than 80% of the Market Rent;

"Affordable Rented Dwellings" has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework to be constructed on plots to be agreed in writing with the Council such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy, and Affordable Rented Dwelling shall be construed accordingly;

"Application" means the application reference number 2015/1490 for the erection of 40 dwellings and associated infrastructure on the Site

"Chargee" means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

"Commencement of Development" means the date upon which any material operation within the meaning of Section 56 (4) of the 1990 Act forming part of the Development begins to be carried out 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" shall be construed accordingly;

"Council's Approved List" means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Limited; Guinness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Together Housing Association Limited ; and 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 Site in accordance with the Planning Permission;

"Dwelling" means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;

"First Occupier" means the first occupier for residential purposes of each Dwelling excluding all subsequent occupations and reference to "First Occupation" shall be construed accordingly;

"Green Spaces Contribution" means the sum of £90,000 (ninety thousand pounds) towards the provision of and/or improvement to informal open space and/or sports and/or recreation facilities at Darfield Park and any other sites within the vicinity of the Site;

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

"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 the rate of 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;

"Intermediate Dwellings" has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises 1 Dwellings in total consisting of 1 x 2 bed house to be constructed on such locations and / or house types that may be agreed in writing between the Owner and/or Developer and the Council from time to time such properties to be made available to persons in accordance with the Registered Provider's policy;

"Market Rent" means the average local market rent for a Dwelling in Barnsley with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion;

"Occupation" 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" and "Occupied" shall be construed accordingly;

"Open Market Dwellings" means the residential units that may be built on the Site as part of the Development excluding the Affordable Housing Units and reference to "Open Market Dwelling" shall be construed accordingly;

"Plan 1" means the plan annexed hereto and marked "Plan 1";

"Planning Permission" means the planning permission to be issued pursuant to the Application;

"Protected Tenant" means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

"Registered Provider" means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council;

"Site" means the land at the Former Foulstone School, Nanny Marr Road, Darfield, Barnsley, S73 9AB, shown edged red on Plan 1;

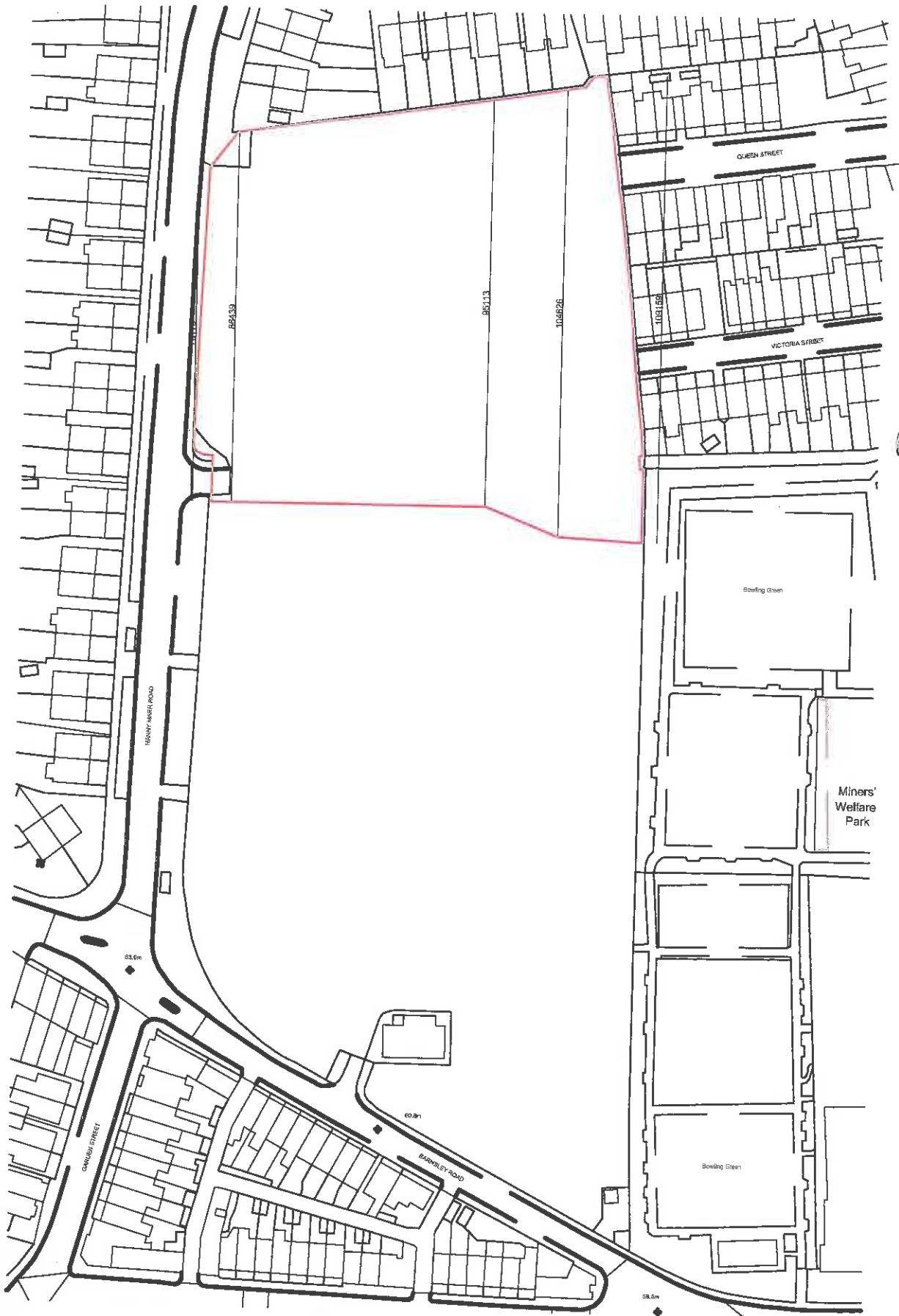
"Together Housing" means Together Housing Group Limited or Together Housing Association Limited

"Working Day" means Monday to Friday in each week excluding bank and other public holidays.

OPERATIVE PROVISIONS

- 2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are entered into pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and all other enabling powers and create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.
- 2.3 This Deed will not be enforced or enforceable against individual owner-occupiers or tenants of any of the Dwellings nor against those deriving title from them or their mortgagee .
- 2.4 This Agreement will not be enforced or enforceable against any operational land upon which a statutory apparatus is situated.
- 2.5 The expressions "the Council", and "the Owner" shall include their successors in title and assigns.
- 2.6 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site 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.
- 2.6 This Deed is conditional upon the Commencement of Development save for the provision of clauses 2.11, 6 and 7 which shall have effect from the date of this Agreement
- 2.6 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner or Developer this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date
- 2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 2.8 The obligations hereby created shall be registered as a Local Land Charge.

"PLAN 1"



Plan 1

Red Line Plan scale 1:1250

nicol thomas

Revision	Date	Details

nicol thomas
 architects project managers construction cost consultants CBM co-ordinators
 Registered in England and Wales Reg No. 2146629
 Quality Assured to BS EN ISO 9001:2004 Certificate Number GB 4793
 Hayfield House, Blackshaw Lane, Hayfield, Royston, Oxford, OX2 6NS
 01706 250988 01706 290099 ac@nicolthomas.com
 Also at Birmingham (Registered office)
 Do not scale from this drawing. All dimensions must be checked and verified before
 making production drawings or commencing works. This drawing and its design is the
 copyright of Nicol Thomas Ltd and may not be reproduced in any form whatsoever
 without their prior express written consent.

Client:	Partner Construction
Job:	Nanny Mar Road, Darfield
Drawing title:	Location Plan
Drawing Number: (Job number)	M3894 (PL) 00
Scale:	1:1250 @ A4
Date:	November 2015
Drawn by/ checked by:	JLW

- 2.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.11 The Owner shall pay the Council's reasonable and proper legal fees in respect of the preparation and negotiation and completion of this Deed of £250
- 2.12 No person shall be liable for breach of any covenant contained in this Deed which relates to land that they do not have a legal interest in and no person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 2.13 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council 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 Head of Planning and Building Control Services. 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.

3. INDEXATION

Any sum payable under this Deed by the Owner 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.

4. 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.

5. JURISDICTION

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

6. 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.

FIRST SCHEDULE

PLANNING OBLIGATIONS

The Owner covenants to observe and perform the following obligations

Affordable Housing

- 1.1 The Affordable Rented Dwellings shall not be used or Occupied other than as Affordable Rented Dwellings and the Intermediate Dwellings shall not be used or Occupied other than as Intermediate Dwellings save that the Affordable Rented Dwellings may be used as Intermediate Dwellings and the Intermediate Dwellings may be used as Affordable Rented Dwellings with the written permission of the Head of Planning and Building Control.
- 1.2 The plot locations of the Affordable Housing Units are to be submitted to and approved in writing by the Council prior to the Commencement of Development.
- 1.3 Subject to paragraph 1.9 of this Schedule not to cause or permit more than 50% of the Open Market Dwellings to be Occupied until the Affordable Housing Units have been constructed to the same external standard as the Open Market Dwellings and transferred to a Registered Provider on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.
- 1.4 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:
 - 1.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and
 - 1.4.2 full and free rights to the passage of water soil electricity gas and other services through the pipes channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains.
- 1.5 The Owner shall provide the Council notice within 14 days of the Practical Completion of the Affordable Housing Units.
- 1.6 The Owner shall use its reasonable endeavours to market the Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval (such approval not to be unreasonably withheld or delayed) ("**the Initial Registered Provider Transfer Terms**"). For the avoidance of doubt, the Owner shall not transfer the Affordable Housing Units to a Registered Provider not appearing on the Council's Approved List subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time.

- 1.7 The Owner will thereafter use reasonable endeavours to exchange contracts with the Registered Provider agreed under paragraph 1.5 above for the sale of the Affordable Housing Units and will keep the Council informed on the progress.
- 1.8 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use reasonable endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of progress.
- 1.9 If the Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Affordable Housing Units or such other date agreed in writing by the Council and the Council is satisfied that paragraphs 1.6 to 1.8 of this Schedule have been complied with then the Owner and/or Developer shall forthwith pay the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** upon such payment the Owner will be free to offer such dwellings for sale on the open market free from the affordable housing obligations in this Schedule as Open Market Dwellings.
- 1.10 Any agreement to sell or transfer the Affordable Housing Units to a Registered Provider shall contain the following minimal provisions:
- 1.10.1 The grant by the Owner and/or Developer of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Unit; and
- 1.10.2 A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Open Market Dwellings.
- 1.11 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission and the appropriate design and space standards set out in the "South Yorkshire Residential Design Guide 2011" (or any guidance that supplements or replaces it) unless otherwise agreed in writing with the Council and shall provide each Affordable Housing Unit with all necessary rights of access and egress from the same together with all the essential water, sewerage and electricity supplies without the imposition of any financial cost or the creation of any ransom element.
- 1.12 The obligations in this Deed shall not be binding on:
- 1.12.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges;
- 1.12.2 any Chargee have first complied with obligations at paragraph 1.13; or
- 1.12.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

- 1.13 A Chargee shall prior to seeking to dispose of any Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 30 Days prior notice to the Council of its intention to dispose and:
- 1.13.1 in the event that the Council responds within 30 Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its reasonable endeavours to secure such transfer;
 - 1.13.2 if the Council does not serve its response to the notice served under paragraph 1.13.1 of this Schedule within 30 Days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule as Open Market Dwellings;
 - 1.13.3 if the Council or any other person cannot within 30 Days of the date of service of its response under paragraph 1.13.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.3 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule as Open Market Dwellings

PROVIDED THAT at all times the rights and obligations in this paragraph 1.13.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must protect the interest of the Chargee and shall not require the Chargee to sell for any less than moneys outstanding under the charge or mortgage (including interest costs and penalty payments due).

Green Space Contribution

- 2 The Owner covenants to pay to the Council the Green Spaces Contribution:
- a) within 28 days of the Commencement of Development where Development Commences after the Owner has acquired a freehold or long leasehold interest in the Site; or
 - b) within 28 days of the acquisition of a freehold or long leasehold interest in the Site where development has Commenced prior to the Owner acquiring that interest.

whichever is the earlier **PROVIDED THAT** if the Green Space Contribution has already been paid pursuant to the section 106 agreement dated 1st April 2016 between Peveril Securities Limited and the Council then no further payment will be required pursuant to this paragraph 2

IN WITNESS whereof the parties hereto have executed this Deed 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:-)

Director of Legal and Governance/Authorised Signatory

Executed as a deed by
PARTNER CONSTRUCTION LIMITED
acting by a director

Signature of Director:

in the presence of:

Signature of witness

Name (in BLOCK CAPITALS

Address

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

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

A. H. L.

Director of Legal and Governance/Authorised Signatory

Min No: 52 PRB 22.3.2016

No. 2420
IN REGISTER

Executed as a deed by

PARTNER CONSTRUCTION LIMITED

acting by a director

Signature of Director: *P. H.*

in the presence of: GRACE MACKAY

Signature of witness *a. H. Mackay*

Name (in BLOCK CAPITALS

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