

DATED 12 December 2016

BARNSELEY COLLEGE (1)

and

MILLER HOMES LIMITED (2)

to

BARNSELEY METROPOLITAN BOROUGH COUNCIL (3)

UNILATERAL UNDERTAKING
pursuant to Section 106 of the Town and
Country Planning Act 1990 relating to
development of land at
Carrington Avenue Barnsley

THIS DEED is given this 12 day of December

2016

BY:

- 1 **BARNSELY COLLEGE** of P O Box 266 Church Street Barnsley South Yorkshire S70 2YW ("the Owner")
- 2 **MILLER HOMES LIMITED** (Company number SC255429) whose registered office is situate at Miller House 2 Lochside View Edinburgh Park Edinburgh EH12 9DH ("the Developer")

TO:

- 3 **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall Barnsley South Yorkshire S70 2TA ("the Council")

WHEREAS

- 1 The Council is the local planning authority for the purposes of Section 106 of the Act for the area in which the Land is situated.
- 2 The Owner is the freehold owner of the Land.
- 3 The Developer has the benefit of an agreement to acquire the Land from the Owner.
- 4 The Owner and the Developer enter into this Deed in order to enable the Council to grant the Reserved Matters Consent.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 Definitions

- 1.1 In this Deed the following words and expressions shall unless the context otherwise requires have the precise meaning set out below:

"Act"	the Town and Country Planning Act 1990 (as amended);
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins 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" and "Commenced" and "Commenced Development" shall be construed accordingly);
"Development"	the development of the Land for residential purposes pursuant to the Planning Permission;
"Dwelling"	any dwelling erected on the Land pursuant to the Planning Permission;
"Education Contribution"	the sum of one hundred and twelve thousand three hundred and eighty four pounds (£112,384) to be applied by the Council solely towards the provision or improvement of primary education facilities within the local area;

"Index"	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 that price index ceases to exist such index as the Council reasonably nominates;
"Interest"	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;
"Land"	the land at Carrington Avenue Barnsley registered at the date hereof at HM Land Registry with title number SYK532137 (as shown edged red on the Plan);
"Occupation"	occupation of a Dwelling constructed on the Land for residential purposes excluding any occupation for the purpose of construction, decoration, fitting out, security during construction of the Development marketing or repair;
"Original Section 106 Agreement"	the agreement relating to the Planning Permission made pursuant to section 106 of the Act and entered into by (1) the Council and (2) the Owner on 18 September 2015;
"Plan"	the plan annexed to this Deed;
"Planning Permission"	planning permission reference 2014/0807 granted by the Council on 18 September 2015;
"Public Open Space Commuted Sum"	has the meaning in the Original Section 106 Agreement;
"Reserved Matters Consent"	the application made by the Developer pursuant to the Planning Permission for approval of reserved matters (appearance, landscaping, layout and scale) and allocated reference number 2016/0552 by the Council; and
"Working Days"	Mondays to Fridays (excluding days which in England and Wales are public holidays) exclusive.

1.2 Interpretation

- (a) save if expressed to the contrary in this Deed, the expressions "the Owner", "the Developer" and "the Council" shall include their respective successors in title and assigns and/or any successor body;
- (b) where appropriate the singular includes the plural and vice versa;
- (c) words importing one gender include all other genders;
- (d) words importing persons shall include firms, companies and corporations and vice versa;
- (e) unless otherwise stated all references to clause numbers are references to the clauses contained within this Deed;
- (f) references to statutory provisions shall be construed as references to those provisions as may hereafter be amended extended or re-enacted and all instruments orders notices regulations directions byelaws permissions and plans for the time being made issued or given under that Act or deriving validity from it;



SCALED AT 1:1250

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miller homes

Date: April 2016
Scale @ A3: 1:1250
Revision:

Project: Carrington Avenue
Barnsley
Drawing Title: Location Plan

Drawing Number: 81121.02
Client: Miller Homes
Yorkshire Office

Revision notes	Rev	Date	Comments

- (g) save where expressed to the contrary in this Deed, the obligations herein relate to the Land and each and every part thereof;
- (h) where a party includes more than one person, any obligations of that party will be joint and several;
- (i) the headings in this Deed are for ease of reference only and cannot be taken into account in its interpretation;
- (j) any notice or written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed or sent by or on behalf of the Council;
- (k) if any provision of this Deed is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Deed is to be unaffected.

2 Enabling Powers

- 2.1 This Deed is made pursuant to the provisions of Section 106 of the Act and shall constitute and shall be deemed to contain planning obligations for the purposes of Section 106 of the Act and (subject to clause 5) in the event of a breach of covenant given to the Council it shall be enforceable by the Council pursuant to all powers enabling and all enactments which may be relevant for the purpose of giving validity hereto or facilitating the enforcement of the obligations herein contained and shall bind the then Owner's interest in the Land.
- 2.2 To the extent that any of the covenants in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Sections 1-8 of the Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time of the Council of any of its statutory powers functions or discretions in relation to the Land or otherwise

3 Conditions Precedent

- 3.1 This Deed is conditional and shall only have effect upon the grant of the Reserved Matters Consent save for the provisions of this clause 4 and clause 8 which shall come into effect immediately upon completion of this Deed.
- 3.2 For the avoidance of doubt this Deed is entered into on the understanding that in the event of the Planning Permission being quashed as a result of any legal proceedings or pursuant to Section 97 of the Act or if the Planning Permission expires before the Commencement of Development then this Deed shall absolutely determine and shall become null and void.

4 The Owner's Covenants to the Council

- 4.1 The Owner covenants to pay 50% of the Education Contribution to the Council upon Commencement of Development.
- 4.2 The Owner covenants to pay 50% of the Education Contribution to the Council prior to Occupation of the first Dwelling to be constructed on the Land.

5 Acknowledgement

It is acknowledged that the Public Open Space Commuted Sum has been confirmed by the Council to be £79,273 (seventy nine thousand two hundred and seventy three pounds) to be applied by the Council solely towards the provision improve or enhancement of public open space within Old Town Ward and that payment shall be made in accordance with the terms of the Original Section 106 Agreement.

6 Miscellaneous

- 6.1 No person shall be liable for any breach of any of the obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in which the breach occurs but without prejudice to any liability for any subsisting breach arising prior to parting with such interest.
- 6.2 This Deed shall not be enforceable against any owner-occupiers or tenants of any Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 6.3 This Deed shall not be enforceable against any statutory undertaker who acquires an interest in the Land for the purposes of carrying out its undertaking.
- 6.4 This Deed may be registered as a local land charge in the Register of Local Land Charges maintained by the Council.
- 6.5 The Owner and the Developer may make application to the Council for written confirmation to the effect that any of the provisions of this Deed have been completed and/or satisfied.
- 6.6 No waiver (whether expressed or implied other than by deed) by any party to this Deed 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 any party to this Deed from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 6.7 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 referred to herein).
- 6.8 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.
- 6.9 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 Notices

- 7.1 Any notice consent or approval required to be given under this Deed shall be in writing and shall be delivered personally or sent by prepaid first class post or recorded delivery post.
- 7.2 The address for service of any such notice consent or approval as aforesaid on the Council shall be at the address aforesaid or at its then current principal office (if different) or such other address for service as shall have been previously notified in writing by the Council to the Owner and the Developer.
- 7.3 The address for service of any such notice consent or approval as aforesaid on any non-Council party shall be at its then current registered office (if a company) its principal office (if an unincorporated body) or last known address (if an individual).
- 7.4 A notice consent or approval under this Deed shall be deemed to have been served as follows:
 - (a) if personally delivered at the time of delivery; and
 - (b) at the expiration of forty eight hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.
- 7.5 In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and

delivered into the custody of the postal authority in a prepaid first class or recorded delivery envelope (if appropriate).

8 Jurisdiction

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

9 Contracts (Rights of Third Parties) Act 1999

The provision of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed.

IN WITNESS whereof this Deed has been duly executed as a Deed the day and year first above written

EXECUTED as a **DEED AND DELIVERED** by
(but not until the date hereof) with the Common
Seal of **BARNESLEY COLLEGE** in the presence
of:



Governor/Authorised Signatory

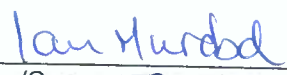


Governor/Authorised Signatory

EXECUTED as a **DEED** by
MILLER HOMES LIMITED
acting by:



~~Director~~ Attorney



Director/Company Secretary
Attorney