

DATED 9th January 2017/8 <sup>BT</sup>

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

JAGUAR WORTLEY LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to development on land at Lidgett Lane Pilley Barnsley S75 3AG, in the  
County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,  
Director of Legal and Governance  
Town Hall,  
Barnsley,  
S70 2TA.

THIS AGREEMENT (signed as a deed) is made the 9<sup>th</sup> day of January 2017<sup>8</sup>

**BETWEEN: -**

- (1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**Council**") of the first part; and
- (2) **JAGUAR & WORTLEY DEVELOPMENTS LIMITED** (Company Registration No: 08733656) whose registered office is situate at 201 High Street Ecclesfield Sheffield S35 9XB, ("**Owner**") of the second part

**WHEREAS**

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.
2. The Owner is the freehold owner of the Site registered at H.M. Land Registry under title number SYK378237
3. The Application was submitted to the Council by the Owner for planning permission for the Development.
4. The Council would not have been willing to grant the Planning Permission but for this Deed.
5. The Owner by entering into this agreement does so to create planning obligations in respect of the Site and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained
6. The Owner has previously entered into two section 106 agreements dated 27<sup>th</sup> November 2014 relating to the Site and outline planning permission 2013/1006 and land nearby ("the Tankersley Site") and outline planning permission 2013/1007 both of which amongst other things required the Site to provide either eight or ten affordable housing units off-site at the former Rockingham Colliery Sheffield Road Birdwell ("the Birdwell Site") pursuant to the Birdwell Planning Permission depending upon whether the outline planning permission relating to the Site or the Tankersley Site was implemented first
7. The Tankersley Site was subsequently granted another outline planning permission under 2016/0952 for an increased number of properties. The related 2016/0952 Section 106") fixed the number of properties to be delivered on the Birdwell Site under the section 106 at ten. Development on the Tankersley Site has subsequently commenced pursuant to 2016/0952

8. Consequently the off-site affordable housing obligations on the Birdwell Site in this section 106 are intended to be fixed at eight (additional to the ten being delivered on the Birdwell Site pursuant to the 2016/0952 section 106) to ensure eighteen affordable housing units are delivered on the Birdwell Site in addition to three on site affordable housing units.

## INTERPRETATION

In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

**"1990 Act"** means the Town and Country Planning Act 1990 as amended;

**"2016/0952 Section 106"** means the section 106 entered into by the Council the Owner and BDW Trading Limited dated 24 January 2017 pursuant to planning permission ref 2016/0952

**"Affordable Housing"** has the same meaning given to it in annex 2 of the National Planning Policy Framework March 2012

**"Affordable Housing Commuted Sum"** means the sum of £284,539 (two hundred and eight four thousand five hundred and thirty nine pounds only)

**"Affordable Housing Units"** means three Dwellings of Affordable Housing comprising of Affordable Rented Dwellings and/or Intermediate Dwellings and/or Social Rented Dwellings the precise proportion to be determined in writing by the Council and provided in accordance with paragraph 1 of the First Schedule and "Affordable Housing Unit" shall be construed accordingly

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

**"Affordable Rented Dwellings"** has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework to be constructed on plots to be agreed in writing with the Council such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy, and Affordable Rented Dwelling shall be construed accordingly;

**"Affordable Housing Commuted Sum Calculation"** means a sum to be calculated by reference to the difference between the open market value of the applicable affordable housing units at the time the relevant affordable housing units are sold and the estimated lump sum payment that would have been paid to the Owner by a Registered Provider in respect of the relevant affordable housing units

**"Birdwell Affordable Housing Commuted Sum"** means £663,924 (six hundred and sixty three thousand nine hundred and twenty four pounds only)

**“Birdwell Affordable Housing Units”** means eight affordable housing units to be built on the Birdwell Site the plot locations to be agreed in writing with the Council and for the avoidance of doubt the plots cannot be the same plots as those agreed under the definition of Affordable Housing Tankersley Units within the 2016/0952 Section 106 and must be agreed after the Affordable Housing Tankersley Units plot locations have been agreed

**“Birdwell Site”** means the former Rockingham Colliery Sheffield Road Birdwell referred to as the Affordable Housing Sale Land in the 2016/0952 Section 106

**“Chargee”** means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

**“Commencement of Development”** means the date upon which any material operation within the meaning of Section 56 (4) of the 1990 Act forming part of the Development begins to be carried out;

**“Council’s Approved List”** means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Limited; Guinness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Together Housing Association Limited ; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time;

**“Development”** means the development of the Site in accordance with the Planning Permission;

**“Dwelling”** means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;

**“Education Contribution”** means the sum of £112,816 (one hundred and twelve thousand eight hundred and sixteen pounds pounds) towards the provision of and/or improvement to secondary school education provision serving the occupants of the Development;

**“Head of Planning and Building Control”** means the Head of Planning and Building Control of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Deed;

**“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 the rate of 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;

(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;

**“Public Open Space Contribution”** means £84,504.05 (eighty four thousand five hundred and five pounds and five pence) to be applied towards the provision and/or improvement of public open space within five miles from the boundary of the Site unless the Council is unable to identify any suitable projects within a reasonable period of time in which case to be applied for the same purposes within the administrative area of the Council

**“Registered Provider”** means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council;

**“Roadway”** has the same meaning as the definition of “roadway” in 2016/0952 Section 106

**“Site”** means the land at Lidgett Lane Pilley Barnsley shown edged red on Plan 1;

**“Social Rented Dwellings”** means has the same meaning as the term “social rented housing” contained in the definition of Affordable Housing contained within the glossary at Annex 2 of the National Planning Policy Framework

**“the Tankersley Site”** has the same meaning as the definition “the Tankersley Land” in the 2016/0952 Section 106

**“Working Day”** means Monday to Friday in each week excluding bank and other public holidays.

## **OPERATIVE PROVISIONS**

- 2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are entered into pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and all other enabling powers and create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner. For the avoidance of doubt the covenants, restrictions and requirements will not be enforced or enforceable against the occupier of any of the Dwellings or their mortgagee.

**"Intermediate Dwellings"** has the same meaning as the term "intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework to be constructed on such locations and / or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available to persons in accordance with the Registered Provider's policy;

**"Market Rent"** means the average local market rent for a Dwelling in Barnsley with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion;

**"Occupation"** means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expression "Occupants" and "Occupied" shall be construed accordingly;

**"Plan 1"** means the plan annexed hereto and marked "Plan 1";

**"Plan 2"** means the plan submitted with the application for Planning Permission given the reference "0125/14/01/100 - Rev T- Site Layout Plan" annexed hereto and marked "Plan 2"

**"Planning Permission"** means a planning permission granted under reference number 2016/1308 pursuant to an application for the erection of 49 Dwellings on the Site;

**"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"** means any tenant including their successors in title, charges, mortgagees, receivers and administrative receivers) 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 acquires the relevant Affordable Housing Unit pursuant to a voluntary sales policy of his landlord;; or
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or

# PLAN 1

## Notes

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## SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION

IN ADDITION TO THE HAZARDS/RISKS NORMALLY ASSOCIATED WITH THE TYPES OF WORK DETAILED ON THIS DRAWING, NOTE THE FOLLOWING:

### CONSTRUCTION

n/a

### MAINTENANCE / CLEANING

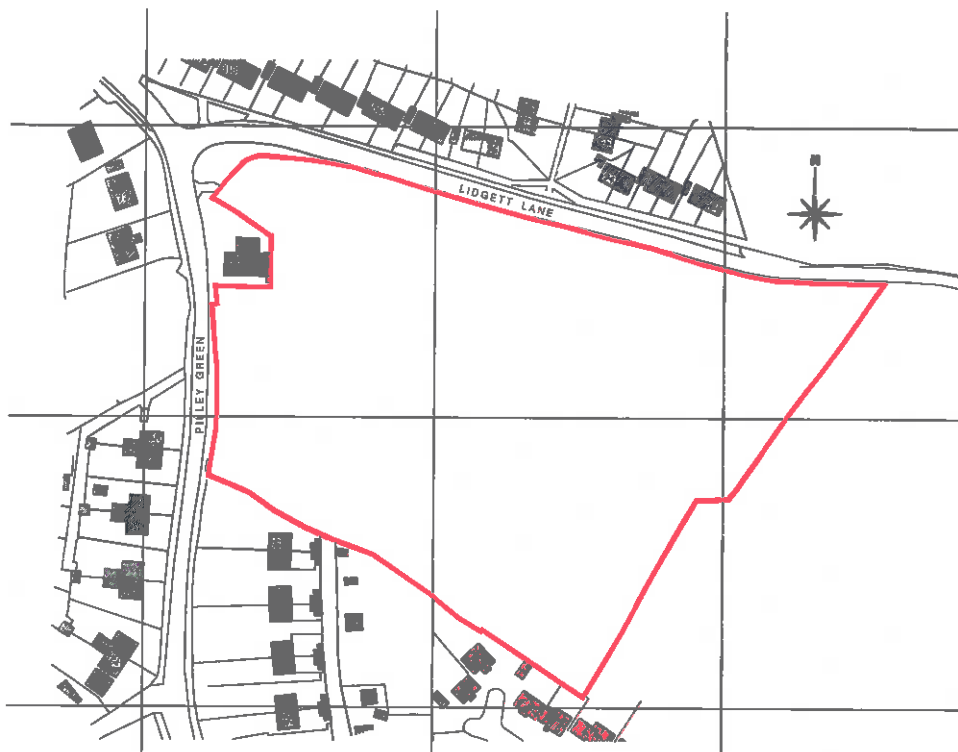
n/a

### DECOMMISSIONING / DEMOLITION

n/a

IT IS ASSUMED THAT ALL WORKS WILL BE CARRIED OUT BY A COMPETENT CONTRACTOR WORKING, WHERE APPROPRIATE, TO AN APPROVED METHOD STATEMENT

This drawing is a feasibility sketch only and no design assessment has been undertaken at this stage for a CDM Coordinator. It is based on topographical survey by HHH Surveys Ltd - drawing no. WC/313/SP dated 7.11.14 and O.S. Plan information. Licence No. 100020449 and is subject to ground investigation, confirmation of all boundaries (ownership) and all Statutory approvals. Position of all existing services to be confirmed on site prior to construction.



Rev: Date: Drawn: Description: Checked:

PLANNING			
	Client: The Wortley Group		
	Project: Residential Development off Lidgett Lane, Pilley Green and New Road, Pilley		
	Title: Site Location Plan		
	Scale: 1:2500 @ A4	Drawn by: mb	Date: Jan 2015
	Drawing no: 0125/14/02/01	Rev: -	Checked: -
24a St. Andrew's Road, Sheffield, S19 9AL T: 0114 226 0288 F: 0114 226 0254 E: office@whitedesign.co.uk U: www.whitedesign.co.uk			





- 2.3 The expressions "the Council" and "the Owner" shall include their successors in title and assigns.
- 2.4 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.
- 2.5 This Deed shall have effect from the date of this Agreement
- 2.6 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Owner other than a non-material amendment under section 96A of the 1990 Act this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date
- 2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.
- 2.8 The obligations hereby created shall be registered as a Local Land Charge.
- 2.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed
- 2.11 Not used
- 2.12 No person shall be liable for breach of any covenant contained in this Deed which relates to land that they do not have an interest in.
- 2.13 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deeds 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 Head of Planning and Building Control. 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.

**3. EDUCATION CONTRIBUTION**

The Owner covenants to pay to the Council the Education Contribution within twenty eight days from the Commencement of Development

**4 AFFORDABLE HOUSING**

The Owner covenants to observe and perform the obligations in the First Schedule

**5 PUBLIC OPEN SPACE CONTRIBUTION**

The Owner covenants to pay the Public Open Space Contribution to the Council within twenty eight days from the Commencement of Development

**6. INDEXATION**

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. INTEREST**

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.

## First Schedule

### Affordable Housing

The Owner covenants to observe and perform the following obligations

- 1 **On Site Affordable Housing**
  - 1.1 The Affordable Rented Dwellings shall not be used or Occupied other than as Affordable Rented Dwellings and the Intermediate Dwellings shall not be used or Occupied other than as Intermediate Dwellings and the Social Rented Dwellings shall not be used or Occupied other than as Social Rented Dwellings unless with the written permission of the Head of Planning and Building Control.
  - 1.2 The plot locations of the Affordable Housing Units are plots 15, 16 and 17 as shown on Plan 2 in writing by the Council prior to the Commencement of Development.
  - 1.3 Not to cause or permit more than 50% of the Dwellings to be Occupied until the Affordable Housing Units have been constructed to Practical Completion and transferred to a Registered Provider on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.
  - 1.4 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:
    - 1.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and
    - 1.4.2 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.
  - 1.5 The Owner shall provide the Council notice within 14 days of the Practical Completion of the Affordable Housing Units.
  - 1.6 The Owner shall use its reasonable endeavours to market the Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval (such approval not to be unreasonably withheld or delayed) ("**the Initial Registered Provider Transfer Terms**"). For the avoidance of doubt, the Owner 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 Owner from time to time.
  - 1.7 The Owner will thereafter use reasonable endeavours to exchange contracts with the Registered Provider agreed under paragraph 1.6 above for the sale of the Affordable Housing Units and will keep the Council informed on the progress.

- 1.8 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner 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 Owner from time to time) and will keep the Council informed of progress.
- 1.9 If the Owner has complied with paragraphs 1.6 to 1.8 and the Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Affordable Housing Units or by the date of Occupation of 50% of the Market Sale Units the Owner shall pay the Affordable Housing Commuted Sum to the Council and shall thereafter be free to dispose of the Affordable Housing Units on the open market free from the restrictions within this paragraph 2 and if any Affordable Housing Units have at such date been sold to a Registered Provider the sum that shall payable to the Council shall be calculated in accordance with the Affordable Housing Commuted Sum Calculation in respect of those Affordable Housing Units not already sold to a Registered Provider.
- 1.10 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission and the appropriate design and space standards set out in the "South Yorkshire Residential Design Guide 2011" (or any guidance that supplements or replaces it) unless otherwise agreed in writing with the Council and shall provide each Affordable Housing Unit with all necessary rights of access and egress from the same together with all the essential water, sewerage and electricity supplies without the imposition of any financial cost or the creation of any ransom element.
- 1.11 The obligations in this Deed shall not be binding on:
- 1.11.1 any Protected Tenant or any mortgagee or chargee, receiver or administrative receiver 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 or receivers of administrative receivers ;
  - 1.11.2 any Chargee,subject to paragraph 1.11 , or
  - 1.11.3 any purchaser from a mortgagee or chargee, of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor or any person deriving title from that individual mortgagor.
- 1.12 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 Days prior notice to the Council of its intention to dispose and:
- 1.12.1 in the event that the Council responds within 30 Days from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and shall use its best endeavours to secure such transfer;
  - 1.12.2 if the Council does not serve its response to the notice served under paragraph 1.13.1 of this Schedule within 30 Days then the Chargee shall be entitled to

dispose of the Affordable Housing Units free of the restrictions set out in this Schedule;

- 1.12.3 if the Council or any other person cannot within 30 Days of the date of service of its response under paragraph 1.13.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.13 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

**PROVIDED THAT** at all times the rights and obligations in this paragraph 1.11 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must have regard to the interest of the Chargee.


## **2 Offsite Affordable Housing**

- 2.1 Not to cause or permit more than 50% of the Dwellings to be Occupied until the Birdwell Affordable Housing Units have been constructed to Practical Completion and transferred to a Registered Provider on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement
- 2.2 The Owner shall construct the Birdwell Affordable Housing Units and any necessary infrastructure required to ensure that the Birdwell Affordable Housing Units are completed in a good and workmanlike manner and in accordance with all necessary consents including
- (a) entering into any necessary agreements and the grants or reservations of rights
  - (b) site preparation including remediation as necessary and laying the tarmac base for the Roadway and installing Service Media for foul and surface water drainage and gas water electricity and other utilities
  - (c) entering into an Agreement under section 38 Highways Act 1980 to secure the satisfactory construction and subsequent adoption of the Roadway
  - (d) entering into (if required by the Drainage or Water Authority) an Agreement under section 104 Water industry Act 1991 for adoption of such foul or surface water drainage on the Birdwell Site as is adoptable by Yorkshire Water Services Limited
- 2.2 The Owner shall use reasonable endeavours to market the relevant Birdwell Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of Birdwell Affordable Housing Units to the relevant Registered Provider inform the Council of the identity of the Registered Provider appearing on the Council's Approved List ("the Initial Registered Provider Transfer Terms")
- 2.3 The Owner will thereafter use all reasonable endeavours to exchange contracts with the Registered Provider specified by the Owner for the sale of the Birdwell Affordable Housing Units and will keep the Council informed on the Owner's progress.

- 2.4 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use reasonable endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List and will keep the Council informed of the Owner's progress.
- 2.5 The Birdwell Affordable Housing Units shall not be used other than for Affordable Housing.
- 2.6 If the Owner has complied with paragraphs 2.1 to 2.5 and the Birdwell Affordable Housing Units have not been contracted for sale to the Registered Provider within nine calendar months of the date of Practical Completion of the Birdwell Affordable Housing Units or by the date of Occupation of 50% of the Market Sale Units the Owner shall pay the Birdwell Affordable Housing Commuted Sum to the Council and shall thereafter be free to dispose of the Birdwell Affordable Housing Units on the open market free from the restrictions within this paragraph 2 and if any Birdwell Affordable Housing Units have at such date been sold to a Registered Provider the sum that shall payable to the Council shall be calculated in accordance with the Affordable Housing Commuted Sum Calculation in respect of those Birdwell Affordable Housing Units not already sold to a Registered Provider.

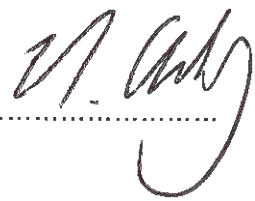
**IN WITNESS** whereof the parties hereto have executed this Deed the day and year first before written

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

  
Director of Legal and Governance/Authorised Signatory  
PRB 5/9/17 MW 41



**EXECUTED as a DEED** (but not )  
delivered until the date hereof) by )  
**JAGUAR & WORTLEY DEEVLOPMENTS LIMITED** )  
acting by a Director )

  
.....

in the presence of

Witness Signature:

*A Lambert*

Witness Name:

ANGELA LAMBERT

Witness Address:

SUNNY BANK VIEW, SHEFFIELD ROAD, HIGH GREEN SHEFFIELD,  
S35 4JR

Witness Occupation:

OFFICE MANAGER

