2010/0176

DATED 21st June **2010**

BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)

-and-

GATEWAY PLAZA LIMITED (2)

-and-

QUEST PROPERTY LIMITED (3)

-and-

BARCLAYS BANK PLC (4)

-and-

BARCLAYS CONVERTED INVESTMENTS (NO.2) LIMITED (5)

-and-

HOMES AND COMMUNITIES AGENCY (6)

SUPPLEMENTAL AGREEMENT MADE UNDER SECTION S106A OF THE TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

relating to
development of land at
Fitzwilliam Street, Barnsley

Gordons LLP

Solicitors
Leeds & Bradford
REF: NP/QUE18/44

This Agreement is made the 25th day of June 2010

BETWEEN:

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

(2) **GATEWAY PLAZA LIMITED (Company Registration Number 05467799)** whose registered office is at Brooke House, Great Cliffe Court, Dodsworth Business Park, Barnsley, South Yorkshire S75 5SP ("the Owner")

(3) **QUEST PROPERTY LIMITED (Company Registration Number 02626654)** whose registered office is at Brooke House, Great Cliffe Court, Dodsworth Business Park, Barnsley, South Yorkshire S75 5SP ("the Original Owner")

(4) **BARCLAYS BANK PLC (Company Registration Number 1026167)** whose registered office is 1 CHURCHILL PLACE LONDON E14 5HP ("the First Mortgagee")

(5) **BARCLAYS CONVERTED INVESTMENTS (NO.2) LIMITED (Company Registration Number 05535473)** whose registered office is 1 CHURCHILL PLACE LONDON E14 5HP ('the Second Mortgagee')

(6) **HOMES and COMMUNITIES AGENCY** of 110 Buckingham Palace Road, London, SW1W 9SA ('the Third Mortgagee')

WHEREAS:

1. The Council is the local planning authority for the purposes of the Town and Country Planning Act (1990) (as amended) (hereinafter called "the Act") for the area within which the land described in the First Schedule hereto (hereinafter called "the Land") is situate

2. The Owner is the registered freehold owner of the Land

3. The First Mortgagee is a mortgagee of the Land under a legal charge dated 18 July 2007 made between the Owner (1) and the First Mortgagee (2)

4. The Second Mortgagee is a mortgagee of the Land under a legal charge dated 31 March 2010 made between the Owner (1) and the Second Mortgagee (2)

5. The Third Mortgagee is a mortgagee of the Land charge dated 31 March 2010 made between the Owner (1) and the Third Mortgagee (2)

6. The Original Owner entered into an agreement with the Council pursuant to Section 106 of the Act on 24 November 2005 ("the Previous Agreement")

imposing planning obligations relating to the residential development of 188 apartments with ground floor A1/A3 units and basement parking, access and associated works to the Land under application number B/04/1468/BA ("the Residential Development").

7. The Original Owner was the registered freehold owner of the Land at the time the Previous Agreement was entered into and the Previous Agreement continues to be enforceable against the Original Owner under section 106(3)(a).

8. On 22 December 2005 the Council granted planning permission to the Original Owner for the Residential Development pursuant to the terms of the Previous Agreement.

9. On 9 August 2006 the Council granted planning permission for the development of an 8 storey office space with parking, A1/A3 and ancillary uses (amended car parking proposals and external works) under application B/04/2019/BA which was subsequently varied by a planning permission granted on 12 February 2009 under reference 2009/0111 ("the Office Permission")

10. The Owner has requested for the Open Space and Related Works Contribution (as defined in the Previous Agreement) to be reduced from £157,132 to £100,025.

11. The Original Owner has submitted an application to vary condition 32 of the Office Permission under application number 2010/0176 ("the Application")

12. The Owner has requested a variation to the obligations contained in the Previous Agreement to facilitate the reduction in the Open Space and Related Works Contribution

13. The Council have agreed to vary the terms of the Previous Agreement and to grant planning permission for the Application subject to the Owner and the Original Owner entering into this supplemental agreement.

NOW THIS DEED WITNESSETH as follows-

IT IS HEREBY AGREED BETWEEN THE PARTIES:_

OPERATIVE PROVISIONS

1. This Agreement is made pursuant to Section 106 and s106A of the Act and in consideration of the covenants hereinafter contained.

2. The obligations assumed by the Owner and the Original Owner in this Agreement are deemed to be planning obligations for the purposes of Section 106 of the Act and shall be enforceable by the Council as local planning authority against the Owner and the Original Owner

3. 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

4. References to any party to this Agreement 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 in title to its statutory functions

8. No person other than the Original Owner shall be liable for any breach of the covenants conditions or restrictions contained in this Agreement after he shall have parted with his interest in the Land or the relevant part of the Land in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest)

9. The Previous Agreement shall be varied by the deletion of the definition of "Open Space and Related Works Contribution" defined in Clause 1.1 of the Previous Agreement and the substitution of the provisions contained in the Second Schedule as the definition of "Open Space and Related Works Contribution" into the Previous Agreement

10. Clause 9 shall only come into effect once the Local Planning Authority confirm in writing that the obligations contained in clause 11 have been satisfied (such confirmation not to be unreasonably withheld or delayed)

11. The Owner covenants with the Council within 3 months from the date of this Agreement to complete improvements to the Pinfold Steps (including lighting and construction) in accordance with the Plan approved by the Council with the reference 22058/CP/P114 Revision M and any related specification

12. The Previous Agreement remains valid and in force subject to the variations contained in this Agreement

13. This Agreement shall be registerable as a local land charge by the Council

14. No provisions of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

15. The First Mortgagee Second Mortgagee and Third Mortgagee each acknowledge and declare that this Deed has been entered into by the Owner with their consent and that the Land shall be bound by the obligations contained in this Deed and that the security of their respective charges over the Land shall take effect subject to this Deed PROVIDED THAT each of the First Mortgagee Second Mortgagee and Third Mortgagee shall otherwise have no liability under this Deed unless either one 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.

16. The Owner shall at the date of this Agreement pay the Council's legal fees of £500 incurred in connection with the negotiation and drafting of this Agreement

IN WITNESS whereof the Council the Owner has executed this Agreement as a Deed the day and year first before written.

THE FIRST SCHEDULE

Brief Description of the Land

The freehold land shown and edged red on the plan attached hereto ("the Plan") being partly registered at the Land Registry under Title Number SYK401952

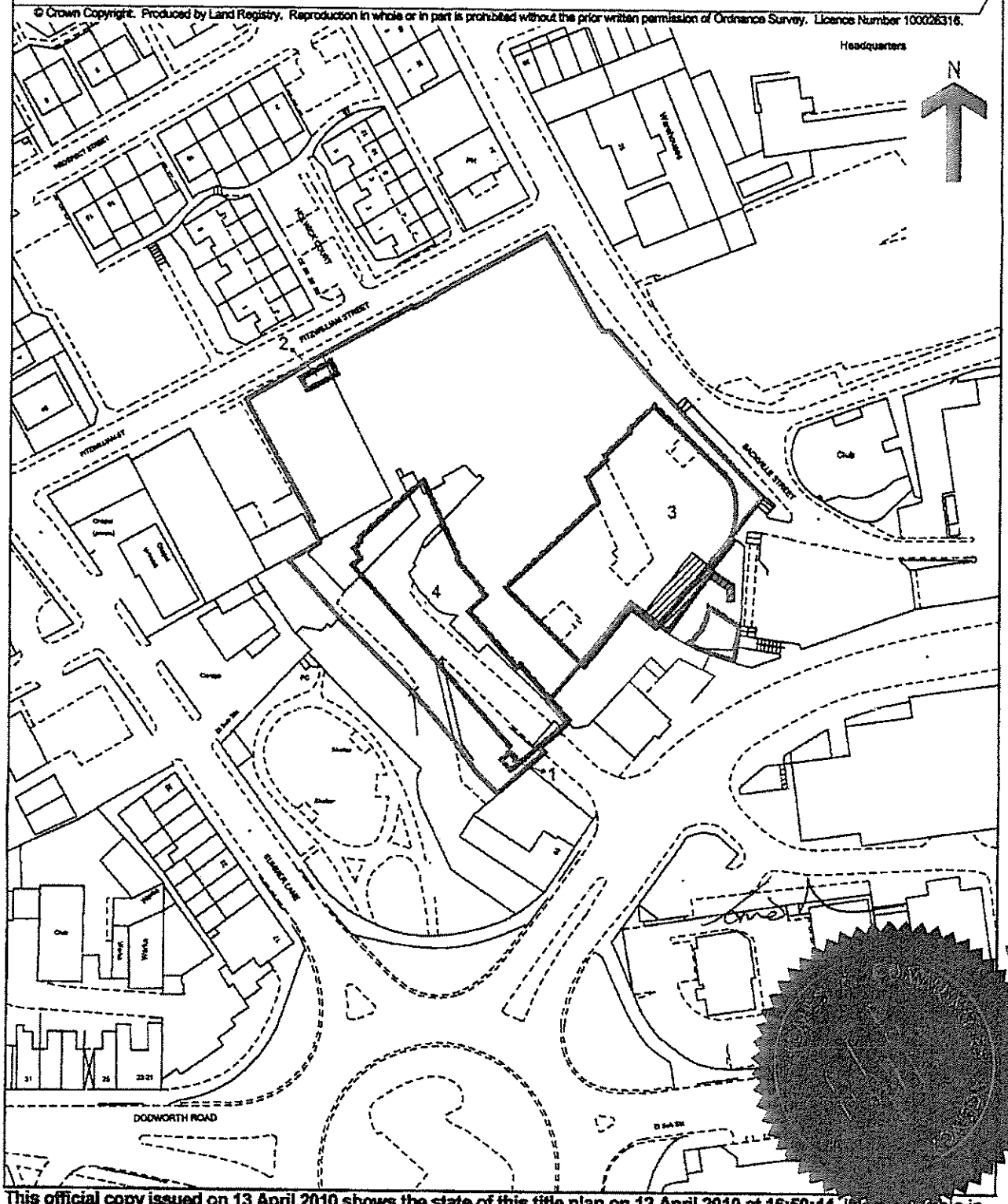
THE SECOND SCHEDULE

"Open Space and Related Works Contribution" means the sum of £100,025

Land Registry
Official copy of title plan

Title number **SYK401952**
Ordnance Survey map reference **SE3406SW**
Scale **1:1250**
Administrative area **South Yorkshire: Barnsley**

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R4618.

This official copy issued on 13 April 2010 shows the state of this title plan on 12 April 2010 at 16:50:44. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This title is dealt with by Land Registry, Nottingham Office.

The Common Seal of **THE BARNSLEY METROPOLITAN BOROUGH COUNCIL** was hereunto affixed in the presence of)

.....

AUTHORISED SIGNATORY

No. 1121 IN REGISTER

EXECUTED AS A DEED by **GATEWAY PLAZA LIMITED** acting by a director, in the presence of)

Witness Signature

Name PAULINE HILL

Address 27 THORP AREH PK
THORP AREH
LS23 7AP

Occupation PA

EXECUTED AS A DEED by **QUEST PROPERTY LIMITED** acting by a director, in the presence of)

Witness Signature

Name Matthew Stephens

Address 37 Rutland Park
Sheffield

Occupation Development Manager

Signed as a Deed by **BARCLAYS BANK PLC)**
acting by ~~these two officers~~:)
its duly authorised attorney)
in the presence of:

~~Director~~

ASHLEY B SMITH
1 CHURCHILL PLACE
CANARY WHARF
LONDON
E14 5HD

~~Director/Secretary~~

Signed as a Deed by **BARCLAYS CONVERTED)**
INVESTMENTS (NO.2) LIMITED)
acting by these two officers:)

~~Director~~ ATTORNEY.

~~Director/Secretary~~ WITNESS

WAQAS AHMED
1 Churchill Place
London.

The Common Seal of **HOMES AND**)
COMMUNITES AGENCY was)
hereunto affixed in the presence of)

14618

X .....

1 .....

north

SACKVILLE STREET

HAMBLES STREET

COMMERCIAL UNIT

National Tyres

TERRACE

TERRACE

TERRACE

RECLAIMED NATURAL STONE FLAGS WITH MARGIN AT ENTRANCE + DEMARCATION OF PAVED STEPS

RECLAIMED NATURAL STONE SETS WITH TACTILE MARGIN IN NATURAL STONE TOP + BOTTOM OF STAIRS

NEW RETAINING WALL/PLANTER BOX FACED BOTH SIDES WITH NATURAL STONE WITH SAWN STONE COPINGS

NATURAL STONE PAVING FLAG AS DEMARCASION OF S278 WORKS

GAP BETWEEN STAIR AND WALL TO BE PAVED WITH RECLAIMED NATURAL STONE SETS AT PITCH LINE OF STAIR

TACTILE PAVING

EXISTING PAVED STEPS TO BE REPAIRED, EXISTING HANDRAIL RETAINED AND REDECORATED

NEW SHRUB PLANTING BY BMBC

EXISTING GULLY

EXISTING PLANTER BOX WITH STONE COPINGS REPAIRED WHERE MISSING IN NATURAL STONE TO MATCH EXISTING

REPLACEMENT LAMPPOST BY BMBC

EXISTING RAMPED FOOTPATH IN TARMAC RESURFACED AS TEMPORARY MEASURE

3 No. BOLLARDS AS PART OF S278 WORKS

NEW DROP KERB AS PART OF S278 WORKS

MARSHALLS PERFECTA NATURAL PAVING TO TERRACE AREA

ADDITIONAL PAVING

GRASS

TURFED AREA

EXISTING GULLY CLEANED AND OVER-HAULED AS REQUIRED

EXISTING HANDRAIL RETAINED AND REPAIRED / REDECORATED + COPINGS TO RETAINING WALL REPLACED WHERE MISSING IN NATURAL STONE TO MATCH EXISTING

GRASS

GRASS

GRASS

GRASS

BLACK FACING BRICK TO CONCRETE RETAINING STRUCTURE TO LINE THRU WITH GABION WALL

GABION BASKETS

TIMBER SLEEPER RETAINING STRUCTURE TO CREATE SERIES OF TERRACES

EXISTING STONE COBBLED RAMPED FOOTPATH

RECLAIMED NATURAL STONE SETS WITH TACTILE MARGIN

SHRUB PLANTING

EXISTING HANDRAIL RETAINED AND REPAIRED / REDECORATED + COPINGS TO RETAINING WALL REPLACED WHERE MISSING IN NATURAL STONE TO MATCH EXISTING

LOW LEVEL

HATCH INDICATES NEW GABION RETAINING WALL WITH ADDITIONAL BASKETS IN LINE WITH COMMENTS

EXISTING TREE TO BE REMOVED

BACK EDGE OF FOOTPATH / HIGHWAY BOUNDARY

FORKED SYCAMORE RETAINED WITH REMAINING EXISTING SELF SEEDED TREES REMOVED AND DAMAGED RETAINING WALL TAKEN DOWN + REBUILT

AREA REPLANTED WITH NATIVE SHRUB PLANTING BY BMBC

EXISTING LAMP POST

EXISTING LAMP POST

TYPICAL SECTION OF GABION RETAINING WALL

SCALE 1:50

ELEVATION OF GABION RETAINING WALL FROM NTS YARD

SCALE 1:100

M	SCHEME AMENDED IN LINE WITH BMBC COMMENTS	31.03.10
L	TYPICAL WALL SECTION AMENDED & LINK WITH LANDSCAPE DETAILS	24.02.10
K	WALLS SHOWN TO TERRACE GABION BASKETS SHOWN TO SOUTH SIDE OF CONCRETE RETAINING	17.01.10
J	NEW RETAINING WALL AMENDED TO SUIT AS BUILT RETAINING WALL BETWEEN UPPER AND LOWER TERRACE OMITTED, RETAINING STRUCTURE TO LOWER LANDSCAPE AMENDED	03.12.09
H	AMENDED TO INCLUDE NEW KNEE RAIL TO STEPS JOINING ON FROM EXISTING STEPS	30.11.09
G	NOTES TO LAMP POSTS UPDATED, PAVED AREA TO TERRACE AMENDED, STAIR ADDED	26.11.09
F	NOTES UPDATED	25.11.09
E	NOTES UPDATED	05.11.09
D	GABIONS ADDED, ELEVATION ADDED, SECTION REFS ADDED	31.08.09
C	SURFACED AREA REVISED, PLANTING AREAS UPDATED, TEXT UPDATED, ISSUED AS PRELIMINARY	05.06.09
B	ISSUED FOR CONSTRUCTION	01.02.07
A	NOTES AMENDED	23.08.07

PLANNING

AXIS ARCHITECTURE

TALBOT CHAMBERS 2 NORTH CHURCH STREET SHEFFIELD S1 2DH
TEL 0114 2480044 FAX 0114 2480068 www.axis-architecture.com

GATEWAY PLAZA
BARNSLEY

QUEST PROPERTY

LANDSCAPE PLAN

TERRACE

SCALE		DATE	DRAWN	CHECKED
A1 ISSUE:	A3 ISSUE:			
1:125	1:250	20.09.07	JW	

DRAWING NUMBER: 22058/CP/P114 REVISION: M

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GATEWAY PLAZA - PINFOLD STEPS/GREEN SPRINT



SKETCH VIEW

MARCH 2010

AXIS architecture