

DATED 23rd July

2018

BARNSELY METROPOLITAN BOROUGH COUNCIL (1)

-and-

PIPESTONE LIMITED (2)

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to land at Wakefield Road Mapplewell, Barnsley

D.06273

THIS AGREEMENT (signed as a deed) is made the 23rd day of July

2018

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Smithies Lane Depot, Smithies Lane, Barnsley S71 1NL ("**Council**") of the first part; and
- (2) **PIPESTONE LIMITED** (Company No. 096440C) whose registered office is situate at International house Castle hill Victoria Road Douglas Isle of Man IM2 4RB ("**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 Units"

means 22 Dwellings of Affordable Housing comprising of the Intermediate Dwellings and the Affordable Rent Dwellings to be provided in accordance with paragraph 1 of the First Schedule and "Affordable Housing Unit" shall be construed accordingly;

"Affordable Rent"

has the same meaning as the term "affordable rent" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework;

"Affordable Rent Dwellings"

comprises 17 seventeen Dwellings in total consisting of house types as specified on the Plan to be constructed on plots 45, 46, 94, 95, 106, 107, 108, 109, 204, 205, 206, 212,

213, 214, 218, 219, 220 or such other locations and/or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available for Affordable Rent to persons in accordance with the Registered Provider's policy

"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 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 environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary and reference to **"Commence Development"** shall be construed accordingly;

"Council's Approved List"

means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Leeds and Yorkshire Housing Limited; the Guinness Partnership; Equity Housing Group Limited;; Together Housing 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 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;

"Education Contribution"

means the sum of £250,000.00 (two hundred and fifty thousand pounds) Index Linked to be paid by the Owner to the Council as its contribution towards the provision of and/or improvement to primary school educational facilities that serve Mapplewell ;

"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 Agreement;

"Index"

means the 12 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;

"Index Linked"

means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it;

"Interest Rate"

means interest at 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;

"Intermediate Dwellings"

comprises 5 five Dwellings in total consisting of house types as specified on the Plan to be constructed on plots 41, 42, 92, 93, and 110 or such other locations and/or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available at an Intermediate Rent to persons in accordance with the Registered Provider's policy;

"Intermediate Rent"

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;

"Land"

means all that land at Wakefield road Mapplewell, Barnsley shown for identification purposes only edged red on the Plan and this comprises:-

- 1 An area of the Land granted reserved matters approval for 46 Dwellings under planning reference 2016/0337; and
- 2 An area of the Land granted reserved matters approval for 193 Dwellings under planning reference 2017/0520;

"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;

"National Planning Policy Framework"

means the National Planning Policy Framework as published in March 2012 by the Department for Communities and Local Government (or any future guidance or initiative that replaces or supplements it);

"Occupation" and "Occupy"

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**" shall be construed accordingly;

"Off-Site Open Space Contribution"

means the sum of £379,612.00 (three hundred and seventy nine thousand six hundred and twelve pounds) Index Linked to be paid to the Council by the Owner and used by the Council in lieu of the provision of publically accessible formal recreation open space on the Land for the provision

or updating of or improvements to, Mapplewell Park or other public open space within three kilometres of the boundary of the Land;

"Open Market Dwellings"

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

"Plan"

means the plan attached to this Agreement;

"Planning Permission"

means the outline planning permission for residential development of up to 250 Dwellings given the planning reference number 2014/0249;

"Practical Completion"

means either:

1. the issue of a certificate signed by a chartered architect which confirms that a specified Dwelling has been constructed in compliance with building regulations and is completed so as to be fit for habitation as a residential housing unit; or
2. the issue of Buildmark cover note by the National House-Building Council;

"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;

"Statutory Undertaker"

means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;

"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 SYK430302.
- 2.4 The Council would not grant reserved matters approval for the Development unless the planning obligations contained herein were entered into by the Owner.
- 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.

2 The planning obligations comprised in this Agreement shall not become effective until the following conditions are satisfied:-

3.2.1 the Planning Permission has been granted; and

3.2.2 (except where stated otherwise in this Agreement) the Commencement of Development.

3.3 Subject to clause 3.2: -

3.3.1 The Owner hereby covenants with the Council that the Land shall be permanently 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; and

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: -

- (i) 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);
- (ii) if he shall be an occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling;
- (iii) if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.

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 Services at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2014/0249.
- 3.4.6 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) or revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.7 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.
- 3.4.8 The obligations hereby created shall be registered as a Local Land Charge.
- 3.4.9 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.
- 3.4.10 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.

- 3.4.11 The Owner shall pay to the Council its reasonable legal fees of £1000 incurred in the preparation negotiation and completion of this Agreement.
- 3.4.12 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 3.4.13 The parties shall act reasonably and in good faith in the performance of their obligations in this Agreement.
- 3.4.14 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.

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

FIRST SCHEDULE
("the Owner's Covenants")

The Owner hereby covenants with the Council: -

1. AFFORDABLE HOUSING

Affordable Housing Provision

- 1.1 The Affordable Rent Dwellings shall not be used or Occupied other than as Affordable Rent Dwellings and the Intermediate Dwellings shall not be used or Occupied other than as Intermediate Dwellings save that the Affordable Rent Dwellings may be used as Intermediate Dwellings and the Intermediate Dwellings may be used as Affordable Rent Dwellings with the written permission of the Head of Planning and Building Control Services and further this obligation shall not be binding on:
- 1.1.1 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;
 - 1.1.2 any Chargee provided that the Chargee shall have first complied with the obligations at paragraph 1.2 of this Schedule; or
 - 1.1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 1.2 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 Working Days prior notice to the Council of its intention to dispose and:
- 1.2.1 in the event that the Council responds within 30 Working 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 best endeavours to secure such transfer;
 - 1.2.2 if the Council does not serve its response to the notice served under paragraph 1.2.1 of this Schedule within 30 Working 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;

- 1.2.3 if the Council or any other person cannot within 40 Working Days of the date of service of its response under paragraph 1.2.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.2 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 1.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must have regard to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

- 1.3 The plot locations of the Affordable Housing Units have been agreed between the Council and the Owner and are indicated on the Plan.

- 1.4 Subject to paragraph 1.10 of this Schedule not to cause or permit more than

1.4.1 50% of the Open Market Dwellings to be Occupied until 80% of Affordable Housing Units; and

1.4.2 80% of the Open Market Dwellings to be Occupied until all of the Affordable Housing Units;

have been constructed to the same external standard as the Open Market Dwellings and transferred to a Registered Provider.

- 1.5 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:

1.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and

1.5.2 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.

- 1.6 The Owner shall provide the Council with notice upon the Practical Completion of each Affordable Housing Unit.

- 1.7 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) ("**Initial Registered Provider Transfer Terms**") **PROVIDED THAT** it is agreed for the avoidance of doubt that 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.

- 1.8 The Owner will thereafter use reasonable endeavours to exchange contracts with the Registered Provider for the sale of the Affordable Housing Units and will keep the Council informed on the Owner's progress.
- 1.9 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 the Owner's progress.
- 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 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.

2. **EDUCATION CONTRIBUTION**

- 2.1 Before the occupation as dwellings of 25% or more of the Open Market Dwellings to pay to the Council the Education Contribution as Index linked.

3. **OFF-SITE OPEN SPACE CONTRIBUTION**

- 3.1 Before the occupation as dwellings of 25% or more of the Open Market Dwellings to pay to the Council the Off-Site Open Space Contribution as Index Linked.

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

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

P.R.B 15/4/14 Min 69(1)

~~Executive Director Core Services/~~
~~Legal Services Director/~~
Authorised Signatory



EXECUTED AS A DEED by Pipestone Limited acting by a director and its secretary or by two directors

Signature of Director:



Signature of Secretary/Director:

