

DATED 4 September 2014

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

TAYLOR WIMPEY UK LIMITED

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to development on land at Former Kingstone School, Broadway, Barnsley,,  
in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,  
Assistant Chief Executive  
(Legal and Governance)  
Town Hall,  
Barnsley S70 2TA.

THIS AGREEMENT (signed as a deed) is made the 4th day of September 2014

BETWEEN: -

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**Council**") of the first part; and
- (2) **TAYLOR WIMPEY UK LIMITED** (company number 01392762) whose registered office is at Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR ("**Developer**") of the second part.

**1 DEFINITIONS AND INTERPRETATION**

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

**DEFINITIONS**

**GENERAL DEFINITIONS**

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990 as amended;
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<b>"Affordable Housing"</b>	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;
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<b>"Affordable Housing Commuted Sum"</b>	means if applicable the sum of £52,779 (fifty two thousand and seven hundred and seventy nine pounds) per Affordable Rented Dwelling and £47,875 (forty seven thousand and eight hundred and seventy five pounds) per Intermediate Dwelling to be paid to the Council by the Developer and used by the Council in lieu of the provision of Affordable Housing on the Land for the provision of, or improvements to, existing affordable housing elsewhere within the Council's area;
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<b>"Affordable Housing Contribution"</b>	means the sum of £671,415 (six hundred and seventy one thousand and four hundred and fifteen pounds) Index Linked to be paid to the Council by the Developer and used by the Council in lieu of part provision of Affordable Housing
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on the Land for the provision of bungalows to be used for the purposes of Affordable Housing within the Council's area;

**"Affordable Housing Units"**

means 11 Dwellings of Affordable Housing comprising of the Intermediate Dwellings and the Affordable Rented Dwellings to be provided in accordance with paragraph 1 of the First Schedule and **"Affordable Housing Unit"** shall be construed accordingly;

**"Affordable Housing Unit Prices"**

means the prices of the Affordable Housing Units that shall be a minimum of:

1. £50,896 (fifty thousand and eight hundred and ninety six pounds) in respect of the two bed Affordable Rented Dwellings; and
2. £59,350 (fifty nine thousand and three hundred and fifty pounds) in respect of the three bed Affordable Rented Dwellings; and
3. £70,950 (seventy thousand and nine hundred and fifty pounds) in respect of the three bed Intermediate Dwelling;

**"Affordable Rent"**

means an affordable rent of no more than 80% of the Market Rent;

**"Affordable Rented Dwellings"**

has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises 10 Dwellings in total consisting of 5 x 2 bed houses to be constructed on plots 158 – 162 (inclusive); and 5 x 3 bed houses to be constructed on plots 153 - 157 (inclusive) or such other locations and / or house types that may be agreed in writing between the Developer and the Council from time to time such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy;

**"Application"**

means the application reference number 2014/0429 and

registered by the Council on 29 April 2014 for the residential development of 163 dwellings on the Land;

**"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 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; Yorkshire Housing Limited; Guinness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Chevin Housing Association Limited; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Developer 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 £150,000.00 (one hundred and fifty thousand pounds) Index Linked to be paid by the Developer to the Council as its total contribution towards the provision of and or improvement to educational facilities the need for which directly arises from the Development;

**"Equipped Children's Play Facilities"**

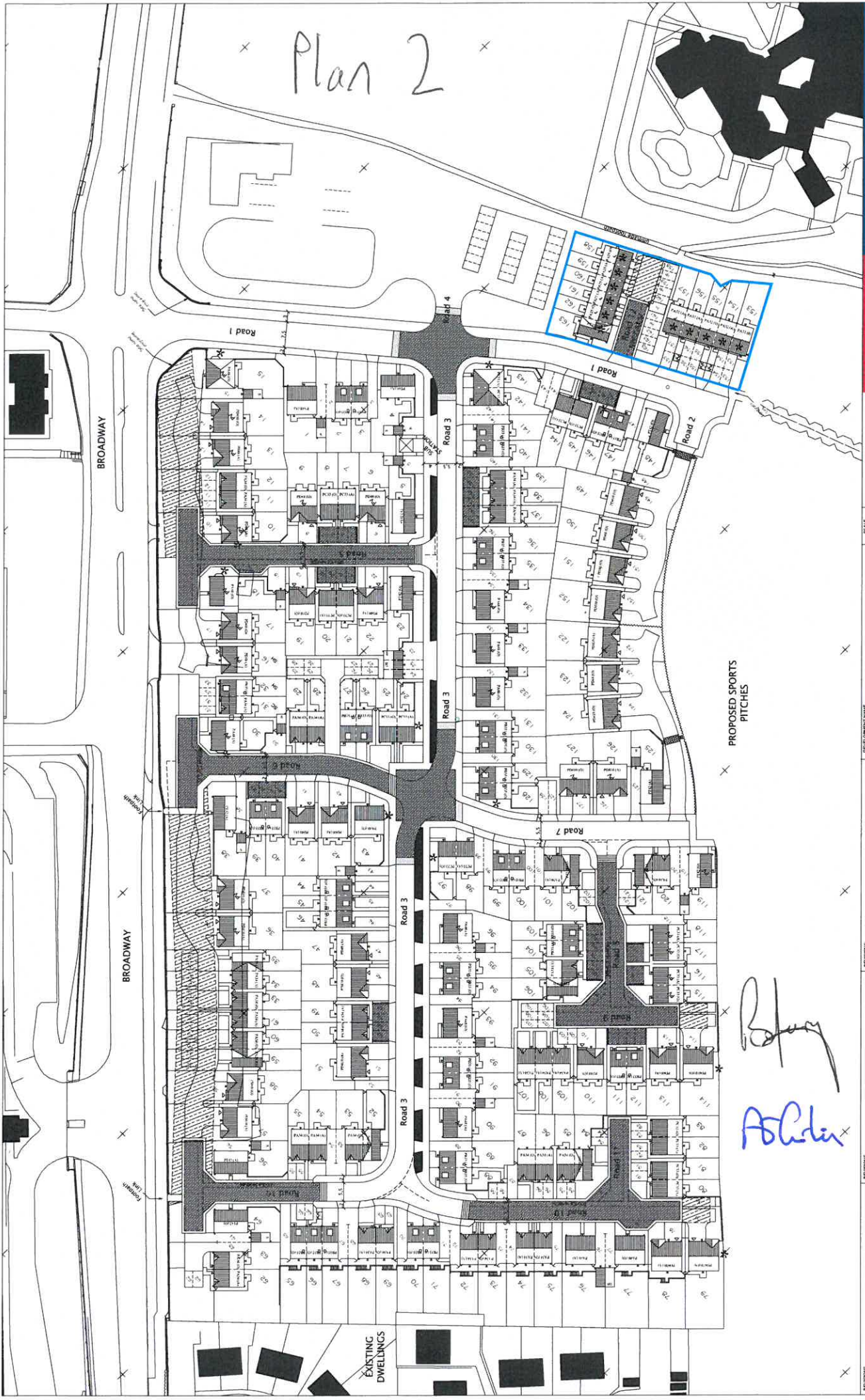
means equipped children's play facilities to meet at least the NPFA standard for Local Equipped Areas for Play (LEAP). In order to meet the LEAP standard, the play area should be equipped for children of early school age to meet

the NPFA standards as follows: the activity zone should have a minimum area of 400m<sup>2</sup>, with grass playing space and at least five types of play equipment with appropriate surfacing and seating for accompanying adults;

<p><b>"First Occupier"</b></p>	<p>means the first occupier for residential purposes of each Dwelling excluding all subsequent occupations and reference to <b>"First Occupation"</b> shall be construed accordingly;</p>
<p><b>"Head of Planning, Building Control and Sustainability Development Services"</b></p>	<p>means the Head of Planning, Building Control and Sustainability Development 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;</p>
<p><b>"Independent Surveyor"</b></p>	<p>means a member of the Royal Institution of Chartered Surveyors appointed by the Developer but first approved by the Council and reference to <b>"Independent Surveyors"</b> shall be construed accordingly;</p>
<p><b>"Index Linked"</b></p>	<p>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;</p>
<p><b>"Interest Rate"</b></p>	<p>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;</p>
<p><b>"Intermediate Dwellings"</b></p>	<p>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 and comprises 1 Dwelling in total consisting of 1 x 3 bed house to be constructed on plot 163 or such other locations and / or house types that may be agreed in writing between the Developer and the Council from time to time</p>

	such properties to be made available at an Intermediate Rent to persons in accordance with the Registered Provider's policy;
<b>"Intermediate Rent"</b>	means an intermediate rent up to 80% of the Market Rent;
<b>"Land"</b>	means all that land at Former Kingstone School, Broadway, Barnsley, S70 6RB, shown for identification purposes only edged red on Plan 1;
<b>"Market Rent"</b>	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;
<b>"National Planning Policy Framework"</b>	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);
<b>"Occupation" and "Occupy"</b>	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 <b>"Occupants"</b> shall be construed accordingly;
<b>"Open Market Dwellings"</b>	means the residential units that may be built on the Land as part of the Development excluding the Affordable Housing Units and reference to <b>"Open Market Dwelling"</b> shall be construed accordingly;
<b>"Plan 1"</b>	means the plan attached to this Agreement and marked "Plan 1";
<b>"Plan 2"</b>	means the plan attached to this Agreement and marked "Plan 2";
<b>"Plan 3"</b>	means the plan attached to the Agreement and marked "Plan 3";





REVISIONS	REV. DATE	BY	DESCRIPTION	REVISIONS	REV. DATE	BY	DESCRIPTION	DEVELOPMENT NAME	SCALE	PLAN NO.
								Land off Broadway, Barnsley	1:1000	Plan 2

Taylor Wimpey  
 Sandpiper House  
 Calder Park  
 Wakefield WF2 7UA

Taylor Wimpey

Land off Broadway, Barnsley  
 Plan 2

REVISIONS  
 REV. DATE  
 BY  
 DESCRIPTION

*[Handwritten signature]*  
 A. Chiswick



<b>“Planning Permission”</b>	means a planning permission to be granted pursuant to the Application substantially in the form of the draft is annexed in the Third Schedule;
<b>“Play Facilities Contribution”</b>	means the sum of £97,062.60 (ninety seven thousand sixty two pounds and sixty pence) Index Linked to be paid by the Developer to the Council and to be used by the Council to provide Equipped Children’s Play Facilities on an area or areas of land shown edged green on Plan 3 and also towards the costs of maintaining the Equipped Children’s Play Facilities for a period of 15 years;
<b>“Playing Pitches Contribution”</b>	means the sum of £110,000 (one hundred and ten thousand pounds) Index Linked to be paid by the Developer to Council and to be applied by the Council for the provision of a Multi Use Games Area to used for a variety of different sports at Locke Park;
<b>“Practical Completion”</b>	<p>means either:</p> <ol style="list-style-type: none"> <li data-bbox="738 1072 1460 1335">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</li> <li data-bbox="738 1341 1460 1420">2. the issue of buildmark cover note by the National House-Building Council;</li> </ol>
<b>“Protected Tenant”</b>	<p>means any tenant who:</p> <ol style="list-style-type: none"> <li data-bbox="738 1559 1460 1821">(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</li> <li data-bbox="738 1827 1460 1995">(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or</li> <li data-bbox="738 2002 1460 2085">(c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where</li> </ol>

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;

**"Public Open Space Contribution"**

means the sum of £196,656.96 (one hundred and ninety six thousand six hundred and fifty six pounds and ninety six pence) Index Linked to be paid by the Developer to the Council as its total contribution towards the provision of and or improvement to informal open space and / or sports and / or recreation facilities within the administrative area of the Council;

**"Reasonable Endeavours"**

means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable;

**"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 Developer and approved by the Council;

**"South Yorkshire Annual Travel Pass"**

means the Travel Master Annual Pass valid for all buses, trams and trains for 12 months from the date of issue by the South Yorkshire Passenger Transport Executive for its South Yorkshire Zone or any successor annual travel card and reference to "South Yorkshire Annual Travel Passes"

shall be construed accordingly;;

**"South Yorkshire Annual Travel Pass Contribution"**

means the sum of £76,950 (seventy six thousand nine hundred and fifty pounds) Index Linked to be paid by the Developer to the Council and to be used by the Council to provide South Yorkshire Annual Travel Passes to the First Occupier of each Dwelling;

**"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 Developer 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 Council is the registered proprietor with absolute title of the Land registered at HM Land Registry under Title Number SYK581056 and has entered into an agreement for the sale thereof to the Developer.

2.3 The Application was submitted to the Council on behalf of the Developer for planning permission for the Development.

2.4 The Council would not grant Planning Permission for the Development unless the planning obligations contained herein were entered into by the Developer.

2.5 The Developer 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 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 Developer 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
- 3.3.2 The Council covenants with the Developer to comply with its obligations in the Second 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 it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.
  - (c) if it is the owner or occupier of any Open Market Dwelling
  - (d) if it is the owner or occupier of any Affordable Housing Unit (other than for the provisions of paragraphs 1.1-1.11 inclusive of the First Schedule to this agreement)
- 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, Building Control and Sustainability Development Services at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2014/0429.
- 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 Developer) or revoked this Agreement shall terminate and cease to have effect.
- 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 Developer shall pay to the Council its reasonable legal fees 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 Developer 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 Developer 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.

**FIRST SCHEDULE**  
("the Developer's Covenants")

The Developer hereby covenants with the Council: -

**1. AFFORDABLE HOUSING**

**On-Site Affordable Housing Provision**

- 1.1 The Affordable Rented Dwellings shall not be used or Occupied other than as Affordable Rented Dwellings and the Intermediate Dwellings shall not be used or Occupied other than as Intermediate Dwellings save that the Affordable Rented Dwellings may be used as Intermediate Dwellings and the Intermediate Dwellings may be used as Affordable Rented Dwellings with the written permission of the Head of Planning, Building Control and Sustainability Development 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 only that the Chargee shall have first complied with the obligations at paragraph 1.2 below; 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 40 Working Days prior notice to the Council of its intention to dispose and:
- 1.2.1 in the event that the Council responds within 40 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 40 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 give full consideration 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 Developer and are indicated on Plan 2 and shown on the area of land edged blue.

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

1.4.1 76 of the Open Market Dwellings to be Occupied until 6 of the Affordable Housing Units; and

1.4.2 106 of the Open Market Dwellings to be Occupied until all of Affordable Housing Units

have been constructed to the same external standard as the Open Market Dwellings and transferred to a Registered Provider at the Affordable Housing Unit Prices and on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.

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 Developer shall provide the Council with notice upon the Practical Completion of each Affordable Housing Unit.

- 1.7 The Developer 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) ("**the Initial Registered Provider Transfer Terms**"). For the avoidance of doubt, the Developer shall not transfer the Affordable Housing Units to a Registered Provider not appearing on the Council's Approved List.
- 1.8 The Developer will thereafter use Reasonable Endeavours to exchange contracts with the Registered Provider agreed under paragraph 1.7 above for the sale of the Affordable Housing Units and will keep the Council informed on the Developer's progress.
- 1.9 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Developer 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 Developer from time to time) and will keep the Council informed of the Developer's progress.
- 1.10 If any of the Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Affordable Housing Unit or such earlier date agreed in writing by the Council and the Council is satisfied that paragraphs 1.7 to 1.9 of this Schedule have been complied with then the Developer shall pay the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** such sum shall only be payable in respect of those Affordable Housing Units not already transferred to a Registered Provider and upon such payment the Developer will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule as Open Market Dwellings.
- 1.11 Any agreement to sell or transfer the Affordable Housing Units to a Registered Provider shall contain the following minimal provisions:
- 1.11.1 The grant by the Developer of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Unit; and

- 1.11.2 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.

**Off-Site Affordable Housing Provision**

- 1.12 The Developer shall pay to the Council the Affordable Housing Contribution as Index Linked as follows:

1.12.1 Within 28 days of the Occupation of the 40<sup>th</sup> Dwelling the Developer shall pay the sum of £335,707.50 and

1.12.2 Within 28 days of the Occupation of the 120<sup>th</sup> Dwelling the Developer shall pay the further sum of £335,707.50

2. **EDUCATION CONTRIBUTION**

- 2.1 Within 28 days of the Commencement of Development the Developer shall pay the Education Contribution as Index Linked to the Council.

3. **PUBLIC OPEN SPACE**

**On-Site Provision**

**Playing Pitches Contribution**

- 3.1 Within 28 days of the Commencement of Development the Developer shall pay the Playing Pitches Contribution as Index Linked to the Council.

**Play Facilities Contribution**

- 3.2 The Developer shall pay to the Council the Play Facilities Contribution as Index Linked as follows:

3.2.1 Within 28 days of the First Occupation the Developer shall pay the sum of £48,531.30 and

3.2.2 Within 28 days of the Occupation of the 80<sup>th</sup> Dwelling the Developer shall pay the further sum of £48,531.30

**Off-Site Provision**

- 3.3 Within 28 days of Occupation of the 80<sup>th</sup> Dwelling the Developer shall pay the Public Open Space Contribution as Index Linked to the Council.

4. **SOUTH YORKSHIRE ANNUAL TRAVEL PASS CONTRIBUTION**

4.1 Within 28 days of the First Occupation the Developer shall pay the the South Yorkshire Annual Travel Pass Contribution as Index Linked to the Council.

5. **FURTHER AGREEMENT**

5.1 Within 10 working days of the date that the Developer completes the acquisition of the freehold interest of the Land from the Council to execute and deliver to the Council a Section 106 Agreement (and to authorise the Council to complete such agreement) in exactly the same format as this agreement save that

5.1.1 Clause 2.2 of this agreement shall be deleted and replaced with the new clause 2.2 as follows:

“2.2 The Developer is the freehold owner of the Land having acquired the same from the Council pursuant to a Transfer dated [ ] day of [ ] 2014”

5.1.2 The provisions of this paragraph 5 of the First Schedule shall not be included within such agreement

5.2 The further agreement referred to in paragraph 5.1 of this Schedule shall be executed and delivered to the Council prior to the Commencement of Development.

**SECOND SCHEDULE**  
("the Council's Covenants")

The Council hereby covenants with the Developer: -

**General**

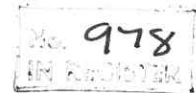
- 1 The Council will on the reasonable written request of the Developer at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.
- 2 To issue separate receipts on request for any sum or contribution paid to the Council under this Agreement.
- 3 To use the payments made by the Developer pursuant to the provisions of the First Schedule only for the purpose specified therein.

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

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




Borough Secretary/Authorised Signatory



EXECUTED as a DEED by )  
TAYLOR WIMPEY UK LIMITED )  
acting by its Attorneys : )

  
.....Attorney

**Andrew Girling**

  
.....Attorney

**Beverly Fury**