DATED 13th July 2012

PLANNING AGREEMENT

between

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

(2) GLEESON DEVELOPMENTS LIMITED

Planning Obligation Agreement under
Section 106 Town & Country Planning Act 1990

relating to land at

former Moorlands Plastics Moorland Avenue Barnsley South Yorkshire S70 6PQ

A.C. Frosdick, LL.B. DipLG,
Borough Secretary,
Town Hall,
Barnsley S70 2TA.
Ref PG/254/00288

THIS DEED is made the 13th day of July 2012

BETWEEN

1) BARNSLEY METROPOLITAN BOROUGH COUNCIL of 1 Gateway Plaza, Sackville St, Barnsley, South Yorkshire S70 ("the Council")

2) GLEESON DEVELOPMENTS LIMITED whose registered office is at Sentinel House Harvest Crescent Ancells Business Park, Fleet, Hampshire GU51 2QG (Company Registration Number; 00848808) ("the Owner")

RECITALS

(A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and by whom the obligations and covenants contained in this Deed are enforceable

(B) The Owner is the freehold owner of the land registered at the Land Registry under title number SYK588918.

(C) The Owner has submitted the Planning Application to the Council for the residential development of the Land

(D) The Planning Application has been granted Planning Permission subject to conditions.

OPERATIVE PART

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Deed the following terms shall have the following meanings: -

"1972 Act"	The Local Government Act 1972
" 1990 Act"	The Town and Country Planning Act 1990 (as amended)
" 2000 Act"	The Local Government Act 2000

"Affordable Housing"	Has the meaning given to it in annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government 2012
"Affordable Housing Commuted Sum"	Means £187,000 (one hundred and eighty seven thousand pounds) to be used towards the provision of Affordable Housing within or within Urban Barnsley
"Affordable Housing Units"	Means the Affordable Rent Dwellings and the Intermediate Dwellings to be provided in accordance with Schedule 1
"Affordable Rent Dwellings"	Has the same meaning as the term Affordable Rent contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises four 2 bedroomed houses being plots 19, 20, 27 and 28 shown on the site layout plan submitted with the Planning Application
"the Chargee"	Means any mortgagee or charge of the RSL or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
"the Chargee's Duty"	Means the tasks and duties set out in paragraph 2 of the First Schedule
"Commencement of Development"	means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the 1990 Act save that for the purposes of this Deed the term is not to include operations in connection with site clearance, demolition, archaeological investigation, investigations for the

	purposes of assessing contamination, or for assessing the need for any diversion and laying out of services and the erection of means of enclosure for the purposes of site security and/or the display of advertisements and the expressions "Commence" and "Commence Development" is to be construed accordingly
"Completed" and "Completion"	In respect of a Dwelling, the issue of a Final Certificate under the Building Act 1984
" Development"	Means the development the subject of the Planning Permission
"Greenspace Commuted Sum"	means the sum of £21,000 (Twenty One Thousand Pounds)
"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"	4% above the base rate published by the Bank of England from time to time
"Intermediate Dwelling"	Is a shared ownership dwelling as referred to in the definition of the term Intermediate Dwelling contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework and comprises one 3 bedroomed house being plot 11 shown on the site layout plan submitted with the Planning Application.
"Land"	Means the land at former Moorlands Plastics, Moorland Avenue Barnsley S70 6PQ registered under title number SYK588918 and

	shown for identification purposes edged red on Plan 1 annexed hereto
"Occupation"	Means occupation of a Residential Unit for any purpose 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 relating to security operations and "Occupied" and "Occupy" shall be construed likewise.
"Plan 1"	Means the plan marked Plan 1 attached
"Planning Permission"	Means the planning permission granted pursuant to the Planning Application .
"Planning Application"	Means the application for planning permission for residential development of the Land and allocated the Council's reference number 2012/0388
"Practical Completion"	means issue of a certificate of practical completion by the Owner's architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect;
"Protected Tenant"	Any tenant who: (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 (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit ;or (c) has been granted a shared ownership

	by a RSL (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the RSL) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the RSL all the remaining shares so that the tenant owns the entire Affordable Housing Unit
"Public Open Space Commuted Sum"	Means the sum of £56,896.56 (fifty six thousand eight hundred and ninety six pounds and fifty six pence)
"Residential Units"	Means all of the Dwellings, excluding the Affordable Housing Units and "Residential Unit" shall be construed accordingly
"RSL"	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 Regulation Committee of the Homes and Communities Agency, referred to as the Regulator of Social Housing in other enactments or instruments, pursuant to section 116 of the 2008 Act and has not been removed from the register pursuant to section 118 of the 2008 Act who is approved by the Council (such approval not to be unreasonably withheld or delayed)

1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed

1.3. Where in any Schedule or part of any Schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that Schedule or (if relevant) part of that schedule

1.4. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them and in respect of the Council shall include the successors to their respective statutory functions

1.5. Words importing the singular meaning where the context so admits include the plural meaning and vice versa

1.6. 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

1.7. 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

1.8. 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. LEGAL BASIS

2.1. This Deed is made pursuant to Section 106 of the 1990 Act section 2 of the 2000 Act and section 111 of the 1972 act and all other enabling powers

2.2. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council as Local Planning Authority against the Owner.

3. **CONDITIONALITY**

3.1. This Deed is conditional upon:

3.1.1. the grant of the Planning Permission

3.1.2. the Commencement of Development save for the provisions of clauses 4.1.3, 4.1.6 and 6.1.2, which shall come into affect immediately upon completion of this Deed.

4. **AGREEMENTS AND DECLARATIONS**

4.1. The parties agree and declare that:

4.1.1. the provisions of this Deed shall not be enforceable by any person who is not a party to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

4.1.2. The covenants given in this Deed shall cease to have effect if

4.1.2.1. the Planning Permission is quashed revoked or otherwise withdrawn at any time; or

4.1.2.2. the Planning Permission expires prior to the Commencement of Development; or

4.1.2.3. the Planning Permission is modified by any statutory procedure without the consent of the Owner

4.1.3. this Deed shall be registrable as a local land charge by the Council as local planning authority

4.1.4. Following the performance and satisfaction of all of the obligations contained in this Deed the Council shall upon written request from the Owner effect the cancellation of all relevant entries made in the Register of Local Land Charges in respect of this Deed

4.1.5. no person or party shall be liable for a breach of the restrictions and obligations contained in this Deed after that person or party has parted with all of his interest in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting

4.1.6. the Owner agrees to give the Council immediate written notice of any change in ownership of its legal interest in the Land occurring before all the obligations under this Deed have been discharged save in respect of the sale of the completed Dwellings to consumers and the sale of Lands for infrastructure purposes to any supplier of services for the general use of the Development or any material part of it

4.1.7. 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) granted (whether or not on appeal) after the date of this Deed

4.1.8. nothing contained in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local authority and their rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not parties to this Deed

4.1.9. if any severable provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired

4.1.10. No waiver (whether expressed or implied) by the Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

4.1.11. the obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated to that statutory undertaker nor enforceable against any owner-occupier for the time being of a completed dwelling on the Land or their successors in title.

4.1.12. where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed

4.1.13. any notices requests demands or other written communications pursuant to this Deed 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

4.1.14. if any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date payment is made

4.1.15 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

5. **COUNCIL'S COVENANTS**

The Council covenants to comply with its obligations set out in this Deed (including any obligations contained in the Schedules).

6. **OWNER'S COVENANTS**

6.1.1. The Owner covenants with the Council to observe and perform the obligations as set out in the First and Second Schedules

6.1.2. The Owner covenants to pay to the Council on the completion of this Deed the reasonable legal costs of the Council in preparing, negotiating and completing this Deed of £1000

7. **JURISDICTION**

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

8. **EXECUTION AND DELIVERY**

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed

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

FIRST SCHEDULE

The Owner covenants with the Council to observe and perform the following obligations

Affordable housing

1. The Affordable Rent Dwellings shall not be used or occupied other than as Affordable Rent Dwellings and the Intermediate Dwellings shall not be used or occupied other than as Intermediate Dwellings save that the Affordable Rent Dwellings may be used as Intermediate Dwelling and the Intermediate Dwellings may be used as Affordable Rent Dwellings with the written permission of the Assistant Director of Planning and Regulatory Service and further this obligation shall not be binding on

   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
   1.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty; or
   1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor

2. The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than four months' prior notice to the Council of its intention to dispose and:

   2.1 in the event that the Council responds within two months 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

   2.2 if the Council does not serve its response to the notice served under paragraph 2 within two months 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.

2.3 if the Council or any other person cannot within two months of the date of service of its response under paragraph 2.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 2.1 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule as open market dwellings.

3. Not to cause or permit more than 50% of the Residential Units to be Occupied until the Affordable Housing Units have been constructed to the same standard as the Residential Units and level 3 of the Code for Sustainable Homes and transferred to an RSL on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.

4. If the Affordable Housing Units have not been transferred to the RSL within eighteen calendar months of the date of Practical Completion of all the Affordable Housing Units or such earlier date agreed in writing by the Council and the Owner has produced evidence in writing to the reasonable satisfaction of the Council that they have made all reasonable endeavours to secure a transfer of the Affordable Housing Units to an RSL then the Owner will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule as open market dwellings subject to prior payment by the Owner to the Council of the Affordable Housing Commuted Sum

5. The Council shall act reasonably in considering any request by the Owner for a variation of the period of 18 months specified in paragraph 4 above and if provided with evidence to the reasonable satisfaction of the Council that all reasonable endeavours to secure a transfer of the Affordable Housing Units to an RSL have been made, and that it is not financially viable to continue offering the affordable housing to RSLs the Council shall agree to the variation requested

6. Any agreement to sell or transfer the Affordable Housing Units to the RSL shall contain the following provisions:-

a. The grant by the Owner of all rights of access and passage of services and other rights reasonably necessary to the beneficial enjoyment of the Affordable Housing Units

b. 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 Dwellings on the Land.

7. The Affordable Housing Units shall be located in the positions identified on the site layout plan submitted with the Planning Application unless otherwise approved in writing by the Local Planning Authority

SECOND SCHEDULE

Public Open Space and Greenspace

The Owner hereby covenants with the Council to observe and perform the following obligation:-

1. Not to Commence Development until the Public Open Space Commuted Sum shall have been paid to the Council in full provided that if the Council shall not have expended or committed to expend any or all of the Pubic Open Space Commuted Sum for the purpose of the provision or improvement of public open space (namely the provision and maintenance of a minimum LEAP standard children's play area or general green space improvements within 800 metres of the boundary of the development site) within the period of 15 years beginning on the date that the Public Open Space Commuted Sum was paid to them then so much of the Public Open Space Commuted Sum that remains unspent shall be refunded by the Council to the Owner together with any interest accrued thereon upon written request.

2. Not to Commence Development until the Greenspace Commuted Sum shall have been paid to the Council in full provided that if the Council shall not have expended or committed to expend any or all of the Greenspace Commuted Sum for the purpose of the maintenance or improvement of functioning greenspace (namely GS1616 (Woodland Drive) or within 800 metres of the boundary of the development site) within the period of 15 years beginning on

the date that the Greenspace Commuted Sum was paid to them then so much of the Greenspace Commuted Sum that remains unspent shall be refunded by the Council to the Owner together with any interest accrued thereon upon written request.

THE COMMON SEAL OF)

BARNSLEY METROPOLITAN)

BOROUGH COUNCIL was affixed in the presence of:)

[redacted]

Authorised Signatory:

No.2204
IN REGISTER

EXECUTED AS A DEED by)

GLEESON DEVELOPMENTS LIMITED)

Acting through a Director)

[redacted]

in the presence of a witness)

[redacted]

Witness Name:

Address: