

DATED 29th January, 2020

- BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

JAGUAR & WORTLEY DEVELOPMENTS LIMITED

DEED OF VARIATION

Pursuant to Section 106 and Section 106A of the Town and Country Planning Act 1990 (as amended) relating to development on land at Lidgett Lane, Pilley, Barnsley, S75 3AG, in the County of South Yorkshire

THIS DEED OF VARIATION is made the 29th day of January Two Thousand and Twenty

BETWEEN

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("the Council") of the first part; and
- (2) **JAGUAR & WORTLEY DEVELOPMENTS LIMITED** (CRN: 08733656) whose registered office is situate at 210 High Street, Ecclesfield, Sheffield, S35 9XB ("the Owner") of the second part.

RECITALS

- (1) This Deed of Variation is supplemental to an agreement entered into pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) the Council and (2) the Owner dated 9 January 2018 ("**the Original Section 106 Agreement**").
- (2) By virtue of the Town and Country Planning Act 1990 "the 1990 Act" the Council is the local planning authority for the purpose of this Deed for the area in which the Site is situated and is the local planning authority by whom the planning obligations hereby created are enforceable.
- (3) The Owner is the registered proprietor with Title Absolute of the Site, which is registered at HM Land Registry under title number SYK378237.
- (4) The Owner has submitted an application to the Council to vary conditions 2, 20 and 27 and remove condition 13 of planning permission 2016/1308 and this application is known to the Council by reference 2019/1464.
- (5) The Council is minded to grant planning permission pursuant to this updated planning application subject to completion of this Deed of Variation without which the

...ning permission would not be granted. This Deed of Variation shall secure the following amendments to the Original Section 106 Agreement:

- Amendments to provide that the obligations contained within the Original Section 106 Agreement shall also apply to any development undertaken under a planning permission that may be granted by the Council under reference 2019/1464.
- An increase in the sum of the Public Open Space Contribution from £84,504.05 to £95,767.10 (ninety five thousand seven hundred and sixty seven pounds and ten pence).
- Provision of the Affordable Housing Units on plots 33, 34 and 35 under a planning permission that may be granted by the Council under reference 2019/1464 and miscellaneous amendments to the affordable housing definitions to correspond with the updated National Planning Policy Framework dated February 2019. For the avoidance of doubt, if planning permission 2016/1308 was to be implemented the Affordable Housing Units would be provided on plots 15, 16 and 17 as shown on Plan 2 annexed to the Original Section 106 Agreement.

(6) For the sake of clarity, the Council acknowledges that the Owner has now complied with its obligation to provide the Birdwell Affordable Housing Units under clause 2 of the First Schedule of the Original Section 106 Agreement.

(7) Any words or phrases which are defined in the Original Section 106 Agreement (as varied by this Deed of Variation) and which appear in this Deed of Variation shall have the same meaning as are associated to them in the Original Section 106 Agreement (as varied by this Deed of Variation) unless a contrary intention appears from this Deed of Variation.

NOW THIS DEED WITNESSETH AS FOLLOWS:-

1 Variation

- 1.1 It is hereby agreed between the parties to this Deed of Variation that the Original Section 106 Agreement is varied only in the manner set out in the Schedule to this Deed of Variation and the Original Section 106 Agreement shall remain in full force and effect and the amendments contained in this Deed of Variation shall take effect as if they were included in the Original Section 106 Agreement.
- 1.2 This Deed of Variation is made pursuant to the statutory provisions and in consideration of the covenants contained herein and for the avoidance of doubt it is agreed and declared that the said covenants are ones to which Section 111 of the Local Government Act 1972, Section 106 and Section 106A of the Town and Country Planning Act 1990 and all other powers so enabling are to apply.
- 1.3 This Deed of Variation contains planning obligations made pursuant to Section 106 and varied pursuant to Section 106A of the Town and Country Planning Act 1990 which are enforceable by the Council and shall bind the interests held by the Owner in the Site which is registered under Land Registry title number SYK378237 and also its successors in title and assigns and any person claiming through or under it an interest or estate in the Site or any part thereof.
- 1.4 The provisions of this Deed of Variation shall have effect upon the Commencement of Development under a planning permission that may be granted under reference 2019/1464.
- 1.5 This Deed of Variation shall be construed as one with the Original Section 106 Agreement.

2. Third Party Rights

- 2.1 A person who is not party to this Deed of Variation shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Variation.

3. Governing Law

- 3.1 This Deed of Variation and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

4. Local Land Charge

- 4.1 This Deed of Variation shall be registered as a Local Land Charge.

Schedule

The parties hereby mutually agree to vary and supplement the terms of the Original Section 106 Agreement so that the Original Section 106 Agreement shall from and including the date of this Deed of Variation be read and construed as follows:

1. Within the definition of "Affordable Housing" in the Original Section 106 Agreement the reference to "March 2012" shall be amended to "February 2019".
2. The Original Section 106 Agreement shall be amended to include an updated definition of "Affordable Housing Units" which shall read as follows:

"Affordable Housing Units" means three Dwellings of Affordable Housing on plots 33, 34 and 35 as shown on Plan 3 comprising of Affordable Rented Dwellings and/or Affordable Home Ownership Dwellings the precise tenure mix and location (if different from the plots quoted herein) to be determined in writing by the Council and provided in accordance with paragraph 1 of the First Schedule and Affordable Housing Unit shall be construed accordingly."

3. The Original Section 106 Agreement shall be amended to include an updated definition of "Affordable Rented Dwellings" which shall read as follows:

"Affordable Rented Dwellings" has the same meaning as the term "Affordable housing for rent" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and Affordable Rented Dwelling shall be construed accordingly.

4. The definition of Intermediate Dwellings within the Original Section 106 Agreement shall be deleted and replaced by a new definition of "Affordable Home Ownership Dwellings" which shall replace all references to Intermediate Dwellings within the Original Section 106 Agreement and shall read as follows:

“Affordable Home Ownership Dwellings” has the same meaning as the term “Other affordable routes to home ownership” contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and includes housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent) and “Affordable Home Ownership Dwelling” shall be construed accordingly.

5. The Original Section 106 Agreement shall be amended to include a new definition of “Plan 3” which shall read as follows:

“Plan 3” means the plan submitted with application 2019/1464 given the reference “4178/201” annexed hereto and marked “Plan 3”

6. The plan appended to this Deed of Variation shall be annexed to the Original Section 106 Agreement as Plan 3.

7. The definition of Planning Permission within the Original Section 106 Agreement shall be amended to read as follows:

“Planning Permission” means the planning permission granted by the Council on 10 January 2018 under reference 2016/1308 and/or a planning permission that may be granted by the Council pursuant to the Second Application;

8. The Original Section 106 agreement shall be amended to include a new definition of “the Second Application” which shall read as follows:

“**Second Application**” means the application to vary conditions 2, 20 and 27 and remove condition 13 of planning permission 2016/1308, which is known to the Council by reference 2019/1464”;

9. The Original Section 106 Agreement shall be amended to include an updated definition of “Public Open Space Contribution which shall read as follows:

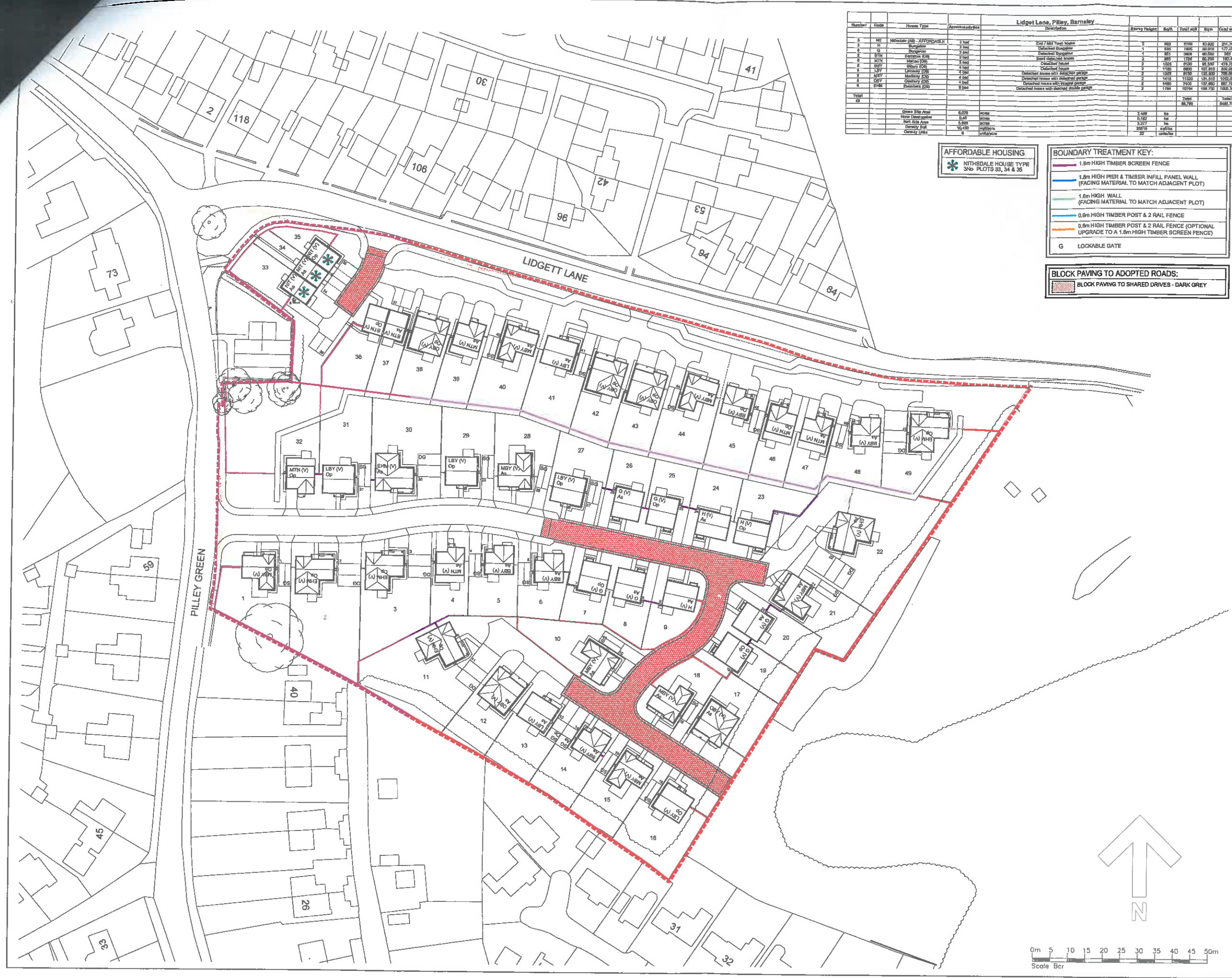
“**Public Open Space Contribution**” means £95,767.10 (ninety five thousand seven hundred and sixty seven pounds and ten pence) to be applied towards the provision and/or improvement of public open space within five miles from the boundary of the Site unless the Council is unable to identify any suitable projects within a reasonable period of time in which case to be applied for the same purposes within the administrative area of the Council”

10. The definition of Social Rented Dwellings within the Original Section 106 Agreement shall be deleted.

11. Clauses 1.1 and 1.2 of the First Schedule of the Original Section 106 Agreement shall be deleted and the following clauses shall be inserted in their place:

“1.1 The Affordable Rented Dwellings shall not be used or Occupied other than as Affordable Rented Dwellings and the Affordable Home Ownership Dwellings shall not be used or Occupied other than as Affordable Home Ownership Dwellings unless with the written permission of the Head of Planning and Building Control.

1.2 The plot locations of the Affordable Housing Units are plots 33, 34 and 35 on Plan 3 (in respect of a planning permission that may be granted pursuant to the Second Application).”



Lidgett Lane, Pilley, Barnsley									
Number	Code	House Type	Accommodation	Description	Barry Height	Roof	Final EOB	Eqm	Total EOB
1	MT	Nithsdale (AB) - AFFORDABLE	2 bed	2nd / 3rd Floor house	3	100	1100	83,000	294,700
2	H	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
3	G	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
4	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
5	MT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
6	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
7	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
8	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
9	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
10	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
11	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
12	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
13	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
14	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
15	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
16	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
17	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
18	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
19	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
20	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
21	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
22	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
23	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
24	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
25	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
26	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
27	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
28	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
29	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
30	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
31	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
32	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
33	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
34	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
35	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
36	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
37	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
38	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
39	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
40	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
41	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
42	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
43	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
44	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
45	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
46	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
47	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
48	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
49	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200
50	BT	Detached	2 bed	Detached bungalow	1	800	1000	80,000	177,200

AFFORDABLE HOUSING

NITHSDALE HOUSE TYPE 3 No PLOTS 33, 34 & 35

BOUNDARY TREATMENT KEY:

- 1.8m HIGH TIMBER SCREEN FENCE
- 1.8m HIGH PIER & TIMBER INFILL PANEL WALL (FACING MATERIAL TO MATCH ADJACENT PLOT)
- 1.8m HIGH WALL (FACING MATERIAL TO MATCH ADJACENT PLOT)
- 0.8m HIGH TIMBER POST & 2 RAIL FENCE
- 0.8m HIGH TIMBER POST & 2 RAIL FENCE (OPTIONAL UPGRADE TO A 1.8m HIGH TIMBER SCREEN FENCE)
- G LOCKABLE GATE

BLOCK PAVING TO ADOPTED ROADS:

BLOCK PAVING TO SHARED DRIVES - DARK GREY

AVANT homes

DATE REVISIONS BY

Plan 3

M. A. J.

Avant Homes
Unit 2
Manner Court
Peel Avenue
Dukin
Wakefield
WF4 3PL

AVANT homes

DRAWN RD. CHECKED DATE Nov 2019 REV

DRG. No. 4178/201

SCALE: 1:500

Site Layout

Lidgett Lane,
Pilley,
Barnsley

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

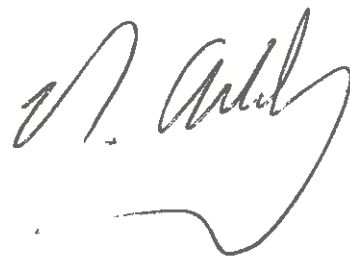
EXECUTED AS A DEED by affixing the)
COMMON SEAL of BARNSLEY)
METROPOLITAN BOROUGH COUNCIL)
in the presence of)



No. 1864
IN REGISTER



EXECUTED as a DEED (but not)
Delivered until the date hereof) by)
JAGUAR & WORTLEY DEVELOPMENTS)
LIMITED)
acting by a director)



in the presence of:



Witness name:

AMANDA PARKER

Witness Address:

43 WORRALL ROAD
HIGH GREEN
SHEFFIELD

Witness Occupation:

ASSISTANT ACCOUNTANT