

DATED 3rd January 2017/8

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

BLACKSTONE DEVELOPMENTS LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)
relating to development on land at Sandygate Lane Barnsley S71 5AW in the
County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Executive Director Core Services
Town Hall,
Barnsley, S70 2TA.
PG/254/00409

THIS DEED OF AGREEMENT is made the ^{3rd} day of *January* Two
Thousand and ~~Seventeen~~ *Eighteen*

BETWEEN

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

(2) **BLACKSTONE DEVELOPMENTS LIMITED** (Company number
04740303) whose registered office is situate at 50 Hoyland Road Hoyland
Common Barnsley S74 0PB ("the Owner") of the second part

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the Authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with absolute title of the Land registered under Land Registry Title Number SYK471961.

(3) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

1 For the purposes of this Deed the following expressions shall have the following meanings

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

"the Application" means the application given the planning reference 2017/0206 submitted to the Council for outline planning permission for residential development granted under planning permission 2016/0288 without condition 13 of that permission

"the Commencement of Development" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 and "Commence Development" is to be construed accordingly

"the Development" means the development of the Land in accordance with the Planning Permission

"Dwelling" means any dwellings erected on the Land pursuant to the Planning Permission

"Footpath and Cycleway Works" means the construction of a footpath and cycleway of 3 metre width or thereabouts on the land shown coloured orange on Plan 3 to the Specification

"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 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

"the Land" means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

"Licence Agreement" means the agreement as set out in the Third Schedule or substantially similar form

"Occupation" means occupation of a Dwelling constructed on the Land for residential purposes excluding any occupation for the purpose of construction, decoration, fitting out, security during construction of the Development marketing or repair; and Occupy shall be construed accordingly

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

"Plan 2" means the plan annexed hereto and so marked

"Plan 3" means the plan annexed hereto and so marked

"the Planning Permission" means a planning permission to be granted pursuant to the Application

"the Specification" means the specification of works detailed in Plan 2 or as otherwise varied by agreement between the Council and the Owner

CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 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.

2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed 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 to its statutory functions.

LEGAL BASIS

3 This Agreement is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as the local planning authority against the Owner

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clause 5 which shall have effect upon the Commencement of Development

OWNER COVENANTS

5 The Owner covenants with the Council as set out in the Second Schedule

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1,000 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner 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 Assistant Director of Planning and Regulatory Services and any notices shall be deemed to have been properly served if sent by recorded delivery or special delivery to the principal address or registered office (as appropriate) of the relevant party.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.7 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 Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

6.9 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

INDEXATION

7 Any sum payable under this deed by the Owner remaining unpaid six months following the date hereof 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.

INTEREST

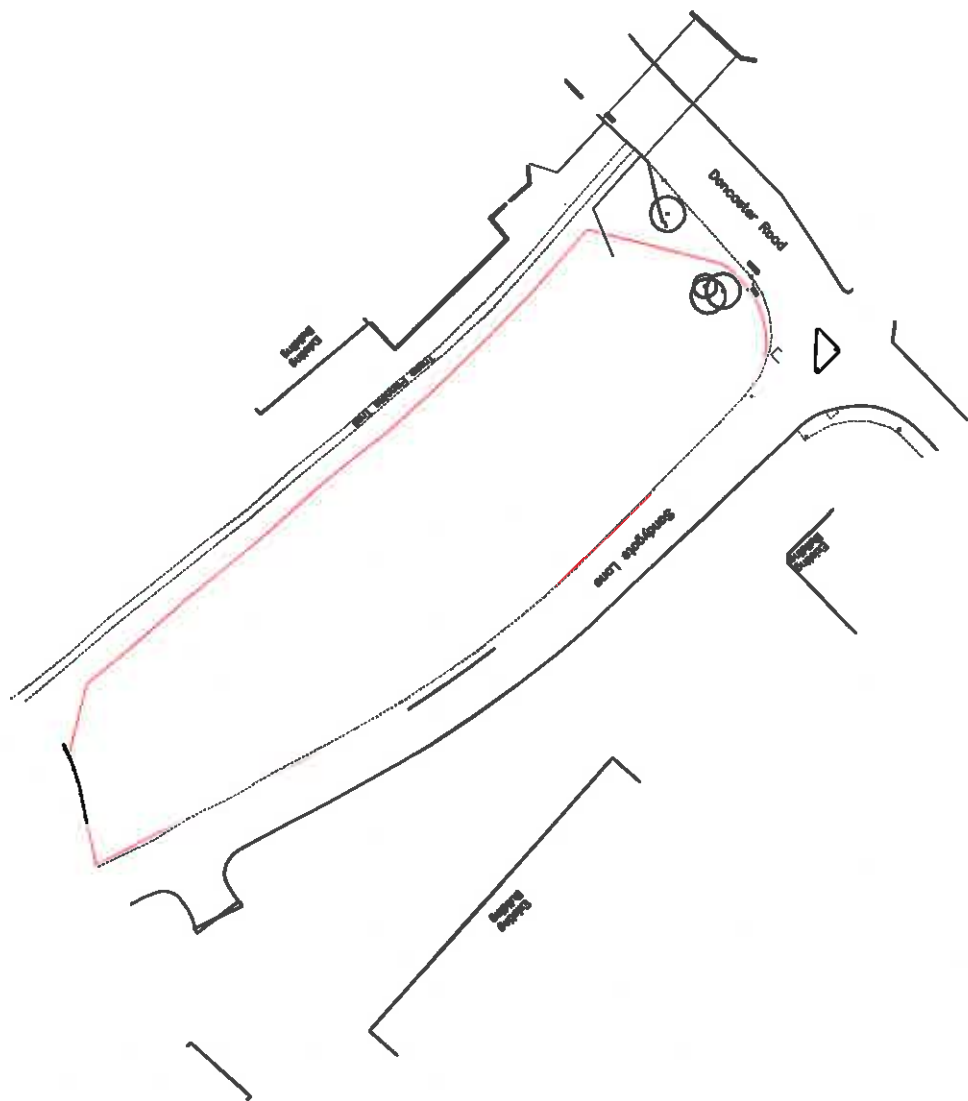
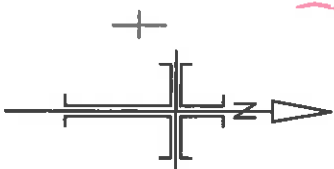
8 If any payment due by the Owner under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

FIRST SCHEDULE

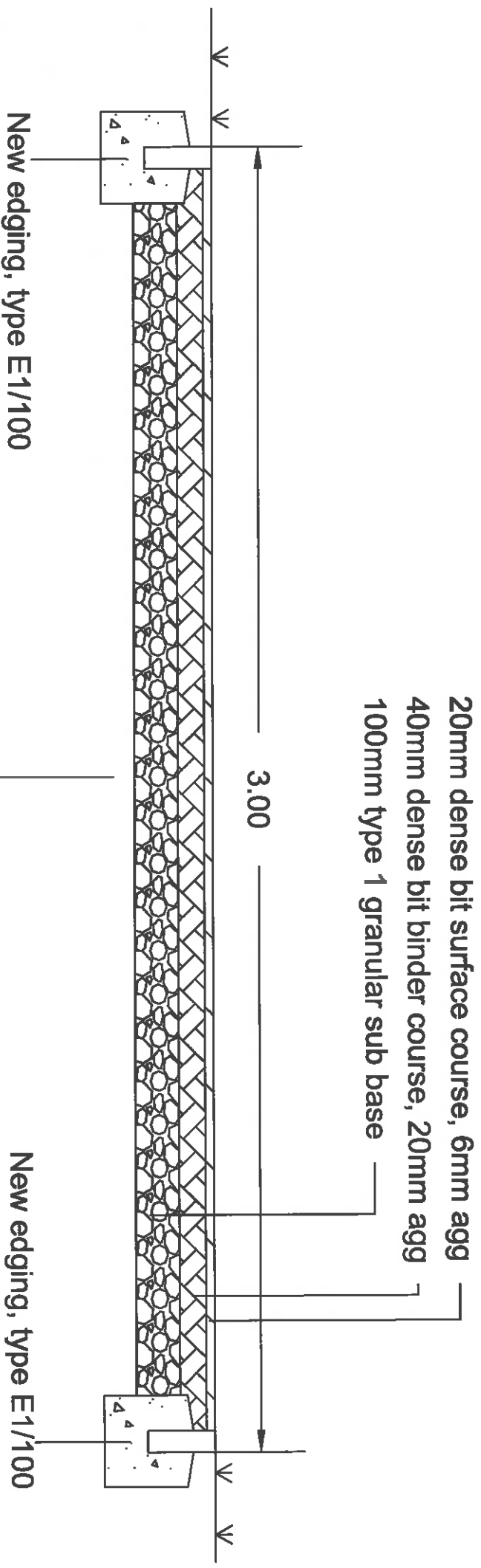
All that land at Sandygate Lane Barnsley S71 5AW and for the purpose of identification shown edged red on Plan 1

PLAN 1



Client		Blackstone Developments Ltd
Location		Dunrobin Road, Shalford, Barnsley
Drawing Title		Location Plan
Dwg No.	LP1001	Scale: 1/1250 @ A4
Drawn By:	-	Checked By:-
Date:	08.03.18	Revision: 0

PLAN 2



Proof roll formation to ensure no soft spots and weed kill

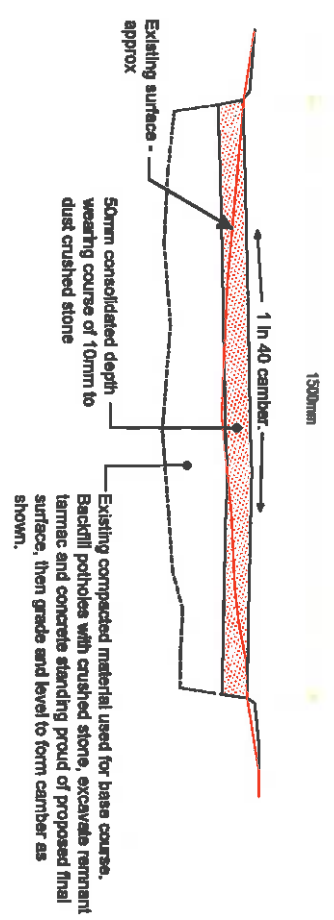
Footway to have a total width of 3m.

Footway to have 3% crossfall

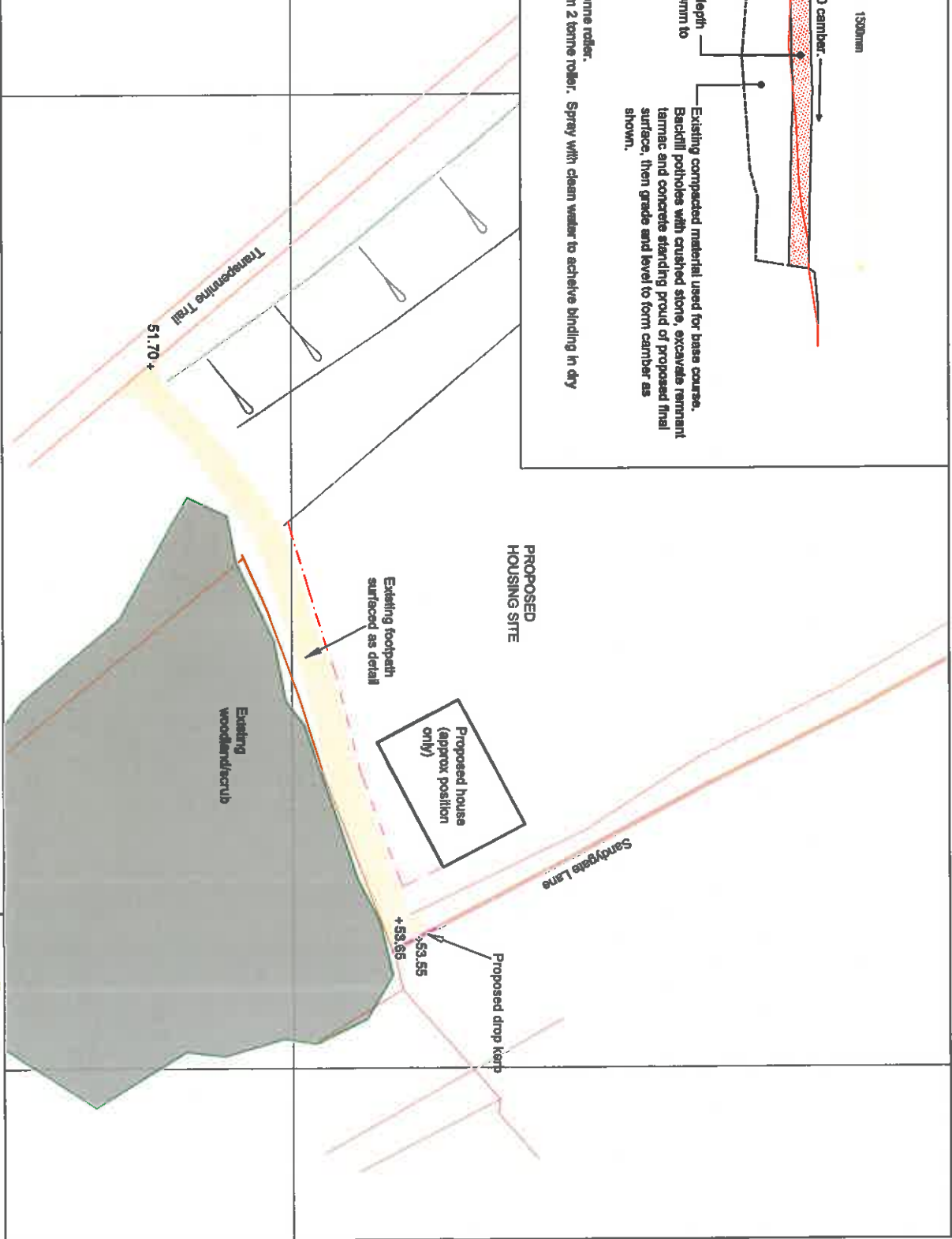
Reinstate either side of cycleway with topsoil and seed, 0.5m wide

PLAN 3

FOOTPATH CONSTRUCTION Scale 1:10



NOTES
Base layer to be rolled with a minimum 6 tonne roller.
Wearing course to be rolled with a minimum 2 tonne roller. Spray with clean water to achieve binding in dry weather conditions.



LINK TO TRANSPENNINE

drawing scale	date	drawn by	checked by
1:200 @ A3	Feb 2017	CTF	S/B/481/1

SECOND SCHEDULE

The Owner covenants with the Council

1 Not to Occupy any Dwelling until the Owner has entered into the Licence Agreement with the Council to undertake the Footpath and Cycleway Works and the Footpath and Cycleway Works have been certified in writing by the Local Planning Authority as satisfactorily constructed

2 To maintain the Footpath and Cycleway Works for a period of 12 months from certification by the Council of its satisfactory construction

3 To give the Council at least three weeks notice before commencing the Footpath and Cycleway Works

4 The Owner covenants to carry out any works on their own Land which are reasonably necessary to complete the Footpath and Cycleway Works (as defined in the Licence Agreement) in accordance with the Licence Agreement maintain such works for a period of 12 months and if required dedicate any of the Land containing the Footpath and Cycleway Works in the Owner's ownership as a public footpath

THIRD SCHEDULE

Licence Agreement

THIS LICENCE is made the day of 2017

BETWEEN

(1) Barnsley Metropolitan Borough Council Town Hall Barnsley S70
2TA ("the Licensor") and

**(2) [the Owner of the land Lane benefiting from planning permission
reference 2017/0206]** ("the Licensee")

NOW THIS DEED WITNESSETH as follows

1 In this Licence

Footpath and Cycleway Works means the construction of a footpath and cycleway of 3 metre width or thereabouts on the land coloured orange on Plan 3 to the Specification

Land means the Licensor's land at Sandygate Lane containing the land coloured orange on Plan 3

Specification means the Specification shown on Plan 2

Plan 2 is the plan so marked in the Section 106 Agreement

Plan 3 is the plan so marked in the Section 106 Agreement

Section 106 Agreement is the agreement entered into in connection with the planning application for residential development given the reference 2017/0206 relating to land at Sandygate Lane Barnsley

2 The Licensor hereby authorises the Licensee to carry out the Footpath and Cycleway Works on the Land

3 The Licensee agrees to pay to the Licensor on demand and indemnify the Licensor against all costs charges fees disbursements and expenses including those of professional advisers and agents and including in each case any VAT incurred by the Licensor in connection with this Licence or the Footpath and Cycleway Works

4 The Licensee hereby covenants that it will:-

- (i) complete the Footpath and Cycleway Works with all due diligence and will employ competent contractors and use new sound and proper materials in a good substantial and workmanlike manner to the complete satisfaction of the Licensor's surveyors and within any reasonable period of time specified by the Licensor**
- (ii) complete the Footpath and Cycleway Works in strict compliance with all statutes and with the terms conditions and requirements of all Planning and Building Regulations Approvals where applicable**
- (iii) comply with all applicable Bye-Laws and Health and Safety Regulations and other statutory obligations**
- (iv) ensure that all contractors working on the site are covered by adequate public liability insurance in a sum not less than Five million pounds**

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

PRB 23/5/11 MIN 9



SIGNED as a DEED by BLACKSTONE)

DEVELOPMENTS LIMITED)

in the presence of:

Signature of Witness

Name of Witness

MIKE FITZGERALD

Address

2/4 VICTORIA ROAD
BARNSLEY
S70 2BB