DATED 19TH FEBRUARY 2020

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

HARARD DEVELOPMENTS (PENISTONE) LIMITED

AGREEMENT

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

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

THIS AGREEMENT (signed as a deed) is made the 19th day of February 2020

BETWEEN: -

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

(2) **HARARD DEVELOPMENTS (PENSITONE) LIMITED** of 201 High Street Ecclesfield Sheffield S35 9XB ("**Owner**") of the second part.

1 DEFINITIONS AND INTERPRETATION

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

DEFINITIONS

GENERAL DEFINITIONS

"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 Contribution"	means £660,000 (six hundred and sixty thousand pounds only) towards the provision or improvement of Affordable Housing within the wards of Penistone East and Penistone West or if in the reasonable opinion of the Council there are no or insufficient opportunities to apply this sum in whole or part within Penistone East and Penistone West wards any remaining sums may be applied in adjoining wards within the administrative area of the Council or if in the reasonable opinion of the Council there are no or insufficient opportunities to apply this sum in whole or part within adjoining wards any remaining sums may be applied within the administrative area of the Council and for the avoidance of doubt the provision or improvement of Affordable Housing may include the administrative costs incurred by the Council in securing that provision or improvement

"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 but disregarding for the purposes of this deed and for no other purpose, the following operations demolition works site clearance ground investigations site survey works temporary access construction works archaeological investigation and erection of any fences and hoardings around the Property and reference to **"Commence Development"** shall be construed accordingly
"Development"	means the development of the Land in accordance with the Planning Permission and any Reserved Matters Consent;
"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;
"Existing Access Road"	means the existing access road shown coloured /edged .... On plan ..... annexed hereto
"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;
"Independent Surveyor"	means a member of the Royal Institution of Chartered Surveyors appointed by the Owner but first approved by the Council and reference to "**Independent Surveyors**" shall be construed accordingly;
"Index Linked"	means such increase to the sums payable to the Council under this Agreement as is necessary to reflect any increase in the Retail Price Index (All Items) (or such replacement index thereof) for the period commencing from the date of this Agreement and ending on the date of payment such increase to be calculated by reference to the index most recently published at the date at which the relevant payment is made;
"Interest Rate"	means interest at 4 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 Sheffield Road Penistone, shown for identification purposes edged red on Plan 1;
"National Planning Policy Framework"	means the National Planning Policy Framework as published and amended in June 2019 by the Department for Communities and Local Government (or any future guidance or initiative that replaces or supplements it);
New Access Road Application	means the application submitted by the Owner under reference 2019/0348
"New Access Road"	means the new access road constructed in full accordance with the New Access Road Permission
New Access Road Permission	means the planning permission granted by the Council under reference 2019/0348 and shown for the purposes of identification coloured /edged ..... on plan
"Occupation" and "Occupy"	means occupation for the purposes permitted by the Planning Permission and New Access Road 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**" shall be construed accordingly;
"Original Section 106 Agreement"	means the agreement made pursuant to Section 106 of the 1990 Act dated 20th December 2016 and made between (1) Barnsley Metropolitan Borough Council and (2) Harard Developments (Penistone) Limited
"Plan 1"	means the plan attached to this Agreement and marked "Plan 1";
"Planning Permission"	means any of the following permissions (i) the outline planning permission for residential development of 33 dwellings under planning reference 2013/0813; (ii) the planning permission granted by the Council under

	reference 2015/0380 (iii) the planning permission granted by the Council under reference 2019/0225
"Public Open Space Contribution"	means the sum of £50,742.60 (fifty thousand seven hundred and forty two pounds and sixty pence) Index Linked to be paid by the Owner to the Council as its total contribution towards the provision of and or improvement to public open space within the wards of Penistone East and or Penistone West
"Reserved Matters Consent"	means any approval of reserved matters consent which may be granted pursuant to the Planning Permission;
"Traffic"	means vehicles and persons on foot or using a cycle
"Working Day"	means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year's Day excepted) and reference to **"Working Days"** shall be construed accordingly.

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 gender and extend to include a corporation sole or aggregate;

1.2.2 References to any party 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 Where a party includes more than one person any obligations of that party shall be joint and several;

1.2.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;

1.2.5 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under 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; and

1.2.7 Clause headings are for reference only and shall not affect the construction of this Agreement.

2 RECITALS

2.1 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 is the Authority by whom the planning obligations hereby created are enforceable.

2.2 The Owner is the registered proprietor with absolute title of the Land registered at HM Land Registry under Title Number SYK350320 and SYK180945.

2.3 The Planning Permission reference 2013/0813 was granted by the Council for the Development on 25th September 2013. Conditions 9 and 10 of the Planning Permission required schemes for public open space and affordable housing respectively. This Agreement is entered into pursuant to those requirements.

2.4 The Owner has now submitted the New Access Road Application and a planning application given reference 2019/0225 by the Council and this agreement is further entered into to make provisions for the Construction of the New Access Road as provided in paragraph 3 of the First Schedule hereto.

2.5 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.

3 OPERATIVE PROVISIONS

3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

3.2 The planning obligations comprised in this Agreement shall come into effect on the date it is executed

3.3 Subject to clause 3.2 the Owner hereby covenants with the Council that the Land shall be from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule and the Developer acknowledges that its interest in the Land will be bound by the planning obligations in the First Schedule;

3.4 It is agreed and declared as follows: -

3.4.1 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: -

(a) occurring after he or it has parted with his or its 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);

(b) if he shall be an individual owner-occupier or tenant of any of the Dwellings;

3.4.2 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person (**"Expert"**).

3.4.3 Any reference to an Expert in accordance with clause 3.4.2 shall be to a reputable person unconnected to any of the parties hereto and experienced in matters to which the subject matter of the dispute relates and who shall be agreed between the parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error).

3.4.4 Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision

which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.

3.4.5 Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the reference numbers 2013/0813.

3.4.6 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 or public authority.

3.4.7 The obligations hereby created shall be registered as a Local Land Charge.

3.4.8 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 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

3.4.9 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 after the date of this Agreement.

3.4.10 The Owner shall pay to the Council its reasonable legal fees incurred in the preparation, negotiation and completion of this Agreement to a maximum of £1000.

3.4.11 The parties shall act reasonably and in good faith in the performance of their obligations in this Agreement.

3.4.12 Any sum referred to in this Agreement 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.

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

4. REVOCATION

4.1 On the execution of this deed the Original Section 106 Agreement shall be revoked and being replaced by this deed and shall be of no further effect.

FIRST SCHEDULE

("the Owner's Covenants")

The Owner hereby covenants with the Council: -

1. **AFFORDABLE HOUSING**

1.1 To pay to the Council 50% of the Affordable Housing Contribution prior to or upon Occupation of the first 10 Dwellings within the Development

1.2 To pay to the Council the remaining 50% of the Affordable Housing Contribution prior to or upon Occupation of 20 Dwellings within the Development

2. **PUBLIC OPEN SPACE CONTRIBUTION**

2.1 To pay to the Council the Public Open Space Contribution prior to the Occupation of more than 50% of the Dwellings or prior to the 30th of December 2020 whichever occurs first and not to cause permit or allow the Occupation of more than 50% of the Dwellings unless and until the Public Open Space Contribution has been paid to the Council

3. **ACCESS ROAD PROVISIONS**

3.1 The Existing Access Road shall be retained and kept open to use by Traffic and until the New Access Road is constructed and ready to be used by Traffic in accordance with the New Road Planning Permission

3.5 3.2 Without prejudice to paragraph 3.1 above the New Access Road shall be constructed prior to the Occupation of any Dwellings and no Dwellings shall be Occupied until the New Access Road has been constructed and the Council in response to a written request from the Owner has confirmed that the New Access Road has been constructed in full accordance with the New Road Planning Permission, such confirmation not to be unreasonably withheld or delayed.



Site Layout Plan

Residential Development at Boxmill Lane, Penistone

Notes

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This drawing is based on topographical survey by Initial Surveys drawing no. 6691-A0 file number 15/0208/6691/J10 dated 04/03/2008, and O.S. Plan information. Licence No. 100020449 and is subject to ground investigation, confirmation of all boundaries (ownership) and all Statutory approvals.

LEGEND

No.	Housetype
7	A - 2B/3P detached bungalow at 66.2m² (713 ft²)
3	B - 1B/2P detached bungalow at 44.1m² (475 ft²)
4	C - 3B/4P detached bungalow at 73.2m² (788ft²)
2	D - 3B/5P detached bungalow at 80m² (861ft²) + detached garage
2	E - 3B/5P 2-storey semi-detached houses at 83.2m² (895ft²)
5	F - 4B/6P detached 2½ storey houses at 133.9m² (1441 ft²) + integral garage
1	G - 4B/6P detached 2½ storey houses at 151.8m² (1634 ft²) + integral garage

30 No. Total

60 No. on plot parking spaces including garages (2 per dwelling)
+ 2 No. visitors spaces

Site area = 1.48ha (3.66 acres)
Density = 20.3 dwellings per hectare.

Existing trees to be retained

Application Site

Land also in ownership of Harard Developments

Rev.	Date	Drawn	Description
A	08.08.18	AJB	Sewage Pumping Station moved and private shared drive upgraded to adoptable standards.
B	04.02.19	SJ	Car park amended
C	17.04.19	SJ	Proposed entrance to Birds Stainless added
D	24.04.19	SJ	Proposed levels added Levels of plots 6, 9 & 10 amended
E	21.05.19	SJ	Legend added
F	28.05.19	SJ	Red and blue line boundaries amended

Self Architects

Client: Harard Developments (Penistone) Ltd

Project: Residential Development, Sheffield Road, Box Mill Lane, Penistone, Sheffield

Title: Site Layout Plan

PLANNING

Scale: 1:500 @ A2 | Drawn by: SJ | Date: Nov 2017

Drawing no: 4145 - 34 | Rev: F | Checked:

24a St. Andrew's Road, Sheffield, S8 9HL
T: 0114 255 8025 F: 0114 226 8256
E: design@selfarchitects.co.uk UK www.selfarchitects.co.uk

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:-)

Borough Secretary/Authorised Signatory

No.1908
IN REGISTER

EXECUTED AS A DEED BY)
HARARD DEVELOPMENTS (PENISTONE) LIMITED)
in the presence of:)

Signature

Name of witness ANGELA LAMBERT

Address SUNNY BANK VIEW, SHEFFIELD ROAD, ~~HIGH~~ GREEN, SHEFFIELD

Occupation OFFICE MANAGER