

DATED

16th March

2010

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

STRATA HOMES YORKSHIRE LIMITED

and

CLYDESDALE BANK PLC

AGREEMENT

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

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 16th day of March Two Thousand and Ten *2010*

BETWEEN

- (1) **BARNSELEY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council") of the first part and
- (2) **STRATA HOMES YORKSHIRE LIMITED** (Company Number 01596961) whose registered office is situate at Quay Point Lakeside Doncaster South Yorkshire DN4 5PL ("the Owner") of the second part
- (3) **CLYDESDALE BANK PLC** (Company number SC001111) whose registered office is situate at 30 St Vincent Place Glasgow G1 2HL ("the Chargee") of the third 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 Title Absolute of the Land under Land Registry Title Number SYK 567269
- (3) The Chargee has a registered charge over the Land dated 11 October 2010
- (4) The Application has been submitted to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

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 Affordable Dwellings" means the dwellings and house types identified in the Fourth Schedule and on Plan 2 where each dwelling's use and occupation shall be for Social Rented or ~~Intermediate Rented~~ purposes only as indicated in the Fourth Schedule

Intermediate Affordable Housing

*JK
DPS*

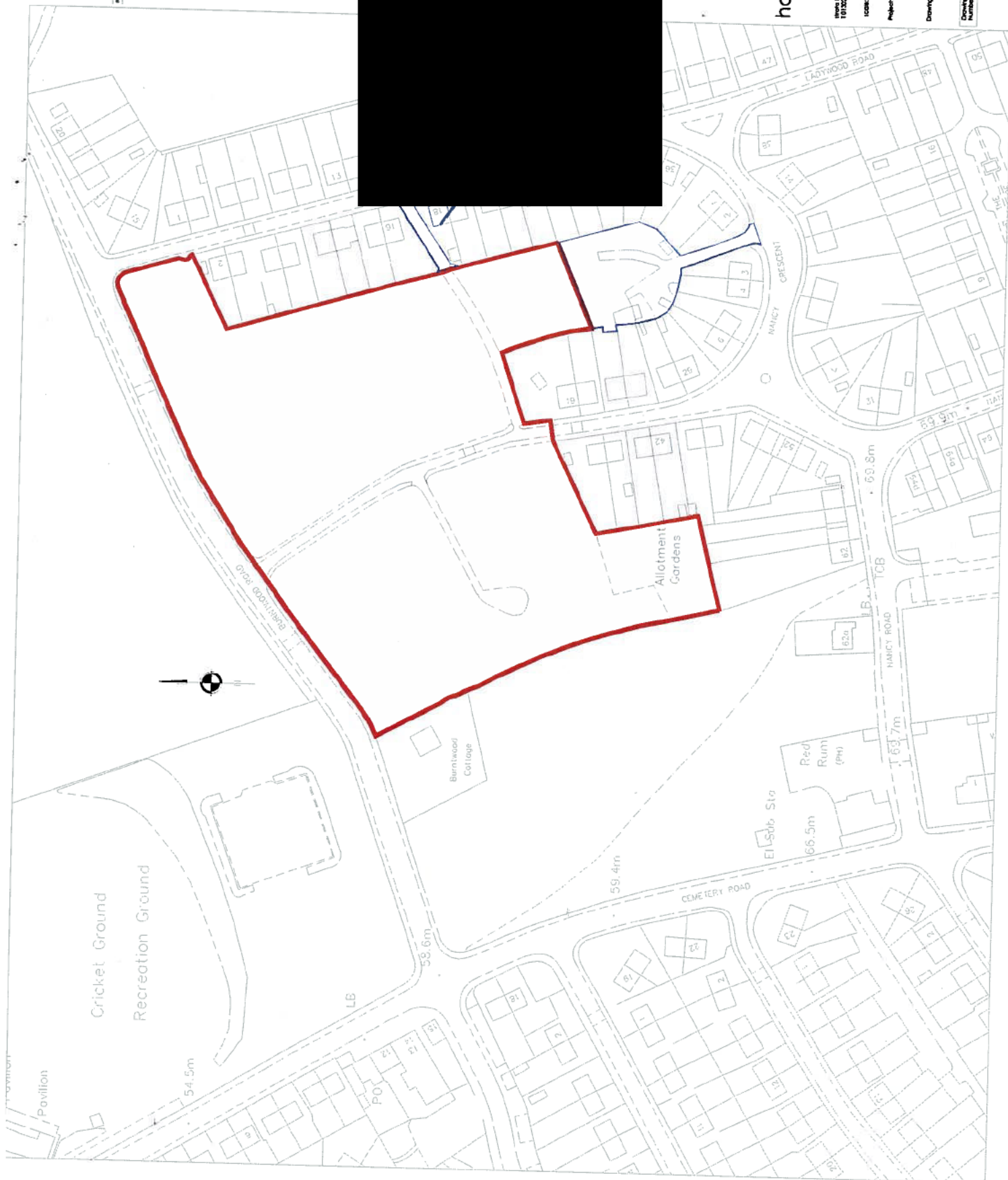
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Itasca Homes Limited
T 01 522 306508
query point
info@itascapoint.co.uk
www.itascapoint.co.uk

Project: Burntwood Road
Grimethorpe

Drawing: Red Line Location Plan

Drawing number 29134/LP/01 Revision



All rights to be carried out in accordance with the requirements of the Building Regulations and the Construction (Design and Management) Regulations 2015. Do not scale from this drawing. Approval to be notified at any alterations. Verify all dimensions on site before commencing work or preparing any drawings. The drawing is for reference only.

Rev: Date: Author: Date: 1/1/2020
 A 10/02/20 Amended in line with changes made at the request of the LPA

- LEGEND**
-  S106 Affordable Units
 -  Kickstart Affordable Units
 -  Home Buy Direct Units

Plan 2



strata homes limited
 101 302 30508
 101 302 30508
 F 03 202 30508
 www.stratahomes.co.uk

scale: 1/500
 drawn by: JLC
 date: 11/09

Project: Burnwood Rd
 Grimethorpe
 Drawing: Kickstart II Identification Plan

Drawing Number: 29134/KS2/01
 Revision: A



"the Application" means an application for planning permission submitted to the Council for residential development with the reference number 2009/1549

"the Commencement of Development" means the date upon which any material operation as defined by Section 56(4) of the 1990 Act forming part of the Development beings to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" is to be construed accordingly

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

"Homes and Communities Agency" means the Home and Communities Agency of 110 Buckingham Palace Road London SW1W 9SA

"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

"Intermediate-Rented" has the meaning given to it in Annex B of Planning Policy Statement 3 or any future guidance that replaces it

"Kickstart Funding" means Home Buy Direct and National Affordable Housing Programme funding granted to the owner by the Homes and Communities Agency under the Homes and Communities Agency's Kickstart Scheme

"Market Dwellings" means that part of the development which is general market housing for sale on the open market and does not include the Affordable Dwellings or properties which are sold under the Homes and Communities Agency's Home Buy Direct scheme

"Open Market Value" has the same meaning as the definition of 'Market Value' in Practice Statement 3.2 of the Royal Institution of Chartered Surveyors' Appraisal and Valuation Standards or other guidance replacing that statement

"the Open Space Commuted Sum" means the sum of £130579 (one hundred and thirty thousand five hundred and seventy nine pounds)

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

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

"the Planning Permission" means the planning permission numbered 2009/1549 and dated 10 March 2010

"Registered Social Landlord" means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 ("the 2008 Act") who is registered with the regulator of social housing called the Office for Tenants and Social Landlords in the 2008 Act, referred to as the Regulator of Social Housing in other enactments or instruments, and known as the Tenant Services Authority pursuant to section 3 of the Housing Act 1996 ("the 1996 Act") or section 116 of the 2008 Act and has not been removed from the register pursuant to section 4 of the 1996 Act or section 118 of the 2008 Act and who is approved by the Council

"Social Rented" has the meaning given to it in Annex B of Planning Policy Statement 3 or any future guidance that replaces it

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 2 of the Local Government Act 2000 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 local planning authority against the Owner

COMMENCEMENT

- 4.1 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
- 4.2 if the Planning Permission is quashed or revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires before the Commencement of Development this Deed shall cease to have effect (except as regards any part of the Development which has by then been implemented)

OWNER COVENANTS

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

COUNCIL COVENANTS

- 6 The Council covenants with the Owner as set out in the Third Schedule

MISCELLANEOUS

- 7.1 The Owner shall pay to the Council on completion of this Deed the legal costs of the Council in the sum of £1000 incurred in the negotiation, preparation and execution of this Deed.
- 7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 other than by a Registered Social Landlord
- 7.3 This Deed shall be registerable as a local land charge by the Council.
- 7.4 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 Transportation and any notices shall be deemed to have been properly served if sent by

recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.5 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.

7.6 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.

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

7.8 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.

7.9 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.

7.10 This Deed is governed by and interpreted in accordance with the law of England and Wales.

7.11 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.

7.12 Any sum payable under this deed by the Owner 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

7.13 If the parties are unable to agree upon the determination of any sum or monetary obligation due from one party to another in connection with this Agreement the dispute or difference shall be settled by an expert to be appointed by agreement between the parties or in default of agreement by the president of the royal institute of Chartered Surveyors, such person to act as expert and not as arbitrator and his decision to be binding on the parties, including costs

MORTGAGEE CONSENT

8 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Land shall take effect subject to this

Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

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 Burntwood Road, Grimethorpe, Barnsley registered at the Land Registry under title number SYK567269 shown edged red on Plan 1

SECOND SCHEDULE

The Owner covenants with the Council that:-

Public Open Space

1.1 The Owner shall pay to the Council ten working days after the date of this Agreement the Open Space Commuted Sum, five thousand pounds of which shall be spent towards improvements to Grimethorpe Miners Welfare Sport Ground pavilion

Affordable Housing

2.1 The Owner shall construct the Affordable Dwellings shown edged blue on Plan 2 to a design standard and quality equivalent to the design standards and quality of the Homes and Communities Agency Space Standards and Code for Sustainable Homes Level 3 as required by the Owner's application for Kickstart Funding

2.2 The Owner shall construct the Affordable Dwellings shown edged orange on Plan 2 to a design standard and quality equivalent of the design standards and quality of the Market Dwellings.

2.3 It shall not cause or permit more than 50% of the Market Dwellings to be occupied until the Affordable Dwellings have been constructed in accordance with Clause 2.1 or 2.2 as appropriate above and the freehold interest in the Affordable Dwellings transferred (in the

case of houses) and unencumbered leasehold interest of at least 99 years in the Affordable Dwellings granted (in the case of flats) to a Registered Social Landlord

2.4 If no transfer or grant (as the case may be) of the Affordable Dwellings to a Registered Social Landlord has occurred within eighteen months of the date of practical completion of all the Affordable Dwellings and the Owner has produced evidence in writing to the reasonable written satisfaction of the Council that the Owner has made all reasonable endeavours to secure a transfer or grant of the Affordable Dwellings to a Registered Social Landlord then the Owner will be free to offer the Affordable Dwellings for sale on the open market free from the affordable housing obligations contained in this Schedule but the provisions of paragraphs 2.5 and 2.6 shall apply

2.5 In the event that the Owner is free to offer the Affordable Dwellings for sale on the open market pursuant to paragraph 2.4 above the Owner shall immediately upon the sale of each Affordable Dwelling pay the Council either 50% of the Open Market Value if the dwelling sold is a dwelling which is identified for use as ~~Intermediate Affordable Housing~~ ^{Intermediate Affordable Housing} ~~Intermediate Rented~~ in the Fourth ^{DAS} Schedule and 65% of the Open Market Value if the dwelling sold is identified for use as Social Rented in the Fourth Schedule such Open Market Value to be determined at the date the Owner is first free to offer the Affordable Dwellings for sale on the open market

2.6 The Open Market Value of the Affordable Housing Units shall be determined in the first instance by agreement between the Council and the Owner and in default of such agreement by expert determination under clause 7.13 of this Agreement

2.7 The Affordable Dwellings shall be used only for Social Rented or ~~Intermediate Rented~~ ^{Intermediate Affordable Housing} purposes subject to any statutory rights to acquire the Affordable Dwellings ^{DAS}

THIRD SCHEDULE

1. Within 15 years of the date of this Deed to spend the Open Space Commuted Sum on the provision improvement or maintenance of public open space in the Grimethorpe area (including £5000 (five thousand pounds) to be spent on

improvements to Grimethorpe Miners Welfare Sports pavilion) and being within a radius of one mile of the Land and for no other purpose

2. To repay to the Owner either the whole or such part of the Open Space Commuted Sum that has not been expended in accordance with paragraph 1 of this Schedule within 15 years of the date of this Deed together with interest at the base rate (from time to time applied) of Barclays Bank plc from and including the date of payment of the Open Space Commuted Sum by the Owner to the Council to and including the day preceding the date of payment of the refund.
3. To provide the Owner with such evidence as it shall reasonable require confirming the expenditure of the Open Space Commuted Sum or any part or parts of it.
4. To provide written confirmation of the discharge of the Owner's obligations and covenants contained in this Deed as soon as possible after receipt by the Council of a written request to do so from the Developer.

FOURTH SCHEDULE

1. Four two bedroomed properties and six three bedroomed properties shown within the area edged orange on Plan 2 to be used for Social Rented purposes only and six two bedroomed properties and six three bedroomed properties shown edged blue on Plan 2 to be used for Social Rented purposes only and two two bedroomed properties within the area edged orange on Plan 2 to be used for ~~Intermediate Rented~~ ^{Intermediate Affordable} Housing purposes only.

Intermediate
Affordable
Housing
JK
PAS.

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

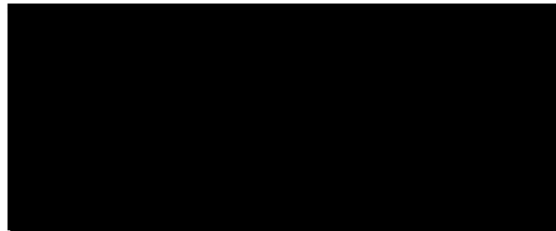


Borough Secretary/Authorised Signatory



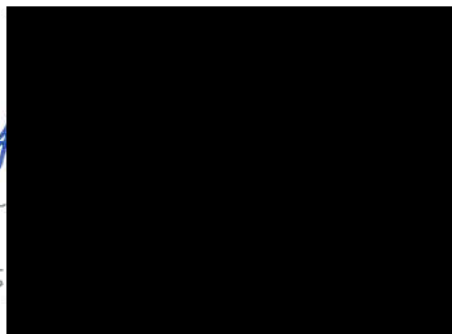
No. 1537
IN REGISTER

EXECUTED as a DEED by STRATA HOMES)
YORKSHIRE LIMITED)



Acting by

Director
in the presence of
~~Director/Secretary~~
none address



THE COMMON SEAL OF CLYDESDALE)
BANK PLC TRADING AS YORKSHIRE BANK)
was hereunto affixed in the presence of:)

For and on behalf of
Clydesdale Bank PLC



Duly Authorised Official



JAMES SHAW - ASSOCIATE

Witness