

**AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

relating to land at

**junction with Carr Road and Hollin Busk Lane, Sheffield S36 1GH
Planning Application 17/04673/OUT**

between

THE SHEFFIELD CITY COUNCIL (1)

- and -

PENNY SAMANTHA HILL & DEBBIE KIMBERLEY HILL (2)

- and -

COLIN BRIAN CRAWSHAW (3)

- and -

**JACQUELINE ANN MILTON & SAMANTHA LOUISE MIDDLETON & FIONA JENNY
DENHAM (4)**

- and -

HALLAM LAND MANAGEMENT LIMITED (5)

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

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Ref: CAS/HAL00487.96

THIS DEED is made on

2021

BETWEEN:

- (1) **SHEFFIELD CITY COUNCIL** of Town Hall, Pinstone Street, Sheffield S1 2HH ("**the Council**");
- (2) **PENNY SAMANTHA HILL** of 9999 Braddock Drive, Culver City, Los Angeles, California 90232, United States of America and **DEBBIE KIMBERLEY HILL** of 12 Tortmaynes, Todwick, Sheffield S26 1JE ("**the First Landowner**"); and
- (3) **COLIN BRIAN CRAWSHAW** of The Flat, Aston Wood Golf Club, Blake Street, Sutton Coldfield B74 4EU ("**the Second Landowner**"); and
- (4) **JACQUELINE ANN MILTON** of Royd Cottage, Carr Road, Deepcar, Sheffield S36 2NR and **SAMANTHA LOUISE MIDDLETON** of 5 Duke Street, Alderley Edge SK9 7HX and **FIONA JENNY DENHAM** of 2 Brick Row, Crane Moor Nook, Crane Moor, Sheffield S35 7AN ("**the Third Landowner**"); and
- (5) **HALLAM LAND MANAGEMENT LIMITED** (Company Number 2456711) whose Registered Office is at Banner Cross Hall, Ecclesall Road South, Sheffield S11 9PD ("**the Developer**").

BACKGROUND

- (a) For the purposes of the 1990 Act, the Council is the local planning authority and the local highway authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Deed.
- (b) The First Landowner is the freehold owner of the part of the Site registered with HM Land Registry (title absolute) under title registration number SYK161165 subject to a unilateral notice in respect of a promotion agreement dated 15 March 2016 made between the First Landowner and the Developer, but free from encumbrances that would prevent the First Landowner entering into this Deed.

- (c) The Second Landowner is the freehold owner of those parts of the Site registered with HM Land Registry (title absolute) under title registration numbers SYK178781 and SYK217495 subject to a unilateral notice in respect of a promotion agreement dated 15 March 2016 made between the Second Landowner and the Developer, but free from encumbrances that would prevent the Second Landowner entering into this Deed.
- (d) The Third Landowner is the freehold owner of the part of the Site registered with HM Land Registry (title absolute) under title registration number SYK404124 subject to a unilateral notice in respect of a promotion agreement dated 15 March 2016 made between the Third Landowner and the Developer, but free from encumbrances that would prevent the Third Landowner entering into this Deed.
- (e) The Developer submitted the Application to the Council for the Development and intends to carry out the Development on the Site.
- (f) The Council has refused to grant the Planning Permission for the Development. The Appeal was lodged on behalf of the Developer and the Landowners in relation to the Council's refusal of the Application.
- (g) Having regard to the provisions of the development plan and the planning considerations affecting the Site, the planning obligations in this Deed were considered necessary by the Parties in the interests of proper planning.
- (h) The Parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Landowners and their successors in title.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 In this Deed, the following words and expressions have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990;

"Affordable Dwellings" means the Dwellings to be delivered as Affordable Housing comprising of Affordable Rented Dwellings and/or Social Rented Dwellings and as Shared Ownership Housing Dwellings which will be delivered on the Site in accordance with the Affordable Housing Scheme and reference to **"Affordable Dwelling"** shall

be construed accordingly;

- "Affordable Housing"** means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework;
- "Affordable Housing Scheme"** means the scheme to be agreed between the Landowners and the Council in writing relating to the delivery of Affordable Dwellings such scheme to include the details referred to in Schedule 2 and any amendment to such scheme agreed in writing by the Council;
- "Affordable Rent"** means a total rent (including the Estate Service Charge) which shall be determined in accordance with the government's rent policy and associated guidance relating to affordable rent as published from time to time by the government or Homes England or any successor thereto but which at no time will equate to more than 80% of the local market rent in any event;
- "Affordable Rented Dwellings"** means an Affordable Dwelling let by a Registered Provider to a Nominated Person at an Affordable Rent;
- "Affordable Tenure Mix"** means the tenure mix approved in the Affordable Housing Scheme comprising a combination of:
- (i) 70% Affordable Rented Dwellings and/or Social Rented Dwellings; and
 - (ii) 30% Shared Ownership Housing Dwellings
- unless otherwise agreed in writing by the Council;
- "Allocations Policy"** means the Allocations Policy published by the Council in April 2016 under s166A Housing Act 1996 or any future policy or guidance document which replaces or supplements it;
- "Approval of Reserved Matters"** means an approval by the Council of one or more reserved matters (as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England)

Order 2015) reserved for approval by the Planning Permission;

- "Appeal"** means the appeal (PINS Reference No. APP/J4423/W/21/3267168) lodged on behalf of the Developer and the Landowners against the Council's refusal on 20th July 2020 to grant planning permission for the Application;
- "Application"** means the application for outline planning permission submitted to the Council on 14th November 2017 for the Development of the Site for up to 85 dwellings including open space (amended description) which was validated on 15th December 2017 and given reference 17/04673/OUT in relation to land at Junction with Carr Road and Hollin Busk Lane, Sheffield S36 1GH;
- "Bus Stop Upgrades Contribution"** means the sum of £27,000.00 (twenty seven thousand pounds to be applied by the Council towards procuring the upgrade of bus stops within the vicinity of the Development the need for which is to address impacts arising as a result of the Development;
- "Chargee"** means 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 including a housing administrator (however appointed whether pursuant to statutory powers or the provisions of any mortgage or charge as required by Court Order or otherwise) including a housing administrator;
- "Commencement Date"** means the date on which the Development commences by the carrying out on the Site pursuant to or in purported implementation of the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and **"Commence"**, **"Commences"** and **"Commencement"** shall be construed accordingly **SAVE THAT** for the purposes of this Deed the following shall not constitute a *"material operation"*:

- works of demolition, groundwork or site clearance;

- remediation works;
- environmental investigation and site and soil surveys;
- archaeological investigation;
- erection of temporary fencing to site boundary; and
- laying of services;

- "Completed"** means the stage when an Affordable Dwelling has been constructed and is ready for first Occupation;
- "Completion Certificate"** means a certificate(s) to be issued by the Council confirming that the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features have been completed to the satisfaction of the Council and in accordance with any conditions attached to the Planning Permission or the Open Space Scheme and Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features;
- "Contract"** means a contract which requires a Registered Provider to:
- enter into a Nomination Agreement;
 - provide the Affordable Housing Units in accordance with the Affordable Housing Tenure Mix; and
 - apply all Staircasing Sums received towards Affordable Housing in the Council's administrative district;
- "Council Land"** means the land owned by the Council as shown edged in blue on Plan 3 and reference to **"Council's Land"** shall be construed accordingly;
- "Decision Letter"** means the letter issued by the Inspector or the Secretary of State determining the Appeal;
- "Development"** means the development undertaken on the Site pursuant to the

Planning Permission as specified in the Application;

“Drainage Management Company”

means either the Council or a properly constituted company registered at Companies House which may already be in existence or which may be formed by the Landowners for the purposes of carrying out future maintenance of the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features as set out in paragraph 6 of Schedule 2 and:

- (i) which is incorporated in England, Wales or Scotland;
- (ii) which has its registered office in England; and
- (iii) whose primary objects permit it to maintain and renew the On-Site Sustainable Drainage Features and if applicable the Off-Site Sustainable Drainage Features;

"Dwelling"

means any house apartment flat or maisonette or other building or part thereof proposed to be occupied as a single unit of residential accommodation which is constructed on the Site as part of the Planning Permission and reference to "**Dwellings**" shall be construed accordingly;

“Eligible Person”

means a person who has demonstrated to the Registered Provider that they are in need of Affordable Housing and will occupy a Shared Ownership Unit as their sole or main residence and reference to "**Eligible Persons**" shall be construed accordingly;

“Estate Service Charge”

mean an estate service charge forever charged on and issuing out of the Site and representing a fair and proper proportion of the Expenditure applicable to the particular Dwelling and payable annually to the Management Company in respect of its administration and of insuring maintaining repairing renewing as necessary and generally managing the Open Space and the Species Rich Grassland in accordance with the Planning Permission and the Open Space Scheme;

“Estate Service Charge Terms”

means the terms to be included in the legal transfer or lease of each Dwelling whereby the transferee (and its successors in title)

covenant to pay the Estate Service Charge;

“Expenditure”

means the aggregate of all costs charges expenses and outgoings whatsoever incurred by the Management Company in relation to the insuring maintaining repairing renewing as necessary and generally managing the Open Space and the Species Rich Grassland in accordance with the Planning Permission and the Open Space Scheme;

“Final Certificate”

means a certificate(s) to be issued by the Council confirming that the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features have been completed to the satisfaction of the Council and in accordance with any conditions attached to the Planning Permission or the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features and have been maintained by the Landowners for a period of 12 (twelve) months from the date of the relevant Completion Certificate;

"GIA"

means gross internal floor space (including the internal floor space of any external garage or external storage area);

"Homes England"

means the Homes and Communities Agency trading as Homes England or any bodies undertaking the existing functions of Homes England within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act);

"Index"

means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used;

- “Index Linked”** means increased (if applicable) in proportion to movements in the Index between the date of this Deed and the date the particular payment is made;
- "Inspector"** means an inspector appointed by the Secretary of State to determine the Appeal pursuant to Schedule 6, of the 1990 Act;
- "Interest"** means interest at the rate of four per cent per annum above the base lending rate of Barclays Bank plc;
- "Land Drainage Scheme"** means a scheme for the drainage of the Development including groundwater management to be submitted to and approved by the Council in writing pursuant to the provisions of paragraph 6 of Schedule 2;
- "Landowners"** means collectively the First Landowner the Second Landowner and the Third landowner;
- "Landowners' Notice"** has the meaning given in paragraph 8.12 of Schedule 2;
- "LEAP"** means a ‘local equipped area for play’ as defined by Fields in Trust (or such successor body or organisation whose primary objects are protecting and improving outdoor sports and play spaces) including play equipment predominantly for children up to the age of 12 years with seating for accompanying adults that is to be provided within the Open Space;
- “Management Company”** means a limited company or companies registered at Companies House which may already be in existence or which may be formed by the Landowners for the purposes of carrying out future maintenance of the Open Space and the Species Rich Grassland and:
1. which is incorporated in England, Wales or Scotland;
 2. which has its registered office in England, Wales or Scotland; and
 3. whose objects permit it to maintain and manage and where applicable renew the Open Space and the Species

Rich Grassland;

- "Management Scheme"** means the scheme to be prepared and submitted by the Landowners and as agreed in writing by the Council setting out the ongoing works to be undertaken for the management and future maintenance of the Open Space;
- "Monitoring Fee"** means the sum of £5,000.00 (five thousand pounds) payable for the councils monitoring of the obligations in this Deed;
- "MOVA Traffic Signal Contribution"** means the sum of £17,000.00 (seventeen thousand pounds) to be applied by the Council towards the provision of microprocessor optimised vehicle actuation (MOVA) sensors across Carr Road and additional sensors across Manchester Road in the vicinity of its junction with Carr Road in order to incorporate Carr Road into the MOVA software in relation to the Manchester Road / Vaughton Hill junction, together with future maintenance, the need for which is to address impacts arising as a result of the Development;
- "National Planning Policy Framework"** means the National Planning Policy Framework published by the Ministry of Housing, Communities and Local Government in February 2019 (as updated in June 2019) (or any future guidance or initiative that replaces or supplements it);
- "Nomination Agreement"** means a written agreement between the Council and a Registered Provider for the nomination of tenants to Occupy the Affordable Rented Dwelling in accordance with the Allocations Policy and **"Nominated Person"** and **"Nominated Persons"** shall be construed accordingly;
- "Occupation"** means the occupation of any part of the Development for any purpose permitted by the Planning Permission and **"Occupy"** and **"Occupied"** shall be construed accordingly;
- "Off-Site Sustainable Drainage Features"** means the drainage areas located on the Council Land as identified by the Land Drainage Scheme as shown on Plan 2 in Schedule 2;

- "On-Site Sustainable Drainage Features Adoption Sum"** means if applicable the sum of £5,000.00 (five thousand pounds) to be applied by the Council towards adopting the On-Site Sustainable Drainage Features;
- "Off-Site Sustainable Drainage Features Maintenance Sum"** means if applicable the sum of £10,000.00 (Ten thousand pounds) to be applied by the Council towards the future maintenance of the Off-Site Sustainable Drainage Features;
- "On-Site Sustainable Drainage Features Maintenance Sum"** means if the Council are to adopt the On-Site Sustainable Drainage Features a sum of £6,000.00 (six thousand pounds) to be applied by the Council towards the future maintenance and adoption of the On -Site Sustainable Drainage Features and the Off-Site Sustainable Drainage Features;
- "On-Site Sustainable Drainage Features"** means the drainage areas located on the Site as identified by the Land Drainage Scheme;
- "Open Market Dwellings"** means Dwellings constructed on the Site pursuant to the Planning Permission which are not identified as Affordable Dwellings and reference to **"Open Market Dwelling"** shall be construed accordingly;
- "Open Market Value"** means the same definition as is set out in the RICS Valuation – Professional Standards 2014 (the Red Book) as may be updated from time to time or replaced;
- "Open Space"** means all the areas of open space within the Development as shown for illustration purposes on Plan 2 and identified within the Phasing Plan and detailed in the Open Space Scheme and the to be provided including formal and informal recreation areas play equipment, play space, incidental green spaces around the Development outside of residential curtilages, pedestrian and cycle links, wildlife habitats, landscaping belts and drainage areas;
- "Open Space Scheme"** means a scheme approved in writing by the Council in respect of each Phase detailing:
- (i) the size, location and type of Open Space;

- (ii) details and specification for works and materials showing how the Open Space will be graded, drained, landscaped, seeded, planted, laid out and provided fit for use by the public;
- (iii) in relation to play equipment, details of the design and layout of the play area, the construction specification, the safety surfacing, materials and play equipment demonstrating that they meet relevant safety and disability standards together with details of fencing, seating for supervising adults and a buffer zone landscaped with low level planting;
- (iv) specification of the constructions methods and materials to be used;

“Phase”

means in the event that the Development is to be carried out in one or more phases, a parcel of housing development being an area within the Site for which an application is made to the Council for Approval of Reserved Matters pursuant to the Planning Permission or such other areas of the Site which shall be agreed in writing between the Council and the Landowners;

“Phasing Plan”

means in the event that the Development is to be carried out in one or more phases, a plan to be approved by the Council in writing before Commencement of Development identifying the number, location, extent and programming of construction phases of the whole Site and showing the number of houses to be provided in each Phase and the location and provision of all the Open Space and the Species Rich Grasslands and the on and off-site Land Drainage Scheme serving the whole Site;

“Parties”

means the Council the First Landowner the Second Landowner the Third landowner and the Developer and **“Party”** shall mean all or any one of them;

“Plan 1”

means the plan labelled "Plan 1" which is contained in Schedule 1;

- "Plan 2"** means the plan labelled "Plan 2" which is contained in Schedule 1;
- "Plan 3"** means the plan labelled "Plan 3" which is contained in Schedule 1;
- "Plan 4"** means the plan labelled "Plan 4" which is contained in Schedule 1;
- "Planning Obligations"** means the obligations, conditions and stipulations set out in this Deed and made pursuant to section 106 of the 1990 Act and **"Planning Obligation"** shall be construed accordingly;
- "Planning Permission"** means a planning permission granted conditionally pursuant to the Application for the carrying out of the Development and / or any subsequent permission granted by the Council following an application to vary such permission pursuant to section 73 of the 1990;
- "Reasonable Service Charge Terms"** means the terms to be included in the legal transfer or lease of each Dwelling whereby the transferee (and its successors in title) covenants with the Drainage Management Company to pay to the Drainage Management Company a pro-rata share of the reasonable contributions required to be paid from time to time by the Drainage Management Company for the management and maintenance of the On-Site Sustainable Drainage Features and if applicable the Off-Site Sustainable Drainage Features **PROVIDED THAT** the occupier of any Affordable Dwelling shall not be required to make any such pro-rata payment and that the payment that would otherwise be attributable to such Affordable Unit shall instead be payable by the Registered Provider;
- "Registered Provider"** means a body registered with Homes England pursuant to and defined by the Housing and Regeneration Act 2008 or a local or similar authority or housing association or organisation or a social landlord or such other body or organisation whose main object is the provision of Affordable Housing or such other

- organisation;
- "Secretary of State"** means the Secretary of State for Housing, Communities and Local Government or any substitute or any Inspector appointed by him;
- "Serviced"** means in relation to the Affordable Dwellings connections for mains water, sewerage, gas, electricity and telecommunications appropriate to the proposed use as Affordable Dwellings and adequate for the purposes of the prospective users of the Affordable Dwellings and to enable connections to be made thereto and with sufficient vehicular and pedestrian access to serve the Affordable Dwellings;
- "Shared Ownership Lease"** means a lease to be granted for a term of not less than 125 years which shall accord with the requirements of, and be consistent with any model shared ownership lease as approved from time to time by Homes England;
- "Shared Ownership Housing Dwellings"** means an Affordable Dwelling which is let by way of Shared Ownership Lease granted to Eligible Persons where the percentage equity share to be marketed and the percentage rent payable under retained equity is agreed in writing between the Council and the Registered Provider before the Shared Ownership Housing Dwelling is marketed and reference to **"Shared Ownership Housing Dwelling"** shall be construed accordingly;
- "Social Rent"** means a rent no higher than the Government's Rent Standard for which guideline target rents are determined through the national rent regime;
- "Social Rented Dwellings"** means an Affordable Dwelling let by a Registered Provider to a Nominated Person at a Social Rent;
- "Staircasing Sums"** means any sums received by the Registered Provider from or on behalf of any tenant or leaseholder or occupier of an Affordable Dwelling upon that tenant or leaseholder or occupier;

- exercising the right to acquire pursuant to the Housing Act 1985 or Housing Act 1996 any other statutory provision or any equivalent contractual right in respect of a particular Affordable Housing Dwelling; or
- purchasing further shares in a Shared Ownership Housing Dwelling from the Registered Provider

less the amount equating to the Registered Provider's reasonable legal costs in respect of such transaction and less any amount the Registered Provider owes to a mortgagee in respect of the Affordable Dwelling in question;

"Site"

means land at the junction with Carr Road and Hollin Busk Lane, Sheffield S36 1GH registered at HM Land Registry under Title Numbers SYK161165, SYK178781, SYK217495 and SYK404124 and shown for identification edged red on Plan 1;

"Specialist"

means a person who has not less than 10 (ten) years' professional experience in relation to developments of the nature of the Development and property in the same locality as the Site and who is qualified to act as an expert in relation to any dispute to which clause 9 applies;

"Species Rich Grassland"

means those parts of the Site with restricted access preventing access by the public consisting of species rich grassland to be provided and managed for biodiversity benefits in accordance with the conditions annexed to the Planning Permission and / or Approval of Reserved Matters and shown shaded green with green dots and marked "GRASSLAND AREA MANAGED FOR BIODIVERSITY AND ECOLOGICAL BENEFITS" on Plan 2;

"Species Rich Grassland Works"

means the works to be carried out for the provision and laying out of the Species Rich Grassland accordance with conditions annexed to the Planning Permission and / or Approval of Reserved Matters;

"Statutory Undertaker"

means any company corporation board or authority who is authorised by statute to carry on an undertaking for the supply of

telephone and television communications electricity gas water or drainage;

"Traffic Regulation Order(s)"

means such traffic regulation order or orders under the Road Traffic Regulation Act 1984 or amendments to existing traffic regulation orders (including the provision of or alteration to traffic regulation signs and / or road markings) made pursuant to the Road Traffic Regulation Act 1984 as the Council may from time to time promote from the date this Deed comes into effect to provide parking restrictions in the form of double yellow lines within the site access' visibility splay on Carr Road in the approximate location as shown indicatively on Plan 4 to include road markings and signage, the extent of which is to be agreed with the Council as local highway authority in accordance with a condition annexed to the Planning Permission;

"TRO Contribution"

means the sum of £10,000.00 (ten thousand pounds) to be applied by the Council towards:

1. advertising;
2. drafting; and
3. the legal costs associated with the making of;

the Traffic Regulation Order(s) and for the **AVOIDANCE of DOUBT** this sum will not be in respect of costs associated with or relating to design and implementation;

"Transfer Price"

means the price to be paid for an Affordable Dwelling including all its fixtures fittings garden areas driveways garages and similar land and buildings relating to and to be used in conjunction with the Affordable Dwelling, as at the date of the Transfer, such price being unless otherwise agreed in writing by the Council:

- (i) in respect of an Affordable Rented Dwelling, a sum not in excess of £850.00 (eight hundred and fifty pounds) per square metre or such updated adopted sum at the time Transfer occurs for every square metre of gross internal

area of the Affordable Rented Dwelling in question; and

- (ii) in respect of a Shared Ownership Housing Dwelling, the agreed percentage as approved in writing by the Council of the Open Market Value of the Shared Ownership Housing Dwelling in question such sum to be agreed in writing with the Council prior to entering into a Contract with the Registered Provider;

"Transferred"

means in relation to the Affordable Dwellings the transfer of the freehold or grant of a lease for a term of at least 125 (one hundred and twenty five) years unless otherwise agreed in writing with the Council and reference to **"Transfer"** shall be construed accordingly;

"Water Company"

means:

1. Yorkshire Water Service Limited or any successor authority to its statutory functions under the Water Industry Act 1991; or
2. such other licenced water company that is regulated by The Water Services Regulation Authority (OFWAT);

"Working Day"

means any day other than a Saturday or Sunday or a public holiday and **"Working Days"** shall be construed accordingly.

1.2 In this Deed:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.3 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Deed and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.4 references to any statute or statutory provision include references to:

- 1.2.4.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
- 1.2.4.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.5 references to the Site include any part of it;
- 1.2.6 references to any Party in this Deed include the successors in title of that Party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.7 "including" means "including", without limitation;
- 1.2.8 any covenant on any Party not to do any act or thing includes a covenant not to cause or permit or allow or suffer the doing of that act or thing;
- 1.2.9 where two or more people form a Party to this Deed, then all of that Party's obligations in this Deed can be enforced against both or all of the persons jointly and against both or all of the persons individually and where more than one Party undertakes or is required to comply with an obligation in this Deed then such obligation can be enforced against both or all Parties jointly and against both or all Parties individually; and
- 1.2.10 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.
- 1.3 No provisions of this Deed will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than the Parties to this Deed and their successors in title.
- 1.4 The Landowners warrant that no person other than the Developer has any legal or equitable interest in the land outlined in red on Plan 1 which is contained in Schedule 1 to this Deed that would prevent it from entering into this Deed and the Site is free from any encumbrances (other than those listed in the recitals) that would prevent it from entering into this Deed.

- 1.5 The Developer consents to this Deed and confirms that its interests in the Site shall be bound by the obligations contained in this Deed and shall take effect subject to this Deed as if the Deed had been executed and registered as a land charge prior to the creation of the Developer's interests in the Site **PROVIDED THAT** (with the exception of clause 8 which is binding on and enforceable against the Developer immediately upon completion of this Deed) no obligations in this Deed shall be enforced against the Developer, unless and until the Developer has taken possession of the Site or part thereof to which such obligation relates.

2 EFFECT OF THIS DEED

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 The Parties agree that the planning obligations in this Deed are compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) in its form in force as at the date of this Deed.
- 2.4 Nothing in this Deed restricts or is intended to restrict or fetter the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.5 This Deed will be registered as a local land charge by the Council.
- 2.6 This Deed shall not take effect unless the Planning Permission has been granted by the Secretary of State.
- 2.6 This Deed may be executed in part by counterpart, in respect of one party which when executed shall constitute a duplicate original, but the counterpart and the deed executed by the remaining Parties shall together constitute the one agreement.
- 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 (other than one relating to the Development as specified in the Application or specified in a section 73 application to which clause 13.2 below applies) granted after the date of this Deed.

2.8 If the Secretary of State in his Decision Letter concludes that any of the Planning Obligations) are incompatible with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and expressly states in his Decision Letter that he attaches no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation shall from the date of the Decision Letter immediately cease to have effect and the Landowners shall be under no obligation to comply with that Planning Obligation but the remaining Planning Obligations shall remain in full force and effect **PROVIDED THAT** it is agreed by the Landowners that in the event that the Secretary of State in his decision letter concludes that he attaches no weight to the Planning Obligations referred to at paragraph 6 of Schedule 2 (Drainage) in accordance with this clause 2.8, the Landowners confirm that they will still comply with that Planning Obligation (or the relevant part of the Planning Obligation as appropriate).

3 OBLIGATIONS OF THE PARTIES

3.1 The Landowners agree with the Council to comply with the obligations set out in Schedule 2.

3.2 The Council agrees with the Landowners to comply with the obligations set out in Schedule 3 and where applicable in Schedule 2.

3.3 Where any notice, consent, approval, authorisation, agreement or other similar affirmation is required from the Council under the terms of the Deed, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.

3.4 No person shall be bound by the terms of this Deed or be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of this Deed occurring before that date.

3.5 The terms of this Deed shall not be enforced against:

3.5.1 any individual purchaser occupier or a tenant of a single Open Market Dwelling only or if it shall be a mortgagee and / or chargee and / or their respective successors in title and / or receiver appointed by the mortgagee and / or chargee of an Open Market Dwelling **PROVIDED THAT** all obligations in this deed which have been triggered at the date of the transfer of a single Open Market Dwelling have been fully complied with by the Landowners; or

3.5.2 (save for the provisions in paragraph 4 of Schedule 2) if he shall be an occupier or tenant of any of the Affordable Dwellings or a purchaser of an individual Affordable Dwelling (or a mortgagee of a Registered Provider or an individual Affordable Dwelling lending money to such occupier purchaser or tenant); or

3.5.3 a Statutory Undertaker who has acquired an interest in any part of the Site for the sole purposes of exercising its statutory functions.

4 TERMINATION OF THIS DEED

4.1 This Deed will forthwith determine and cease to have effect if:

4.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn before the Commencement Date so as to render this Deed or any part of it irrelevant, impractical or unviable; or

4.1.2 the Planning Permission expires before the Commencement Date without having been implemented.

5 INDEXATION OF CONTRIBUTIONS

5.1 All financial contributions payable to the Council pursuant to this Deed shall be increased to reflect any increase in the Index occurring in the period from and including the date of this Deed to and including the date of actual payment and "**Index Linked**" shall be construed accordingly.

5.2 Should the Index cease to exist, or should it be replaced or rebased, then the term Index shall include reference to any index which replaces the Index or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed).

6 INTEREST

Should any financial sum payable to the Council pursuant to this Deed not have been paid to the Council despite having become due then the Landowners shall in addition to the sum itself pay Interest on that sum for the period from the due date to and including the date of payment.

7 NOTICES

7.1 Any notice, demand or any other communication served under this Deed will be effective only if delivered by hand or sent by pre-paid first class post or recorded delivery.

- 7.2 Any notice, demand or any other communication to be served on the Landowners or the Developer is to be sent to the address of the relevant Party set out at the beginning of this Deed or to such other address as one Party may notify in writing to the others at any time as its address for service.
- 7.3 Any notice, demand or any other communication to be served on the Council is to be sent for the attention of the Head of Planning at Planning Service, Howden House, 1 Union Street, Sheffield, S1 2SH quoting the Planning Permission reference.
- 7.4 Subject to clause 7.5 unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 7.4.1 if delivered by hand, at the time of delivery;
- 7.4.2 if sent by pre-paid first class post, on the second Working Day after posting; or
- 7.4.3 if sent by recorded delivery, at the time delivery was signed for.
- 7.5 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 7.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

8 COSTS OF THIS DEED

Prior to or upon completion of this Deed the Developer is to pay to the Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Deed.

9 DETERMINATION OF DISPUTES

- 9.1 Subject to clause 9.7, if any dispute arises out of or relating to the terms of this Deed, any Party may give to the other Parties written notice requiring the dispute to be determined under this clause 9.
- 9.2 Any notice given pursuant to clause 9.1 above must propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 9.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any party to the dispute to the president or the next most senior available officer of the Law Society who will have the power, with the right to take such further advice as they may require, to determine the appropriate type of Specialist and to arrange the Specialist's nomination under clause 9.4.
- 9.4 Any dispute over the identity of the Specialist is to be referred at the request of any party to the dispute to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as they may require, to determine and nominate the appropriate Specialist or to arrange their nomination. If no such organisation exists, or the parties to the dispute cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.
- 9.5 The Specialist is to act as an independent expert and:
- 9.5.1 each party to the dispute may make written representations within 10 (ten) Working Days of the appointment of the Specialist and will copy the written representations to the other party;
 - 9.5.2 each party to the dispute is to have a further 10 (ten) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 9.5.3 the Specialist is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as they may reasonably require;
 - 9.5.4 the Specialist is not permitted to take oral representations from the parties to the dispute without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
 - 9.5.5 the Specialist is to have regard to all representations and evidence before them when making their decision, which is to be in writing, and the Specialist must give written reasons for their decision; and
 - 9.5.6 the Specialist must use all reasonable endeavours to publish their decision within 30 (thirty) Working Days of their appointment.

9.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 9, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

9.7 This clause 9 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts and nothing in this clause prevents any Party from seeking or pursuing relief without recourse to this clause.

10 NO WAIVER

No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the obligation in this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the obligations that are not complied with.

11 SEVERENCE

If any provision in this Deed shall in whole or in part be held to any extent to be illegal or unenforceable, such provisions shall to the extent required be severed from this Deed and rendered ineffective as far as possible without modifying the remaining provisions of this Deed and shall not in any way affect any other circumstances or the validity or enforcement of this Deed and in the event of any such deletion the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the provision so deleted.

12 CHANGE IN OWNERSHIP

The Landowners shall give the Council immediate written notice of any change in ownership of its interest in the Site occurring before all the obligations under this Deed have been discharged such notice to give full details of the transferee's full name and where a company their registered office address and company registration number and where an individual their usual postal address **PROVIDED THAT** it is agreed that the requirement for the Landowners to give the Council immediate written notice of any change in ownership of any of its interests in the Site will not apply to any transfer of a single Dwelling to an individual purchaser.

13 FUTURE CONSENTS

13.1 In the event that a condition or conditions to the Planning Permission is or are varied pursuant to Section 96A of the 1990 Act this Deed shall continue in full force in respect of the Planning

Permission with the relevant condition or conditions as so varied.

- 13.2 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and / or Approval of Reserved Matters and planning permission or consent is granted in respect of the application (and the Council is satisfied in its absolute discretion that no revised planning obligations are required as a result of such amendment) references to Planning Permission and / or Approval of Reserved Matters in this Deed shall be to the new planning permission granted pursuant to Section 73 of the 1990 Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the 1990 Act.

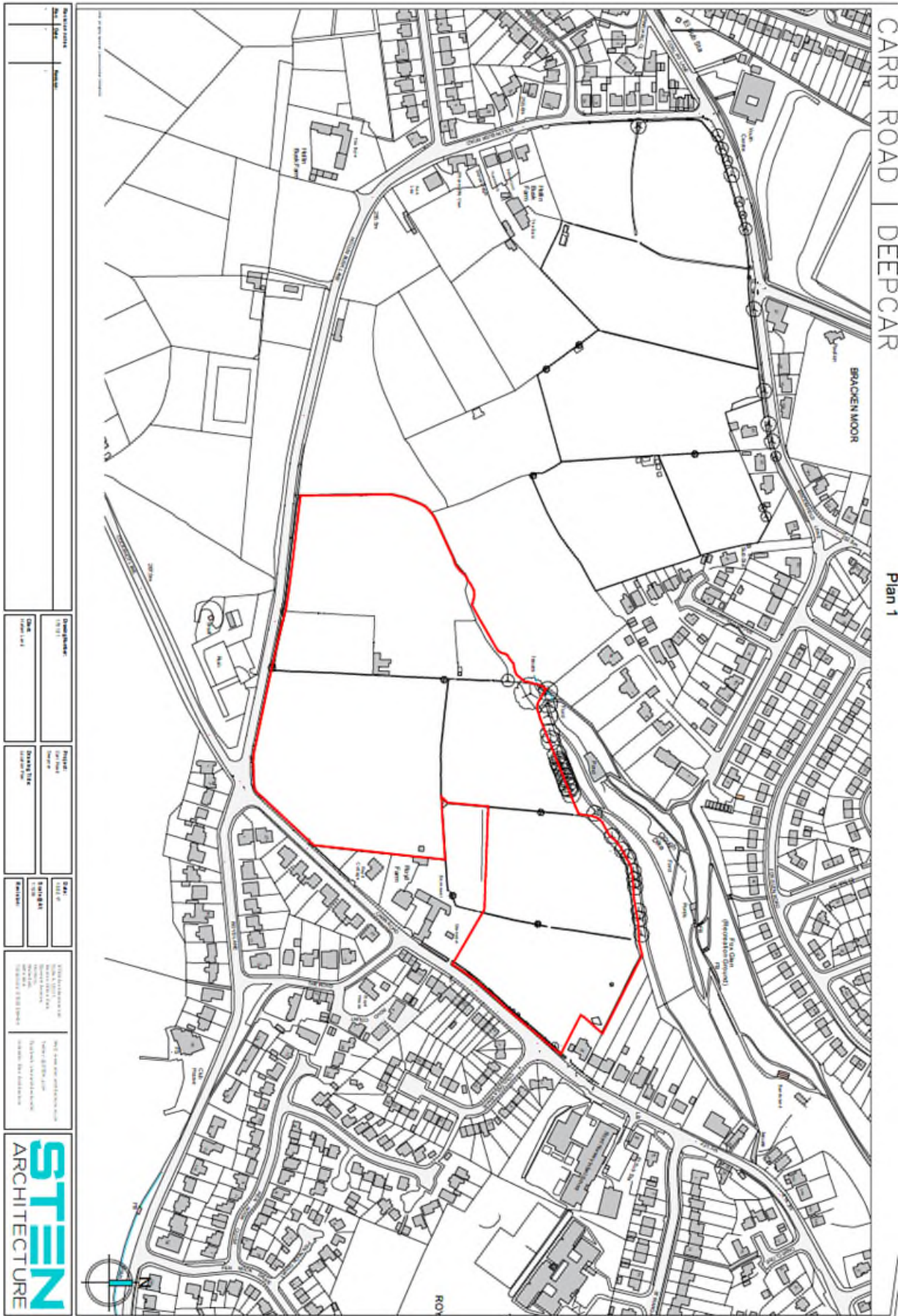
14 JURISDICTION

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

15 EXECUTION

The Parties have executed this Deed as a deed and it is delivered on the date set out above.

SCHEDULE 1
Plan 1: The Site



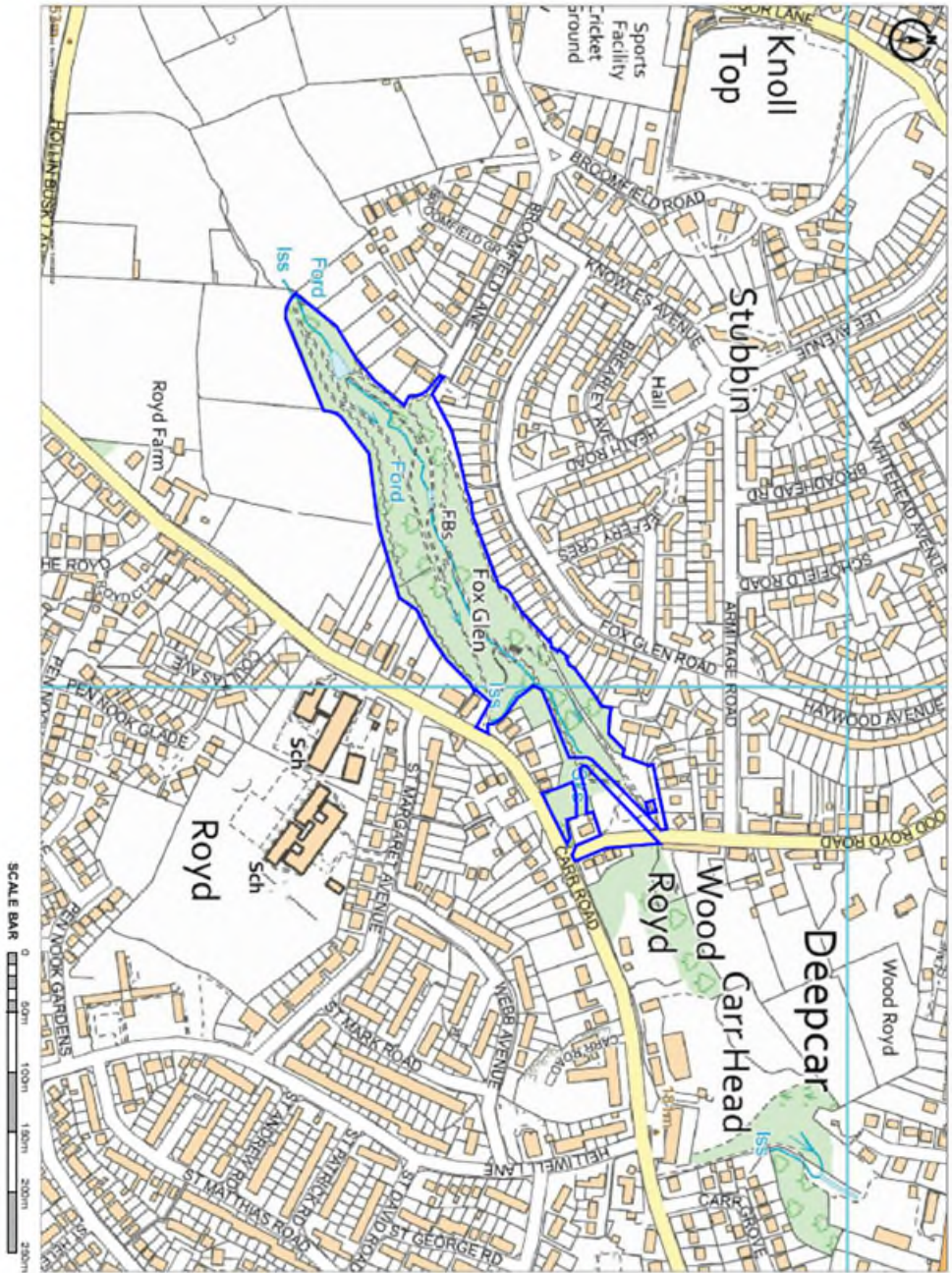
Plan 2: Open Space & Species Rich Grassland

STEN ARCHITECTURE
 LAND AT CARR ROAD, DEEPCAR
 APRIL 2021 | 1:1250 @ A2
 PARAMETER PLAN 05, REV B | LANDSCAPE AND OPEN SPACE



Plan 2

Plan 3: Council's Land



Project: Carr Road, Deepcar
 Drawing Title: Section 106 Plan

Scale: 1:5000@A4
 Date: 28.01.2021

Plan 4: Traffic Regulation Order(s)

Plan 4

ON THIS DOCUMENT, THE PROPERTY OF FORE GROUP IS INDICATED BY THE SHADING OF THE PROPERTY. THIS PLAN IS PROVIDED AS A GUIDE ONLY AND SHOULD NOT BE USED FOR CONSTRUCTION OR OTHER PURPOSES. THE USER OF THIS PLAN IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMISSIONS FROM THE LOCAL HIGHWAY AUTHORITY AND THE LOCAL AUTHORITY. THE USER OF THIS PLAN IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMISSIONS FROM THE LOCAL HIGHWAY AUTHORITY AND THE LOCAL AUTHORITY.

DO NOT SCALE

NOTES

1. PROPERTY LINES AND FOOTWAYS, INCLUDING ANY NEWLY PROPOSED FOOTWAYS, ARE SHOWN IN GREY. ALL OTHER LINES ARE SHOWN IN BLACK. THE USER OF THIS PLAN IS RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS AND PERMISSIONS FROM THE LOCAL HIGHWAY AUTHORITY AND THE LOCAL AUTHORITY.

REV	DESCRIPTION	DATE	BY
PLANNING AND MANAGEMENT			
PROJECT	PROPOSED RESIDENTIAL DEVELOPMENT AT LAND AT COULTAS, STOCKMIDGE		
DATE			
PROPOSED ACCESS ARRANGEMENT ONTO OUR ROAD			
DATE			

PRELIMINARY

Fore

2021/05/20 10:00 AM

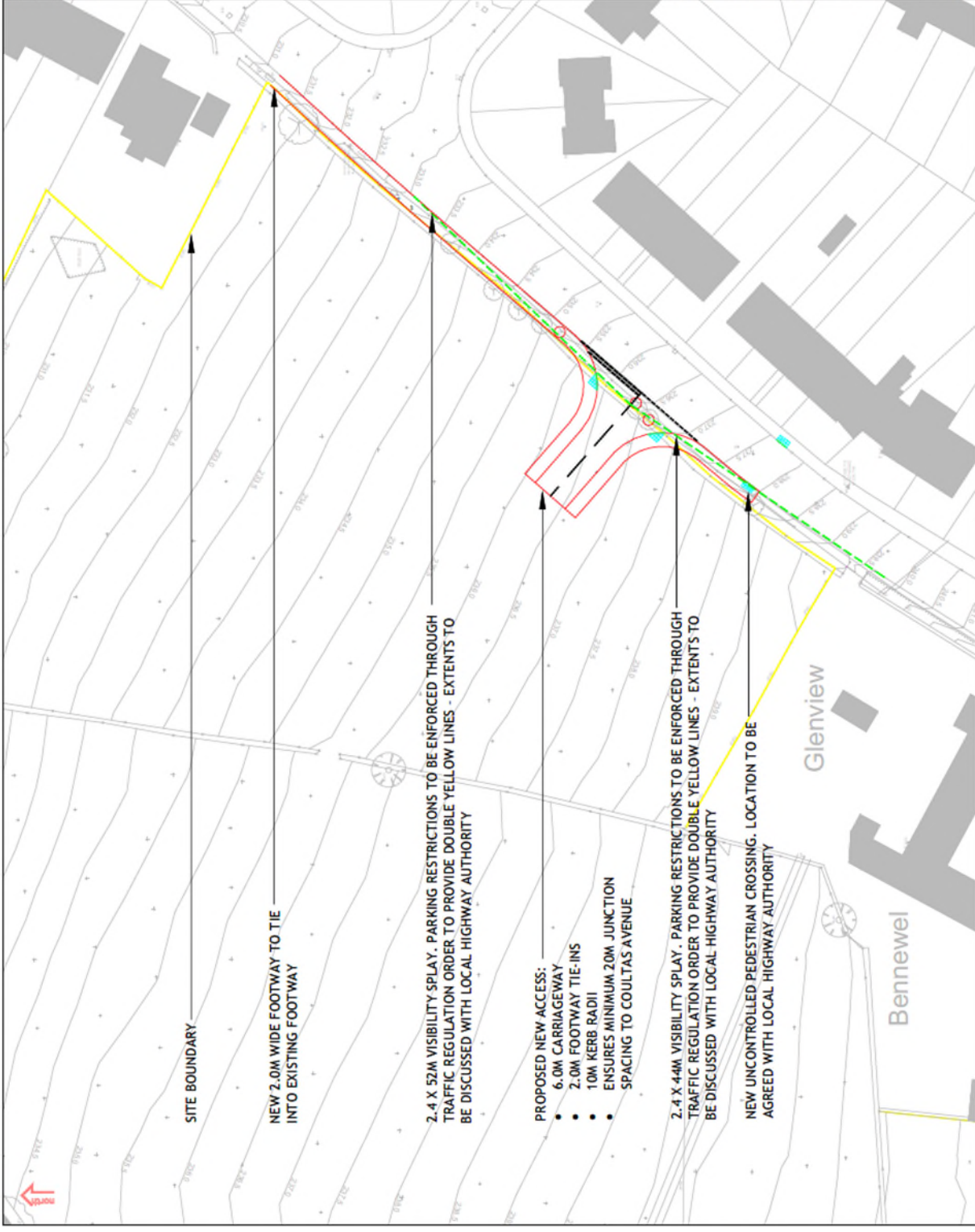
3 OF 3

3 OF 3

3 OF 3

3 OF 3

3 OF 3



- SITE BOUNDARY
- NEW 2.0M WIDE FOOTWAY TO TIE INTO EXISTING FOOTWAY
- 2.4 X 52M VISIBILITY SPYLY. PARKING RESTRICTIONS TO BE ENFORCED THROUGH TRAFFIC REGULATION ORDER TO PROVIDE DOUBLE YELLOW LINES - EXTENTS TO BE DISCUSSED WITH LOCAL HIGHWAY AUTHORITY
- PROPOSED NEW ACCESS:
 - 6.0M CARRIAGEWAY
 - 2.0M FOOTWAY TIE-INS
 - 10M KERB RADII
 - ENSURES MINIMUM 20M JUNCTION SPACING TO COULTAS AVENUE
- 2.4 X 44M VISIBILITY SPYLY. PARKING RESTRICTIONS TO BE ENFORCED THROUGH TRAFFIC REGULATION ORDER TO PROVIDE DOUBLE YELLOW LINES - EXTENTS TO BE DISCUSSED WITH LOCAL HIGHWAY AUTHORITY
- NEW UNCONTROLLED PEDESTRIAN CROSSING. LOCATION TO BE AGREED WITH LOCAL HIGHWAY AUTHORITY

SCHEDULE 2

The Landowners' Obligations

The Landowners covenant with the Council as follows:

1 General Provisions

1.1 In the event that the Development is to be carried out in one or more Phases, the Development shall not Commence unless with the first application for Approval of Reserved Matters the Landowners have submitted a Phasing Plan for the whole of the Site and by reference to the Phases of development which details:

- (i) the total number and the location of Dwellings to be constructed on the Site and the GIA of those Dwellings;
- (ii) The total number of the Affordable Dwellings which shall comprise at least 10% GIA of the total GIA of all the Dwellings;
- (iii) the location of the Affordable Dwellings which should be distributed throughout the Site and not segregated from the Open Market Dwellings;
- (iv) the Open Space to be transferred to the Management Company showing within each Phase the extent of land to be used for public open space, equipped play areas, land drainage measures and flood prevention measures;
- (v) the timescales for the transfer of parcels of the Open Space and Species Rich Grassland to the Management Company which timescales shall comprise a combination of restraints upon:
 - a. the transfer of parcels until the Landowners have completed specified works required by conditions annexed to the Planning Permission to the written satisfaction of the Council; and
 - b. Occupation of (a percentage of) the Dwellings within the Phases and/or across the whole Site until specified parcels public open space have been transferred;

PROVIDED ALWAYS that no more than 50% of the Dwellings (or such other number of Dwellings that may first be agreed in writing by the Council) across the whole Site or on each Phase of the Development as the case may be shall be Occupied until all the Open Space has been completed to the Council's satisfaction in accordance

with the Open Space Scheme and the Planning Permission and transferred to the Management Company.

- 1.2 The Development shall be carried out in complete accordance with the Phasing Plan, the Affordable Housing Scheme(s), the Open Space Scheme, the Land Drainage Scheme, as agreed and as may be amended in writing with the Council from time to time.

2 NOTIFICATION

- 2.1 To provide written notice to the Council at least 5 (five) Working Days prior to each of the following events:

2.1.1 the intended date of Commencement of Development; and

2.1.2 the intended dates of first Occupation of the 1st (first) Dwelling to be Occupied.

- 2.2 In the event any of the dates of actual Commencement or first Occupation of the 1st (first) Dwelling referred to in paragraph 2.1 of this Schedule are different from the intended dates notified in accordance with paragraph 2.1 of this Schedule:

2.2.1 to provide written notice of the actual Commencement Date within 5 (five) Working Days of actual Commencement; and/or

2.2.2 to provide written notice of first Occupation of the 1st (first) Dwelling to be Occupied.

within 5 (five) Working Days of actual first Occupation.

- 2.3 Not to Commence Development until written notice of the intended date of Commencement is given pursuant to paragraphs 2.1.1 or 2.2.1 of this Schedule as the case may be.

- 2.4 Not to Occupy any part of the development until written notice of the intended date of first Occupation is given pursuant to paragraphs 2.1.2 or 2.2.2 of this Schedule as the case may be.

3 MONITORING FEE

- 3.1 Prior to Commencement of Development to pay the Council the Monitoring Fee and not to Commence Development until the Monitoring Fee is paid in full to the Council.

4 AFFORDABLE HOUSING

- 4.1 Not to permit or allow the Affordable Dwellings to be used or Occupied other than as Affordable Housing in perpetuity and as the sole private residence of an Eligible Person or Nominated Person as the case may be, and in accordance with the requirements of paragraph 4 of this Schedule and of the Affordable Housing Scheme.
- 4.2 To provide ten percent (10%) of the GIA of the Dwellings as Affordable Dwellings.
- 4.3 To provide the Affordable Dwellings as a mix of (i) Affordable Rented Dwellings and (ii) Shared Ownership Housing Dwellings across the Site, using reasonable endeavours to provide seventy per cent (70%) as Affordable Rented Dwellings and/or Social Rented Dwellings and thirty per cent (30%) as Shared Ownership Housing Dwellings unless otherwise agreed in writing by the Council.
- 4.4 Upon or before an application for Approval of Reserved Matters to submit an Affordable Housing Scheme to the Council and not to Commence Development until the Council has approved in writing an Affordable Housing Scheme relating to the Affordable Dwellings to be provided within the Development or on a Phase as the case may be such scheme to provide details of the following:
- 4.4.1 the number, and location of the Affordable Dwellings, together with details of the relevant house types and number of bedrooms of each Affordable Dwelling;
 - 4.4.2 the Affordable Tenure Mix;
 - 4.4.3 details of how the proposed design and construction of the Affordable Dwellings will ensure that they are materially indistinguishable in terms of outward design and appearance from the Open Market Dwellings of similar size within the Site;
 - 4.4.4 the timing for the construction of the Affordable Dwellings and its phasing within the Development or any Phase as the case may be;
 - 4.4.5 the Registered Provider to which the Landowners propose to offer to Transfer the Affordable Dwelling;
 - 4.4.6 a plan showing the dispersal of the Affordable Dwellings throughout the Development or the Phase as the case may be;

PROVIDED THAT it is agreed that the number, type, location, of the Affordable Dwellings within the Affordable Housing Scheme for the Development or each Phase as the case may be

may be amended at any time with the written approval of the Council **PROVIDED ALWAYS THAT** the cumulative total of GIA of the Affordable Dwellings within the Development or a Phase shall always comprise 10% of the GIA of the total Dwellings across the whole Site or on that Phase as the case may be.

- 4.5 Within the Development or each Phase as the case may be not more than seventy five per cent (75%) of the Open Market Dwellings (or such other percentage of Open Market Dwellings that may be agreed in writing by the Council) shall be Occupied until all the Affordable Dwellings have been Completed and Transferred in a Serviced Condition to a Registered Provider, with vacant possession at the Transfer Price and on terms which:
- 4.5.1 include all garden areas, driveways, garages, ancillary land and buildings which will be used in conjunction with the Affordable Dwellings;
 - 4.5.2 require the Registered Provider to enter into a Contract;
 - 4.5.3 restrain the use of the Affordable Dwellings for the purpose of providing Affordable Housing; and
 - 4.5.4 require the recycling of Staircasing Sums in accordance with this Deed.
- 4.6 The Development shall be carried out and Affordable Housing provided in complete accordance with the relevant approved Affordable Housing Scheme.
- 4.7 Following the Transfer of the Affordable Dwellings to a Registered Provider pursuant to this Deed the Registered Provider will own and manage the Affordable Rented Dwellings and/or the Social Rented Dwellings for the purpose of providing Affordable Housing at an Affordable Rent or a Social Rent as the case may be and will only allocate tenancies to Nominated Persons.
- 4.8 With the object of preserving the Affordable Rented Dwellings and/or Social Rented Dwellings as Affordable Housing none of those Dwellings shall be sold into owner occupation or otherwise disposed of by a Registered Provider otherwise than by way of:
- 4.8.4 disposal to another Registered Provider for the purposes of providing Affordable Rented Dwellings and/or Social Rented Dwellings; or
 - 4.8.5 transfers of engagements under s110 Co-operative and Community Benefit Societies Act 2014; or

- 4.8.6 creation of easements or other rights in favour of statutory undertakings or service companies for the purpose of providing services to the Site; or
 - 4.8.7 sale to a sitting tenant by way of a tenants` statutory right to acquire; or
 - 4.8.8 tenancies granted to Occupiers of the Affordable Rented Dwellings and/or Social Rented Dwellings.
- 4.9 Following the Transfer of the Shared Ownership Housing Dwellings pursuant to this Deed the Registered Provider will own and manage the Shared Ownership Housing Dwellings for Occupation by Eligible Persons on the basis of a Shared Ownership Lease, granting a lease of no more than seventy-five per cent (75%) of the equity of any Shared Ownership Housing Dwellings upon first disposal.
- 4.10 The Registered Provider shall:
- 4.10.1 advise the Council of all sales of equity in the Shared Ownership Housing Dwellings; and
 - 4.10.2 hold any Staircasing Sums in an interest bearing account; and
 - 4.10.3 inform the Council on request of the amount of money accrued at any one time in that account; and
 - 4.10.4 use such Staircasing Sums either in part, in full or in conjunction with other sums for repurchasing any of the Affordable Dwellings if sufficient funds have accrued or for other Affordable Housing projects within Sheffield.
- 4.11 The restrictions in paragraph 4 of this Schedule shall not apply to Affordable Dwellings:
- 4.11.1 owned by a tenant who has exercised a statutory right to acquire an Affordable Rented Dwelling by way of a purchase grant or like scheme; or
 - 4.11.2 in the control of a Chargee who has taken possession of a Shared Ownership Housing Dwelling under the Shared Ownership Lease; or
 - 4.11.3 owned by an Occupier who has purchased 100% of the equity of a Share Ownership Dwelling in accordance with the Shared Ownership Lease; or
 - 4.11.4 in the control of the Chargee of a Registered Provider following default under a charge **PROVIDED THAT:**

- (a) the Chargee has given the Council at least 3 (three) months written notice of its intention to exercise a power of sale; and
- (b) the Chargee has used reasonable endeavours to first dispose of the Affordable Dwellings to another Registered Provider and to the Council and has provided written evidence of such reasonable endeavours to the Council for the avoidance of doubt the Chargee shall not be under any obligation to dispose of the Affordable Housing Dwellings for a sum less than the monies outstanding pursuant to the charge plus interest and costs due.

4.12 If the Chargee shall not have disposed, or contracted to dispose, of some or any of the Affordable Housing Dwellings within the 3 (three) month period having complied with these provisions, the Chargee may (without obligation) dispose of them on the open market free of the Affordable Housing restrictions contained in paragraph 4 of this Schedule.

5 BUS STOP UPGRADES CONTRIBUTION

5.1 To pay the Bus Stop Upgrades Contribution to the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until the Bus Stop Upgrades Contribution has been paid.

6 DRAINAGE

6.1 Not to Commence Development until the following have been submitted for approval and approved in writing by the Council:

6.1.1 A scheme ("**Land Drainage Scheme**") with details including:

- (a) a landscape plan;
- (b) surface and ground water drainage;
- (c) provision of the Off-Site Sustainable Drainage Features to include details of:
 - (i) piping and channels;
 - (ii) outfalls;
 - (iii) culverts;

- (iv) connection to the On-Site Sustainable Drainage Features;
 - (v) maintenance easements;
- by reference to plans / drawings;
- (d) the On-Site Sustainable Drainage Features to include details of:
 - (i) SUDS basin;
 - (ii) headwall;
 - (iii) piping and channels;
 - (iv) outlet controls;
 - (v) connection to the Off-Site Sustainable Drainage Features;
 - (vi) maintenance easements;

by reference to plans / drawings approved as part of the Land Drainage Scheme or in accordance with a condition(s) annexed to the Planning Permission or an Approval of Reserved Matters as the case may be; and

- (vii) in the event that the Drainage Management Company is not the Council, arrangements for the Council to access the Site upon receipt of reasonable notice in order to inspect the On-Site Sustainable Drainage Features and to recover costs in relation to any remedial works that may be required from time to time.

6.1.2 A plan ("**Management and Maintenance Plan**") in respect of the future management and maintenance of the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features and to include details of:

- (a) projected costs to enable the effective maintenance and management of the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features; and
- (b) the Reasonable Service Charge Terms.

- 6.1.3 Details of the Drainage Management Company together with, in the event that the Drainage Management Company is not the Council, a copy of its certificate of incorporation, structure and long-term funding plans.
- 6.2 To ensure that:
- 6.2.1 prior to Occupation of any Dwelling in the Development the On-Site Sustainable Drainage Features have been constructed in accordance with any conditions of the Planning Permission, the Approval of Reserved Matters and the Land Drainage Scheme; and not to Occupy any of the Dwellings in the Development until the On Site Drainage Features construction is completed; and
- 6.2.2 subject to the Council:
- (a) granting all rights easements consents and licences (for nil consideration) that may be reasonably required to enable the Landowners and / or the Developer to enter onto and / or over the Council's Land necessary for the Off-Site Sustainable Drainage Features to be constructed and provided; and
 - (b) allowing those works to be carried out; and either
 - (i) agreeing in writing to thereafter dedicate and adopt the Off-Site Sustainable Drainage Features; or
 - (ii) granting all rights easements consents and licences (for nil consideration) that may be reasonably required by the Landowners the Developer and / or Drainage Management Company to enter onto and / or over the Council's Land as may be necessary in order to carry out the maintenance of the Off-Site Sustainable Drainage Features in accordance with the approved Management and Maintenance Plan referred to in paragraph 6.1.2 of this Schedule;
- as the case may be in accordance with paragraph 5 of Schedule 3;
- the Off-Site Sustainable Drainage Features are constructed prior to the Occupation of any of the Dwellings in accordance with the Land Drainage Scheme.
- 6.3 To maintain the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage

Features from the time of construction in accordance with the approved Management and Maintenance Plan referred to in paragraph 6.1.2 of this Schedule (subject to any variations that may be agreed in writing between the Council and the Landowners from time to time) and shall keep them maintained in accordance with paragraph 6.6 of this Schedule until the earlier of the date that they are transferred to the Drainage Management Company and the date that they have been adopted by a Water Company **PROVIDED THAT** it is agreed that:

- 6.3.1 it shall be a term of the appointment of the Drainage Management Company that the transfer is on the condition that it shall manage and maintain the Off-Site Sustainable Drainage Features and the On-site Sustainable Drainage Features in accordance with the Management and Maintenance Plan;
 - 6.3.2 the Landowners will not dispose of any of the Dwellings without the inclusion of the Reasonable Service Charge Terms in any disposition of any Dwelling.
 - 6.3.3 In the event that the Council is:
 - (a) not the Drainage Management Company for the On-Site Sustainable Drainage Features then the Landowners will pay to the Council the Off-Site Sustainable Drainage Features Maintenance Sum; or
 - (b) in the event that the Council is the Drainage Management Company for the On-Site Sustainable Drainage Features the Council will adopt the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features and the Landowners will pay to the Council the On-Site Sustainable Drainage Features Maintenance Sum and the On-Site Sustainable Drainage Features Adoption Sum and Reasonable Service Charge Terms will be applicable in relation to the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features and the Landowners will not allow the Occupation of any Dwellings or any further Dwellings as the case may be following the adoption of the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Feature as the case may be by the Council until the On-Site Sustainable Drainage Features Adoption Sum and the On Site Sustainable Drainage Features Maintenance Sum have been paid in full to the Council.
- 6.4 Not to wind up the Drainage Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.

6.5 Save unless the On-Site Sustainable Drainage Features are transferred to a Water Company, to obtain the written agreement of the Council in the event that the nominated Drainage Management Company proposes to transfer the On-Site Sustainable Drainage Features and if applicable the Off-Site Sustainable Drainage Features to another body or Drainage Management Company who is willing to accept the transfer on the condition detailed in paragraph 6.3 of this Schedule.

6.6 Upon the completion of the laying out of the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features:

6.6.1 the Landowners covenant to serve written notice on the Council inviting it to inspect the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features and issue a Completion Certificate confirming that such works have been completed in accordance with the details approved under condition in the Planning Permission and the Council shall inspect the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features within 20 (twenty) Working Days of receipt of the Landowners' invitation pursuant to this paragraph and may identify remedial works necessary to comply with the details approved pursuant to conditions in the Planning Permission and the Council shall within 10 (ten) Working Days of the Council's inspection serve notice of any remedial works on the Landowners to complete such remedial works within the period agreed in writing by the Council that the Council considers necessary (acting reasonably);

6.6.2 upon completion of any such remedial works, the Landowners covenants to serve written notice on the Council inviting the Council to inspect such remedial works and issue a Completion Certificate confirming that such works have been completed in accordance with the conditions attached to the Planning Permission

PROVIDED THAT if either: (a) the Council fails to inspect the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features within 20 (twenty) Working Days of receipt of an invitation from the Landowners; or (b) fails to issue a Completion Certificate within a further 10 (ten) Working Days of the date of inspection where no remedial works have been identified by written notice served on the Landowners then the Completion Certificate shall be deemed to have been issued at the end of the relevant specified periods after the Landowners first giving the Council 7 (seven) days written notice of this deeming provision under the specified terms of this Deed;

- 6.6.3 the Landowners shall maintain the Land Drainage Scheme and Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features as laid out for a period of 12 (twelve) months from the date of issue of (or deemed issue of) the Completion Certificate and shall rectify any defects to the Land Drainage Scheme and Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features which arise within the said 12 (twelve) month period including replacing any equipment that has become faulty or defective.
- 6.6.4 on the expiration of the 12 (twelve) month maintenance period referred to in paragraph 6.6.3 of this Schedule:
- (a) the Landowners covenant to serve notice on the Council inviting the Council to inspect the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features and issue a Final Certificate confirming that such works have been maintained in accordance with the details approved pursuant to conditions in the Planning Permission;
 - (b) the Council shall inspect the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features within 21 (twenty one) Working Days of receipt of the Landowners' invitation pursuant to paragraph 6.6.4(a) of this Schedule and may identify remedial works necessary to comply with the details approved pursuant to conditions in the Planning Permission and shall within 10 (ten) Working Days of the Council's inspection serve written notice of any remedial works on the Landowners to complete such remedial works that the Council considers necessary (acting reasonably);
 - (c) upon completion of any remedial works, the Landowners covenant to serve notice on the Council inviting the Council to inspect the remedial works identified by it pursuant to paragraph 6.6.4(b) of this Schedule and issue a Final Certificate confirming that such works have been completed in accordance with the details approved pursuant to conditions in the Planning Permission

PROVIDED THAT if the Council (a) fails to inspect the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features within 21 (twenty one) Working Days of the invitation from the Landowners; (b) or fails to issue a Final Certificate within a further 21 (twenty one) Working Days of the Council's inspection where

no remedial works have been identified then the Final Certificate shall be deemed to have been issued a Final Certificate at the end of the relevant specified periods after the Landowners first giving the Council 14 (fourteen) days written notice of this deeming provision under the specified terms of this Deed;

6.6.7 the Landowners shall allow and arrange for any Council officer, representative, or agent to have access to the Land Drainage Scheme and the Off-Site Sustainable Drainage Features and the On-Site Sustainable Drainage Features at all reasonable times for the purpose of inspecting and carrying out the Council's obligations under this Deed on reasonable prior written notice to the Landowners for the purpose of inspecting and carrying out the Council's obligations under this Deed **PROVIDED THAT** the Council's officer representative or agent shall comply with all the Landowners' lawful requirements in respect of health and safety and good construction site management practice and shall make good at the expense of the Council any damage caused by such inspection or performance of obligations as soon as reasonably practicable after such inspection or performance of obligations.

Adoption by a Water Company

6.6 Upon receipt by the Council of satisfactory evidence that the On-Site Sustainable Drainage Features have been transferred to a Water Company the obligations in paragraph 6 of this Schedule in so far as they relate to the On-Site Sustainable Drainage Features shall thereafter cease and not be applicable.

7 MOVA TRAFFIC SIGNAL CONTRIBUTION

7.1 To pay the MOVA Traffic Signal Contribution to the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until the MOVA Traffic Signal Contribution has been paid to the Council.

8 PUBLIC OPEN SPACE

8.1 That the Open Space Scheme will be submitted for approval by the Council at the same time as the first application for Approval of Reserved Matters and in any event prior to Commencement of Development and Commencement of Development will not take place until the Open Space Scheme has been approved in writing by the Council.

8.2 In order to maintain the integrity and long term future viability of the Open Space, not without the prior consent of the Council to locate any site and work compounds on the Open Space.

- 8.3 Prior to the Occupation of more than 50% of the Dwellings (or such other number of Dwellings that may first be agreed in writing by the Council) on the Site or on each Phase of the Development as the case may be to provide the Open Space within the Site or on that Phase in complete accordance with the approved Open Space Scheme and Phasing Plan so that it is available and safe for immediate public use and not to permit or allow the Occupation (of more than 50% of the Dwellings) of each Phase of the Development until the Open Space within that Phase has been provided in complete accordance with the approved Open Space Scheme and Phasing Plan (subject to any variations that may be agreed in writing by the Council from time to time) so that it is available and safe for immediate public use.
- 8.4 Not to permit or allow the use of the Open Space until a Royal Society for the Prevention of Accidents (or any successor body or organisation) post installation inspection written report, and evidence of manufacturers warranties of at least 5 (five) years duration from the date of installation of equipment in relation to the LEAP has been provided to the Council, and for the avoidance of doubt, the Open Space will not be considered available and safe for immediate public use unless and until the inspection report and manufacturers warranties described in this clause have been provided.
- 8.5 Prior to the Occupation of the Development to submit the Management Scheme to the Council and not to allow or permit Occupation of the Development until the Management Scheme has been submitted to the Council and the Council has approved the Management Scheme in writing.
- 8.6 To maintain the Open Space in accordance with the Management Scheme approved by the Council at all times from Occupation of 50% of the Dwellings or 50% of the Dwellings in each Phase of the Development as the case may be (or such other number of Dwellings that may first be agreed in writing by the Council) to the satisfaction of the Council.
- 8.7 To amend the Management Scheme only with the Council's written consent.
- 8.8 To keep the Open Space open, unbuilt upon (save for permitted play equipment) and available for public recreational use in perpetuity save for access to any wildlife area to which access is restricted in the Management Scheme(s).
- 8.9 The Landowners will not dispose of:
- 8.9.1 any of the Dwellings within the Development or on a Phase as the case may be:
- (a) until details of the Management Company and the Estate Management Charge Terms have been submitted to and approved by the Council; and

- (b) without the inclusion of the Estate Management Charge Terms;
- 8.9.2 not to Occupy the penultimate Dwelling within the Development or on a Phase as the case may be until a sum of money has been paid to the Management Company to fund the management and maintenance of the Open Space within the Development or within a Phase as the case may be during the period up until the point in time that funds received from future owners of the Dwellings pursuant to the Estate Management Charge Terms are sufficient to fully fund such management and maintenance such sum having been previously approved by the Council acting reasonably;
- 8.9.3 not to dispose (other than by way of mortgage or assured shorthold tenancy) of the Dwelling unless the disponent enters into and delivers to the Management Company a direct covenant with the Management Company in the form set out at subparagraphs 8.9.1 and 8.9.2 above and this paragraph 8.9.3.
- 8.10 To procure that an application is made to the Land Registry for entry of a restriction onto the register of the title of each Dwelling comprised in the Development in standard form L in Schedule 4 of the Land Registration Rules 2003 namely:
- 'No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of paragraph [the provisions referred to at paragraph 2.1 above] of a transfer dated [] and made between [name] (1) and [name] (2) have been complied with or that they do not apply to the disposition'*
- 8.11 The Landowners shall not permit or allow the Occupation of more than 75% of the Dwellings (or such other percentage of Dwellings that may first be agreed in writing by the Council) that form part of the Development unless and until the freehold interest in the Open Space has been transferred free from incumbrances (other than as set out below) to the Management Company but for the avoidance of doubt the transfer shall:
- i. be a transfer of the entire freehold interest of the Open Space;
 - ii. be free from any pre-emption or option agreement;
 - iii. be free from any mortgage, charge, lien or other such incumbrance;
 - iv. include all usual and necessary rights of way with or without vehicles;

- v. be subject to rights of reasonable access to the public;
 - vi. reserve any usual and necessary rights to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same as may be reasonably required;
 - vii. declare that boundary structures shall belong to and be maintained by adjoining owners;
 - viii. not require consideration in excess of one pound (£1);
 - ix. contain covenants by the Management Company in favour of the Council and pursuant to Section 33 of the Local Government (Miscellaneous provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Management Scheme and the principles of good estate management to the intent that the Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied;
 - x. include provisions securing the sole use of the Open Space for the recreational enjoyment of the public as amenity open space;
 - xi. include a declaration that:
 - (a) no area of the Open Space is dedicated as public highway nor that any use by the public of any part of the Open Space shall be taken in any way as an intention by the Landowners to dedicate the same as highway; and
 - (b) notices may be erected on the Open Space and access to them will be denied one day each year in order to prevent public rights of way or common rights coming into being.
- 8.12 Following the completion of the carrying out of each the Species Rich Grassland Works the Landowners shall serve a notice in writing upon the Council ("**Landowners' Notice**").

8.13 As soon as reasonably practicable following service of a Landowners' Notice in accordance with paragraph 8.12 of this Schedule the Landowners shall engage a Management Company (having first supplied to the Council a certified copy of the Memorandum and Articles of Association of the Management Company) on terms to be agreed between the Landowners and the Management Company in consultation with the Council to manage and maintain the Species Rich Grassland and all further management and maintenance shall be thereafter carried out by the Management Company in accordance with the principles set out in paragraph 8.13.2 of this Schedule **PROVIDED THAT** it is agreed that it shall be a term of the Management Company's engagement that the Management Company will:

8.13.2 only allow the use of the Species Rich Grassland for biodiversity benefits and no other purpose; and

8.13.2 within the engagement covenant with the Council pursuant to section 33 of the Local Government (Miscellaneous Provision) Act 1982 to maintain and manage in perpetuity the Species Rich Grassland in accordance with the principles of good horticultural and estate management.

8.14 The Landowners hereby declare that pursuant to Section 31(6) Highways Act 1980 that the Species Rich Grassland has not been dedicated to the public nor is any use by the public to be taken in any way as an intention by the Landowners to dedicate the same as highway.

9 TRAFFIC REGULATION ORDER(S)

9.1 To pay the TRO Contribution to the Council prior to the Commencement of Development and not to Commence the Development until the TRO Contribution has been paid to the Council.

SCHEDULE 3
THE COUNCIL'S OBLIGATIONS

The Council covenants with the Landowners as follows:

- 1 To apply the Bus Stop Upgrades Contribution, the MOVA Traffic Signal Contribution and the TRO Contribution for the purposes specified in this Deed for which they are to be paid and not to expend the sums for any other purposes and the Council shall (on the reasonable request of the payer or the payer's nominee) provide evidence that the monies have been so applied.
- 2 To pay to the Landowners (or the payer or the payer's nominee) such amount of any payment made to the Council under this Deed (save for the TRO Contribution) which has not been expended or allocated in accordance with the provisions of this Deed within 10 (ten) years of the date of receipt or, if applicable, the date of receipt of the final instalment by the Council of such payment together with Interest accrued from time to time for the period from the date of payment to the date of refund.
- 3 To pay to the Landowners (or the payer or the payer's nominee) such amount of the TRO Contribution which has not been expended or allocated in accordance with the provisions of this Deed within 10 (ten) years of the date of receipt or, if applicable, the date of receipt of the final instalment by the Council of such payment together with Interest accrued from time to time for the period from the date of payment to the date of refund.
- 4 That it will following receipt of the written request of the Landowners at any time or times after any of the obligations in this Deed have been discharged issue written confirmation thereof as soon as reasonably practicable and/or at any time after all of the obligations in this Deed have been discharged or at any time after this Deed ceases to have effect pursuant to clause 4.1 or otherwise and the Council receives notice from the Landowners that the Planning Permission to that effect will upon confirmation of same thereafter cancel all relevant entries in the Register of Local Land Charges as soon as reasonably practicable.
- 5 Using all reasonable endeavours to respond in a timely and business like fashion the Council will on receipt from the Landowners of the details referred to in paragraph 6.1 of Schedule 2 to:
 - 5.1 grant all rights easements consents and licences (for nil consideration) that may be reasonably required to enable the Landowners and the Developer to enter onto and / or over the Council's Land necessary for the Off-Site Sustainable Drainage Features to be constructed and provided; and

5.2 allow those works to be carried out; and either

5.3.1 thereafter adopt the Off-Site Sustainable Drainage Features; or

5.3.2 grant all rights easements consents and licences (for nil consideration) that may be reasonably required by the Landowners the Developer and / or Drainage Management Company to enter onto and / or over the Council's Land as may be necessary in order to carry out the maintenance of the Off-Site Sustainable Drainage Features in accordance with the Management and Maintenance Plan referred to in paragraph 6.1.2 of Schedule 2

as the case may be.

IN WITNESS whereof the Parties hereto have sealed this instrument as their deed the day and year first before written

EXECUTED as a deed by the **SHEFFIELD**)
CITY COUNCIL whose common seal was)
hereunto affixed in the presence of:)

Authorised Signatory

EXECUTED as a **DEED** by)
PENNY SAMANTHA HILL)
in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
Occupation:

EXECUTED as a **DEED** by)
DEBBIE KIMBERLEY HILL)
in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
Occupation:

EXECUTED as a **DEED** by)
COLIN BRIAN CRAWSHAW)
in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
Occupation:

EXECUTED as a **DEED** by)
JACQUELINE ANN MILTON)
in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
Occupation:

EXECUTED as a **DEED** by)
SAMANTHA LOUISE MIDDLETON)
in the presence of:)

Signature of witness:
Name of witness:
Address:
.....
Occupation:

EXECUTED as a **DEED** by)
FIONA JENNY DENHAM)
in the presence of:)

Signature of witness:

Name of witness:

Address:

.....

Occupation:

Executed as a deed by affixing the)
Common Seal of)
HALLAM LAND MANAGEMENT)
LIMITED)
In the presence of:)

Director:

Secretary: