

Date

15 December

2025

(1) BARNSELY METROPOLITAN BOROUGH COUNCIL

and

(2) SANDRA MARY SENIOR and ANNE CAWTHORNE

and

(3) SANDRA MARY SENIOR and RICHARD JAMES SENIOR

and

(4) BEN BAILEY HOMES LTD

DEED OF AGREEMENT

Pursuant to s106 of the Town and Country Planning Act 1990 relating to
Land South of Coniston Avenue, Darton

Application Reference: 2024/0698

DATED

15 December 2025

PARTIES

(1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA as the local planning authority (the “**Council**” and the “**Third Owner**”);

(2) **SANDRA MARY SENIOR** of Coniston Farm, 38 Coniston Avenue, Darton, Barnsley, S75 5BB and **ANNE CAWTHORNE** acting by her attorney Jane Cawthorne of Serendipity, 14 Leyland Walk, Redbrook, Barnsley, S75 1GY (the “**First Owner**”);

(3) **SANDRA MARY SENIOR** and **RICHARD JAMES SENIOR** both of Coniston Farm, 38 Coniston Avenue, Darton, Barnsley, S75 5BB as the personal representatives of Gordon Senior deceased (the “**Second Owner**”); and

(4) **BEN BAILEY HOMES LTD** (Registered Company Number: 07488352) whose registered office address of Brook House, Barnsley Road, Dodworth, Barnsley, England, S75 3JT (the “**Developer**”).

BACKGROUND

(A) By virtue of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by who the Planning Obligations hereby created are enforceable.

(B) The First Owner is the registered proprietor to the freehold to that part of the Site which is registered at the Land Registry under Title Number SYK426316.

(C) The Second Owner are the personal representatives of Gordon Senior deceased who is the registered proprietor to the freehold to that part of the Site which is registered at the Land Registry under Title Number SYK81235.

(D) The Third Owner is the registered proprietor to the freehold to that part of the Site which is registered at the Land Registry under Title Number SYK605384.

(E) The Developer has entered into:

(1) a contract for sale dated 26 April 2024 and made between the First Owner and the Developer in relation to title SYK426316; and

(2) a contract for sale dated 26 April 2024 and made between the Second Owner and the Developer in relation to title SYK81235.

and accordingly holds an equitable interest in the Site for the purposes of this Deed.

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(F) The Council enters into this Deed in its capacity as both the local planning authority for the area in which the Site is situated and as the Third Owner of the land shown edged red on the Plan for the purpose of binding the legal estate in that land to the obligations set out herein but does not covenant to perform any obligations in respect of the Council-Owned Land.

(G) The Developer has sufficient interest in the titles SYK426316 and SYK81235 within the Site to enter into this Deed and has joined as a party to this Deed to give effect to the planning obligations contained herein.

(H) The Developer does not currently have a legal or equitable interest in all of the land comprising the Site, specifically the parcel identified edged red on the plan referred to in this Deed as the Council-Owned Land. However, subject to the provisions of Schedule 6 of this Deed, the Developer agrees that the planning obligations contained in this Deed shall become binding upon it in respect of the Council-Owned Land upon its acquisition of a legal or equitable interest in that part of the Site.

(I) The Application was submitted to the Council for planning permission for the Development.

(J) The parties have agreed to enter into this Deed in order to secure (subject to the terms and conditions of this Deed) the planning obligations herein.

(K) The parties have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) and agree the planning obligations it contains are: (i) necessary to make the Development acceptable in planning terms; (ii) directly related to the Development; and (iii) fairly and reasonably related in scale and kind to the Development.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

1990 Act

The Town and Country Planning Act 1990 (as amended).

Actual Profit Margin

The profit margin calculated from the Development Account submitted under Schedule 7.

Affordable Housing

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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Affordable Housing Commuted Sum

If applicable the difference between the Open Market Value of the relevant Affordable Housing Unit and its Affordable Housing Unit Transfer Value on the date that it is disposed of on the open market free from the restrictions in this Deed (as calculated in accordance with the SPD 'Affordable Housing' (July 2022)) to be used by the Council in lieu of Affordable Housing on the Site, for the provision of, or improvements to existing, Affordable Housing elsewhere within the Council's administrative area.

Affordable Housing Plan

The plan annexed to this deed at Schedule 1.

Affordable Housing Unit Prices

The Affordable Housing Unit Transfer Value or such other discounted sum agreed with the Registered Provider that is financially viable for a Registered Provider to be able to purchase an Affordable Housing Unit.

Affordable Housing Units

3 (three) Dwellings of Affordable Housing comprising Shared Ownership Dwellings to be provided in accordance with paragraph 1 of Schedule 2 of this Deed and reference to "**Affordable Housing Unit**" shall be construed accordingly.

Affordable Housing Unit Transfer Value

In relation to an Affordable Housing Unit 50% (fifty percent) of the Open Market Value of an equivalent Open Market Dwelling (unless otherwise first agreed in writing by the Council (approval not to be unreasonably withheld or delayed)).

Affordable Housing Reinvestment

The use of any Overage Payment received by the Council for the provision, improvement, or facilitation of affordable housing within the Council's administrative area.

Affordable Rent

An affordable rent of no more than 80% (eighty percent) of the Market Rent.

Agreed Profit Margin

The profit margin stated in the Viability Appraisal submitted by the Developer being 17.44%.

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Application

The application for planning permission for the Development which was submitted to the Council and which was given reference number 2024/0698 by the Council.

Chargee

A mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator) (each a "Receiver")) of the whole or any part of the Affordable Housing Units.

Commencement of Development

The date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of Site access, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly.

Contributions

Collectively the Education Contribution, the Sustainable Travel Contribution and the Off Site Open Space Contribution.

Council-Owned Land

The land edged red on the Plan and registered under title number SYK605384.

Council's Approved List

Means the following Registered Providers:

- (a) ACIS Group
- (b) Anchor Hanover
- (c) Auxesia Homes
- (d) Berneslai Homes
- (e) Great Places Housing Group
- (f) Guinness Northern Counties H.A. The Guinness Group

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- (g) Habinteg Housing Association
- (h) Heylo
- (i) Home Group
- (j) 54° North Homes
- (k) Park Properties Housing Association Ltd
- (l) Places for People
- (m) Riverside Housing Group
- (n) Sanctuary Housing
- (o) South Yorkshire H.A.
- (p) Together Housing Association Ltd
- (q) Vico Homes (formerly Wakefield and District Housing Association)
- (r) Yorkshire Housing;

or such other Registered Provider(s) that may be agreed in writing between the Developer and the Council from time to time.

Default Interest Rate

4% per annum above the base rate from time to time of the Bank of England.

Development

The development of the Site pursuant to the Planning Permission.

Development Account

A full financial account of the Development, including actual costs, revenues, and profit, prepared in accordance with RICS guidance and submitted to the Council.

Dwelling

A residential unit that may be built on the Site pursuant to the Planning Permission and the term of Dwellings shall be construed accordingly.

Education Contribution

A sum of £240,000 (Two Hundred and Forty Thousand Pounds) to be paid by the Developer to the Council as a contribution towards the provision of and/or improvements to educational provision, facilities and places in accordance with the Council's SPD Financial Contributions to Schools (adopted May 2025) or any replacement thereof.

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Expert

A person of at least 15 years post qualification continual and continuing experience in the subject matter of the dispute.

Final Dwelling

The last Dwelling constructed on the Site which is disposed of (whether by sale or lease) by the Owners or Developer.

Homes England

The Homes and Communities Agency trading as Homes England or any body or bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008.

Index Linked

Increased in accordance with the following formula:

(a) Amount payable = the payment specified in this Deed x (A/B)

(b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and

(c) B = the figure for the Retail Price Index published by the Officer for National Statistics that applied when that index was last published prior to the date of this Deed.

Independent Surveyor

A member of the Royal Institution of Chartered Surveyors appointed by the Developer at its own cost but first approved by the Council.

Initial Registered Provider Transfer Terms

It has the meaning given in paragraph 1.9 of Schedule 2.

Market Rent

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.

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National Planning Policy Framework / NPPF

The National Planning Policy Framework (as redefined by any amendment, replacement or re-enactment thereof).

Occupation

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 **Occupy** and **Occupied** shall be construed accordingly).

Open Market Dwellings

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.

Open Market Value

An amount for which the property or piece of land should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion as agreed between the Developer and the Council or in the absence of agreement as determined by an Independent Surveyor assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time.

Off Site Open Space Contribution

A sum of £73,798.48 (Seventy-Three Thousand Seven Hundred and Ninety-Eight Pounds and Forty-Eight Pence) to be paid by the Developer to the Council as a contribution towards providing off-site public open space required as a result of the Development in accordance with the Council's Open Space Provision on New Housing Developments Supplementary Planning Document (adopted May 2019) or any replacement thereof.

Overage Payment

The financial contribution which may be payable to the Council under Schedule 7 which shall in no circumstances exceed £333,335 (Three Hundred and Thirty-three Thousand Three Hundred and Thirty-five pounds).

Owners

Means the First Owner, the Second Owner and the Third Owner.

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Plan

The plan annexed to this deed at Schedule 1.

Planning Obligation

The obligations and conditions and stipulations set out at Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6 and Schedule 7 of this Deed and the term Planning Obligations shall be construed accordingly.

Planning Permission

The planning permission that may be granted pursuant to the Application for the Development.

Practical Completion

Either:

- (a) 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
- (b) the issue of buildmark cover note by the National House-Building Council.

Protected Tenant

As the case may be any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or Housing and Regeneration Act 2008 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 or voluntary 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; or
- (d) has acquired an Affordable Housing Unit from a Housing Association through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, or any amendment or replacement thereof; and

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- (e) any person or body and/or their mortgagee deriving title through or from any of the parties mentioned in paragraphs (a) to (d) above.

Reasonable Endeavours

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

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 Homes England for receipt of social housing grant as may be proposed by the Developer and approved by the Council.

Shared Ownership Dwellings

Such properties to be made available on a Shared Ownership Lease to persons in accordance with the Registered Provider's policy or such other housing as approved in writing by the Council that provides a subsidised route to home ownership and which complies with either definition (c) "Discounted market sales housing" or definition (d) "Other affordable routes to home ownership" as set out within Annex 2 of the National Planning Policy Framework.

Shared Ownership Lease

Such lease as shall from time to time be used by the Registered Provider in respect of it being a landlord of Shared Ownership Housing.

Site

All that site known as Land South of Coniston Avenue, Darton registered under title numbers SYK426316 (edged green on the Plan) and in part under Title Numbers SYK81235 (edged blue on the Plan) and SYK605384 (edged red on the Plan).

Sustainable Travel Contribution

The sum of £29,250.00 (Twenty-Nine Thousand and Two Hundred and Fifty Pounds) to be used by the Council towards sustainable travel improvements in accordance with the Council's Sustainable Travel

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Supplementary Planning Document (adopted July 2022) or any replacement thereof. the need for which is required to mitigate the impacts arising from the Development.

Statutory Undertaker

Any company corporation board or authority authorised by statute to carry out an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking and any company, corporation, board or authority of a similar or like nature.

Working Day

Any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

1.2 Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.

1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.

1.4 Any words denoting natural persons shall include legal persons and vice versa.

1.5 Reference to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.

1.6 The expression Owners shall include their successors in title and assigns.

1.7 The expression Council shall include any successor authority to its statutory functions under the 1990 Act.

1.8 The expression Developer shall include any person deriving title or interest from the Developer in respect of the parcels in which the Developer holds or acquires a legal interest.

1.9 Where a party includes more than one person any obligations of that party shall be joint and several.

1.10 Clause headings shall not affect the construction of this Deed.

1.11 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

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2. STATUTORY BASIS

2.1 The Deed secures planning obligations made pursuant to section 106 of the 1990 Act, s111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and any other enabling powers and is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and the Developer (and their respective successors in title and assigns) and any person deriving title to the Site (or any part or parts thereof) from the Owners and/or the Developer as if that person had been an original covenanting party to this Deed (subject always to for the avoidance of any doubt to the terms and conditions of this Deed).

2.2 This Deed is enforceable by the Council as local planning authority for the purposes of the 1990 Act.

3. CONDITIONS PRECEDENT

3.1 This Deed is conditional upon and does not come into effect unless and until the Planning Permission is granted and the Commencement of Development has taken place.

4. COVENANTS AND DECLARATIONS

4.1 The Owners and the Developer (and their respective successors in title and assigns) covenant with the Council to comply with the Planning Obligations in this Deed at Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6 and Schedule 7, but for the avoidance of doubt, the Developer shall not be liable under the provisions of this Deed unless and until it acquires the Site and/or any part thereof (including but not limited to the parts of the Site owned by the First Owner and the Second Owner or the Council-Owned Land or any part thereof) and in the event that the Developer only acquires part of the Site, its obligations, rights and duties under this Deed shall be limited exclusively to that part of the Site.

4.2 The Council covenants with the Owners and the Developer to comply with the obligations in this Deed at Schedule 8.

5. EXCLUSIONS AND RELEASE

5.1 No person shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:

5.1.1 after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest);

5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking or other person who acquires any part of the Site or interest therein for the purposes of the supply of heat, cooling, electricity, gas, water, drainage, telecommunication services, electric vehicle charging points and associated services or public transport services;

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5.1.3 if that party is an owner or occupier of an individual Dwelling (subject to any provisions in Schedule 2 which are intended to specifically bind an owner or occupier of an individual Dwelling);

5.2 If the Planning Permission:

5.2.1 expires before the Commencement of Development; or

5.2.2 is quashed by a court; or

5.2.3 is at any time revoked or modified (without the consent of the Owners and the Developer),

this Deed shall determine and cease to have effect.

5.3 No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site unless and until such chargee or mortgagee has taken or entered into possession of the Site of part thereof in which case it shall also be bound by the covenants restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

5.4 No obligation in this Deed shall be binding or enforceable against any person who does not have an interest in the part of the Site to which the obligation relates.

6. REGISTRATION

6.1 The Deed is a local land charge and shall be registered as such by the Council.

6.2 Following either:

6.2.1 the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2 the determination of this Deed in accordance with Clause 5.2

the Council shall upon the written request of the Owners and Developer as soon as reasonably practicable affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7. OWNERSHIP

7.1 The Owners and Developer warrant that no person other than the Owners and Developer have any legal or equitable interest in any part of the Site.

8. NON-FETTER AND WAIVER

8.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers functions or discretions.

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8.2 No waiver (whether express 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 from acting upon any subsequent breach or default.

9. FUTURE PERMISSIONS

9.1 Subject to 9.2 nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

9.2 In the event that any new planning permission(s) are granted by the Council derived from the Planning Permission pursuant to section 73 of the 1990 Act and unless otherwise agreed by the parties:

(a) the Planning Obligations in this Deed shall relate to and bind any subsequent planning permission(s) in respect of the Site granted pursuant to section 73 of the 1990 Act and the Site itself; and

(b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any such application under section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permission(s)

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under section 73 of the 1990 Act or the appropriate nature and quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the 1990 Act whether by way of new deed or supplemental deed pursuant to section 106 of the 1990 Act and FURTHER PROVIDED (for the avoidance of any doubt) that this clause 9.2 and the operation of it shall not ever require the duplication of any of the Planning Obligations in this Deed.

10. INTEREST

If any sum or amount has not been paid to the Council by the date it is due then the sum payable shall attract interest on that sum or amount at the Default Interest Rate and such interest shall accrue on a daily basis for the period from the due date to and including the actual date of payment.

11. INDEXATION

11.1 The Contributions payable to the Council shall be Index Linked.

11.2 Where reference is made in this Deed to an index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owners and Developer in writing.

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12. VAT

All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.

13. SEVERANCE

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

14. CHANGE OF OWNERSHIP

The Owners and Developer agree with the Council to give the Council written notice within 10 Working Days of any change in proprietorship of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (of a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this obligation shall not apply to a disposal of individual Dwellings.

15. NOTIFICATION

15.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

15.1.1 delivered by hand; or

15.1.2 sent by pre-paid first class post or other next working day delivery service.

15.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows (unless otherwise notified by the relevant party):

15.2.1 to the Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number;

15.2.2 to the Developer at Brook House, Barnsley Road, Dodworth, Barnsley, England, S75 3JT or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 15.

15.3 Any notice, request, demand or other written communication given or served in accordance with Clause 15.1 or Clause 15.2 shall be deemed to have been received:

15.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00am on the next Working Day; or

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15.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.

15.4 A notice, request, demand or other written communication given under this Deed shall not be validly given if sent by e-mail.

15.4 This Clause 15 does not apply to the service of any proceedings or other documents in any legal action.

16. DISPUTE RESOLUTION

16.1 Where the agreement, approval, consent or expression of satisfaction is required by the Owners and/or Developer from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

16.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such other period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision shall (except in cases of manifest error, error of law and/or fraud) be final and binding on the parties.

16.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-

16.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days (or such other period as may be agreed) of receipt of the notice in Clause 16.2 above, shall be appointed or identified by the following persons:

(a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

16.3.2 The Expert shall act as an Expert and not as an arbitrator

16.3.3 The Expert shall be required to give notice of their appointment to each of the parties (Expert's notice) and thereafter:

(a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days (or such extended period as the Expert shall allow) of receipt of the Expert's Notice;

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(b) the other parties shall have 20 Working Days from the date of receipt of such written submission (or such extended period as the Expert shall allow) to respond;

(c) the Expert may disregard any representations made out of this time; and

(d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;

(e) to the extent not provided for by this clause the Expert may in their reasonable discretion depending upon the nature and complexity of the case determine such other procedures and/or directions to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination, varying any time limit or direction and/or setting new directions and either of their own volition or upon the application of any party.

16.3.4 the Expert shall make his decision within 20 Working Days (or such other reasonable period as the complexity of the matter may require) of the close of the period for submissions of written representations;

16.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and

16.3.6 each party shall bear its own costs (or as otherwise determined by the Expert) and the Expert's costs will be payable in the determination of the Expert.

16.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

16.4.1 either party may apply to the relevant body as part Clause 16.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

16.4.2 This clause 16 shall apply to the new Expert as if there were the first Expert appointed.

17. THIRD PARTY RIGHTS

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1990 PROVIDED THAT this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including those deriving title to the Site.

18. COSTS

On or before the date of this Deed the Developer shall pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of One Thousand Five Hundred Pounds (£1,500) (no VAT payable).

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19. JURISDICTION

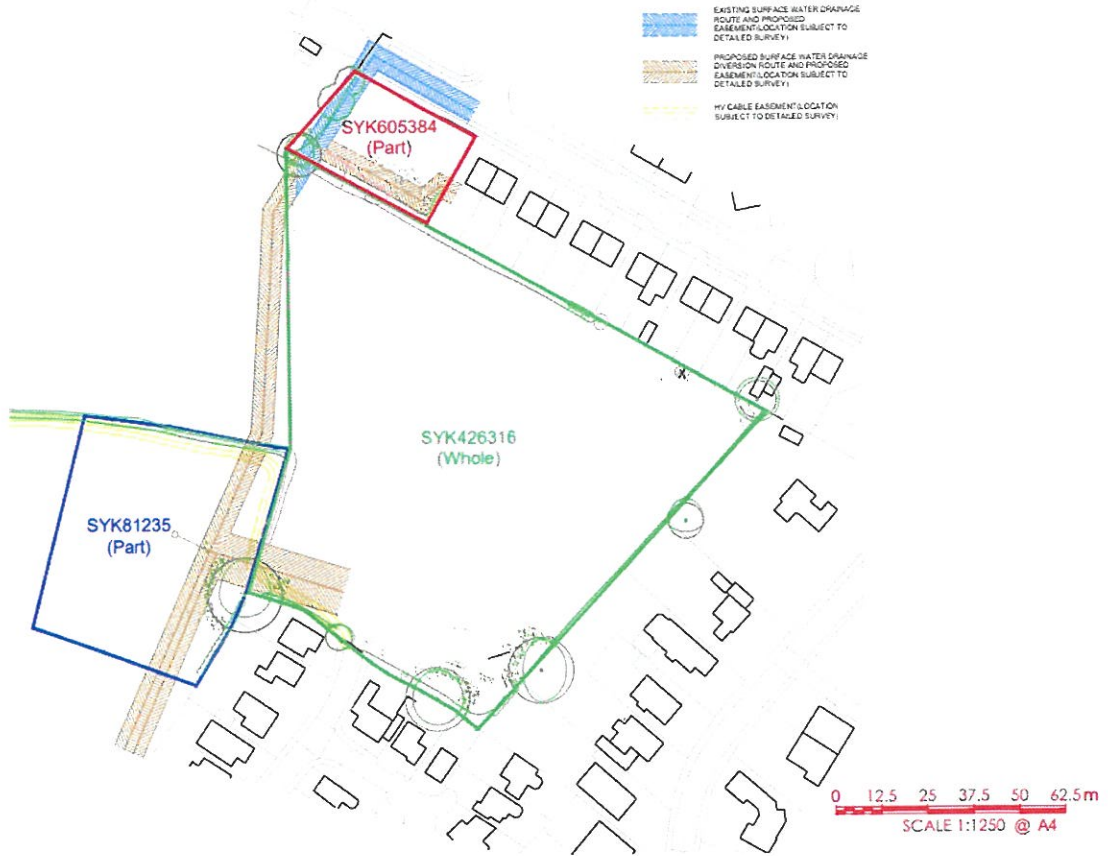
This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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SCHEDULE 1

SITE PLAN



R.S
SS
rc
M.M.
J.C.
S.A

AFFORDABLE HOUSING PLAN



R.S
M.B
S.S
J.C
S.A

SCHEDULE 2

AFFORDABLE HOUSING

The Owners and the Developer hereby covenant with the Council:

1. Affordable Housing

1.1. The Shared Ownership Dwellings shall not be used or Occupied other than as Shared Ownership Dwellings save that 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 chargees;

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 the Chargee and/or 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 (thirty) 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 (thirty) 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 reasonable arrangements and the Council and the Chargee shall use Reasonable 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 (thirty) 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 (forty) 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

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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 Affordable Housing Units shall be provided in accordance with the Affordable Housing Plan in Schedule 1.
- 1.4. The Affordable Housing Units shall be provided in accordance with the Planning Permission and the approved plans.
- 1.5. Subject to paragraph 1.13 of this Schedule not to cause or permit more than 50% of the Open Market Dwellings to be Occupied until the 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 Homes England funding requirements current at the date of this Deed.
- 1.6. Any transfer of the Affordable Housing Units to a Registered Provider shall be to a Registered Provider appearing on the Council's Approved List.
- 1.7. The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:
 - 1.7.1. full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and
 - 1.7.2. 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.
- 1.8. The Developer shall provide the Council with written notice:
 - 1.8.1. of the Commencement of Development; and
 - 1.8.2. of Occupation of the first Dwelling; and
 - 1.8.3. of the date of Practical Completion of the Affordable Housing Units; and
 - 1.8.4. of the date of Occupation of the 15th (fifteenth) and 30th (thirtieth) of the Open Market Dwellings.
- 1.9. 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

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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 ("**Initial Registered Provider Transfer Terms**") **PROVIDED THAT** it is agreed for the avoidance of doubt that the Owners and the Developer 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 Owners and the Developer from time to time.

- 1.10. The Developer 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 Developer's progress.
- 1.11. 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 Owners and the Developer from time to time) and will keep the Council informed of the Developers progress.
- 1.12. If any of the Affordable Housing Units have not been contracted for sale to a Registered Provider within 3 (three) calendar months of the date of Practical Completion of the last Affordable Housing Unit or such earlier date agreed in writing by the Council and the Council is satisfied acting reasonably that paragraphs 1.9 to 1.11 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 Owners and the Developer will be free to offer such dwellings for sale on the open market free from obligations in this Schedule as Open Market Dwellings.
- 1.13. If the provisions of paragraph 1.12 of this Schedule apply then no more than 30 (thirty) Open Market Dwellings shall be Occupied until the Affordable Housing Commuted Sum has been paid to the Council in accordance with paragraph 1.12 of this Schedule in relation to any Affordable Housing Units not transferred to a Registered Provider.

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SCHEDULE 3

EDUCATION CONTRIBUTION

1. The Developer covenants with the Council to pay the Education Contribution prior to the Occupation of the thirtieth (30th) Dwelling on the Development.

SCHEDULE 4

SUSTAINABLE TRAVEL CONTRIBUTION

1. The Developer covenants with the Council to pay the Sustainable Travel Contribution prior to the first Occupation of any Dwelling on the Development.

SCHEDULE 5

OFF SITE OPEN SPACE CONTRIBUTION

1. The Developer covenants with the Council as follows:

- (i) To pay 50% the Off Site Open Space Contribution prior to the Occupation of the Fifteenth (15th) Dwelling on the Development.
- (i) To pay the remaining 50% of the Off Site Open Space Contribution prior to the Occupation of the Thirtieth (30th) Dwelling on the Development.

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SCHEDULE 6

COUNCIL-OWNED LAND

1. The Developer covenants that, upon acquiring a legal interest in the Council-Owned Land, it shall observe and perform the obligations set out in this Deed in respect of that land and shall notify the Council in writing within 10 working days of completion of the transfer of title.

2. The Owners and the Developer (and their respective successors in title and assigns) covenants that, upon acquiring a legal interest in the Council-Owned Land, it shall enter into a further agreement pursuant to Section 106 of the Town and Country Planning Act 1990 with the Council to bind itself to the obligations set out in this Deed in respect of the Council-Owned Land.

SCHEDULE 7

OVERAGE CLAUSE (AFFORDABLE HOUSING REINVESTMENT)

This Schedule provides a mechanism for the Council to recover a proportion of any additional profit generated by the Development for the purpose of funding affordable housing provision within the Borough.

Trigger for Viability Review

1.1. The viability review mechanism in this Schedule shall be triggered upon the earliest of:

1.1.1. the Practical Completion of the thirtieth (30th) Dwelling;

1.2. The Developer shall not allow or permit the first Occupation of the Final Dwelling unless and until the provisions of this Schedule 7 have been complied with.

1.3. For the avoidance of doubt, the viability review mechanism shall expire five (5) years after the Practical Completion of the thirtieth (30th) Dwelling, regardless of whether it has been triggered under paragraph 1.1.

Submission of Viability Review Information

1.4. Within three (3) months of the of the trigger event described in Clause 1.1, the Developer shall submit a revised Development Account to the Council (the "Viability Review"). The Development Account shall:

1.4.1. be certified by an independent chartered accountant or quantity surveyor appointed and paid for by the Developer;

1.4.2. include actual sales values and costs incurred throughout the duration of the Development and estimated sales values for parts of the Development that are yet to be sold / let; and

1.4.3. be prepared in accordance with generally accepted accounting principles and the original viability appraisal.

1.5. Once the Council has reviewed the Viability Review and confirmed any Overage Payment due, and the Developer has paid that amount in accordance with Clause 1.9 of this Schedule, the Developer shall be deemed to have fully discharged its obligations under this Schedule PROVIDED ALWAYS THAT if the Council does not respond to and/or expressly approve the Viability Review within 40 Working Days of receipt of the Viability Review from the Developer, the Viability Review shall be deemed approved by the Council provided that the Council has not reasonably requested further information within that period.

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Overage Payment

- 1.6. If the Actual Profit Margin exceeds the Agreed Profit Margin the Developer shall make an Overage Payment to the Council which shall be 50% of the excess profit above that amount, capped at £333,335.
- 1.7. For the avoidance of doubt, if the Actual Profit Margin is equal to or less than the Agreed Profit Margin, the Developer shall not be entitled to any reduction, refund, or waiver of the obligations contained in this Deed.
- 1.8. The Council shall use any Overage Payment received solely for the provision, improvement, or facilitation of affordable housing within its administrative area.

Payment Terms

- 1.9 The Developer shall pay the Overage Payment within twenty (20) Working Days of the Council's confirmation in writing of the amount payable following submission to it of a Development Account by the Developer.

Dispute Resolution

- 1.10 Any dispute regarding the Development Account or the Overage Payment shall be dealt with in accordance with clause 16 of this Deed.

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SCHEDULE 8

COUNCIL'S COVENANTS

1. The Council shall not apply the Contributions for any purpose other than for the purposes set out within this Deed.
2. The Council covenants with the Developer, the First Owner and the Second Owner that the Contributions money will be held in an interest-bearing account and if, at the date 10 years from the date of receiving the respective Contributions, any monies remain unspent (including any interest accrued) then the Council shall return such monies to the party that paid the relevant Contribution under the provisions of this Deed.

No. 1687
IN REGISTER

EXECUTED as a DEED by the affixing of
THE COMMON SEAL of BARNSELY
METROPOLITAN BOROUGH COUNCIL



Authorised Sealing Officer *SOPHIE ABSON*
(print name)

Signed as a deed by SANDRA MARY SENIOR

in the presence of:

Signature: *SMSenior*

Signature of Witness: *RAdair*

Name (in BLOCK CAPITALS): REBECCA ADAMSON

Address: 3 ALEXANDRA LANE
FLOCKTON
WF4 4FA

Signed as a deed by ANNE CAWTHORNE by Jane Cawthorne under a

Power of attorney dated 1 November 2018



in the presence of:

Signature:

Signature of Witness:



Name (in BLOCK CAPITALS):

BEN SUMMERS.

Address:

POPLARS BOWERHILL OXSPRING
SHEFFIELD S36 8WE

Signed as a deed by SANDRA MARY SENIOR



in the presence of:

Signature:

Signature of Witness:



Name (in BLOCK CAPITALS):

REBECCA ATOAMVON

Address:

3 ALEXANDRA LANE
FLOCKTON
LF4 4FA

Signed as a deed by RICHARD JAMES SENIOR

in the presence of:

Signature: 

Signature of Witness: 

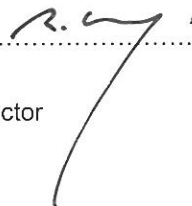
Name (in BLOCK CAPITALS): REBECCA ATKINSON

Address: 3 ALEXANDRA LANE
FLOCKTON
WF4 4FA


EXECUTED as a DEED by)

BEN BAILEY HOMES LTD)

acting by a Director: -)


.....
Director

in the presence of:

Witness Signature: 

Witness Name: MATTHEW BELL

Witness Address: 25 KETTON AVENUE SHEFFIELD S7 3PA

Witness Occupation: ACCOUNTANT