

DATED _____ **2025**

BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)

-and-

GEORGE NEWTON WRIGHT (2)

-and-

MARGARET MARY WOOD & MARCUS JAMES WOOD & JONATHAN DAVID WOOD (3)

-and-

HARGREAVES LAND LIMITED (4)

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended)

relating to Land north of Hemingfield Road, Hemingfield, Barnsley

LPA Reference: 2024/0122

PINS Reference: [*T.B.C.*]

WALKER MORRIS LLP

33 Wellington Street

LEEDS

LS1 4DL

Tel: 0113 2832500

Fax: 0113 2459412

Ref: CAS/HAR01295.13

THIS AGREEMENT (signed as a deed) is made the day of 2025

BETWEEN:

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Westgate Plaza One, 1 Westgate, Barnsley S70 2DR (“**Council**”) of the first part; and
- (2) **GEORGE NEWTON WRIGHT** of Hill Top Farm, Hemingfield Road, Barnsley, South Yorkshire (“**First Owner**”) of the second part; and
- (3) **MARGARET MARY WOOD, MARCUS JAMES WOOD** and **JONATHAN DAVID WOOD** of 2a Beech House Road, Hemingfield, Barnsley, South Yorkshire (“**Second Owner**”) of the third part; and
- (4) **HARGREAVES LAND LIMITED** (Company No. 07813088) whose registered office is situate at West Terrace, Esh Winning, Durham, DH7 9PT (“**HL**”) of the fourth part;

hereinafter called the “**Parties**” and reference to “**Party**” shall be construed accordingly.

1 DEFINITIONS AND INTERPRETATION

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

“1990 Act”	means the Town and Country Planning Act 1990 as amended;
“Appeal”	means the appeal PINS Reference No. APP/[<i>T.B.C.</i>] lodged on behalf of the Owners against the Council’s refusal of the Application on 11 December 2024;
“Application”	means the application reference number 2024/0122 registered by the Council on 9 th February 2024 for the demolition of existing structures and erection of residential dwellings with associated infrastructure and open space (all matters reserved apart from access into the site);
“Bus Service Contribution”	means the sum of £44,374.00 (forty four thousand three hundred and seventy four pounds) Index Linked to be paid to the Council by the Owners and used by the Council towards procuring with SYMCA the continued operation of bus service 21a on routes 67 and/or 72 (or their equivalents) over

a period of 3 (three) years the need for which is to mitigate the effects of the Development;

“Bus Stops Infrastructure Contribution”

means the sum of £45,626.00 (forty five thousand six hundred and twenty six pounds) Index Linked to be paid to the Council by the Owners and used by the Council towards procuring with SYMCA improvements to bus stops 50030 and 50031 on Hemingfield Road within the vicinity of the Development to include the supply and installation of bus waiting shelters and real-time passenger information displays the need for which is to mitigate the effects of the Development;

“CIL Regulations”

means the Community Infrastructure Levy Regulations 2010 (as amended);

“Commencement of Development”

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That the term “*material operation*” shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys construction of any access roads erection of contractors work compound erection of site office erection of fencing to site boundary and reference to “**Commence Development**” shall be construed accordingly;

“Contributions”

means collectively the Bus Service Contribution, the Bus Stops Infrastructure Contribution and the Skylark Mitigation Contribution and reference to “**Contribution**” 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 of the Land in accordance with the Planning Permission and Reserved Matters Approval(s);

“Dwellings”	means the residential units that may be built on the Land as part of the Development and reference to “Dwelling” shall be construed accordingly;
“Expert”	has the meaning given in clause 3.4.2;
“First Bus Service Contribution Instalment”	means £14,791.00 (fourteen thousand seven hundred and ninety one pounds) Index Linked of the Bus Service Contribution;
“First Owner's Land”	has the meaning given above in clause 2.2;
“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 Agreement;
“Independent Surveyor”	means a member of the Royal Institution of Chartered Surveyors appointed by the Owners at its own cost but first approved by the Council;
“Index”	means the 12 (twelve) month percentage change in the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;
“Index Linked”	means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of this Agreement or any publication substituted for it;
“Inspector”	means an inspector appointed by the Secretary of State to determine the Appeal pursuant to Schedule 6, of the 1990 Act;

“Land”	means all that land north of Hemingfield Road, Hemingfield, Barnsley shown for identification purposes only edged red on Plan 1;
“Occupation” and “Occupy” and “Occupied”	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;
“Owners”	means collectively the First Owner and the Second Owner and reference to “Owner” shall be construed accordingly;
“Plan 1”	means the plan attached to this Agreement (showing the Land edged red) and marked “Plan 1” appended to this Agreement as Annex 1;
“Planning Obligations”	means the obligations, conditions and stipulations set out in Schedule 1 and “Planning Obligation” shall be construed accordingly;
“Planning Permission”	means a planning permission that may be granted in pursuance of the Application;
“Reasonable Endeavours”	means it is agreed by the Parties that the Party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable;
“Reserved Matters Application”	means an application for discharge of reserved matters pursuant to the Planning Permission;
“Reserved Matters Approval(s)”	means any approval granted in respect of a Reserved Matters Application;

“Second Bus Service Contribution Instalment”	means £14,791.00 (fourteen thousand seven hundred and ninety one pounds) Index Linked of the Bus Service Contribution;
“Second Owner's Land”	has the meaning given above in clause 2.3;
“Secretary of State”	means the Secretary of State for Housing, Communities and Local Government or any substitute or any Inspector appointed by him/her;
“Skylark Mitigation Contribution”	means the sum of £1,320.00 (one thousand three hundred and twenty pounds) Index Linked to be paid to the Council by the Owners and used by the Council towards off-site mitigation for skylark the need for which is to address impacts arising from the Development;
“Statutory Undertaker”	means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;
“SYMCA”	means the South Yorkshire Mayoral Combined Authority or any body or bodies undertaking the existing functions of SYMCA;
“Third Bus Service Contribution Instalment”	means £14,792.00 (fourteen thousand seven hundred and ninety two pounds) Index Linked of the Bus Service Contribution;
“Working Days”	means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year's Day excepted).

1.2 Where the context so requires:

- 1.2.1 the singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;

- 1.2.2 references to the First Owner the Second Owner and HL in this Agreement shall include the successors in title and assigns of the First Owner the Second Owner and HL and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.3 where a Party includes more than one person any obligations of that Party shall be joint and several;
- 1.2.4 any covenant by the Owners not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.5 a reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it;
- 1.2.6 references to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement; and
- 1.2.7 clause headings are for reference only and shall not affect the construction of this Agreement.

2 RECITALS

- 2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.
- 2.2 The First Owner is the registered proprietor with absolute title of the part of the Land given title number SYK363994 by HM Land Registry (which title also include land that is not the subject of the Application and which is not bound by this Agreement) (“**First Owner's Land**”).
- 2.3 The Second Owner is the registered proprietor with absolute title of the part of the Land given title number SYK628553 by HM Land Registry (which title also include land that is not the subject of the Application and which is not bound by this Agreement) (“**Second Owner's Land**”).
- 2.4 HL has an interest in the:
 - 2.4.1 First Owner's Land by way of an agreement, dated 23 October 2023, made between the First Owner and HL.

2.4.2 Second Owner's Land by way of an agreement, dated 23 October 2023, made between the Second Owner and HL.

- 2.5 The Application was submitted to the Council on behalf of the Owners and HL for planning permission for the Development.
- 2.6 The Appeal was lodged on behalf of the Owners and HL against the Council's refusal of the Application on 11 December 2024.
- 2.7 The Owners by entering into this Agreement do so to create planning obligations in respect of the Land 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.
- 2.8 The Parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement and agree that the obligations comply with regulation 122 of the Community Infrastructure Levy Regulations 2010.

3 OPERATIVE PROVISIONS

- 3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 The planning obligations comprised in this Agreement shall not become effective until the following conditions are satisfied:
- 3.2.1 the Planning Permission has been granted; and
- 3.2.2 (except where stated otherwise in this Agreement) the Commencement of Development.
- 3.3 Subject to clause 3.2:
- 3.3.1 The Owners hereby covenant with the Council that the Land shall be permanently from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in Schedule 1 and HL acknowledges that its interest in the Land will be bound by the and subject to the restrictions and provisions regulating the Development and use thereof specified in Schedule 1; and

- 3.3.2 The Council covenants with the Owners to comply with its obligations in Schedule 2 and where applicable in Schedule 1.
- 3.4 It is agreed and declared as follows:
- 3.4.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement:
- (a) occurring after he or it has parted with his or its interest in the Land 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);
 - (b) if he shall be an occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling (or a chargee of an individual Dwelling lending money to such occupier purchaser or tenant);
 - (c) if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.
- 3.4.2 Any dispute arising between the parties as to their respective rights duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person (“**Expert**”).
- 3.4.3 Any reference to an Expert in accordance with clause 3.4.2 shall be to a reputable person unconnected to any of the Parties and experienced in matters to which the subject matter of the dispute relates and who shall be agreed between the Parties to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error).
- 3.4.4 Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert

himself) shall be paid.

3.4.5 Where any notice or confirmation is to be served on:

- (a) The Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning and Building Control at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2023/0898.
- (b) The First Owner under the terms of this Agreement such notice or confirmation shall be marked for the attention of George Newton Wright of Hill Top Farm, Hemingfield Road, Barnsley, South Yorkshire, quoting the Application reference number 2024/0122.
- (c) The Second Owner under the terms of this Agreement such notice or confirmation shall be marked for the attention of Margaret Mary Wood, Marcus James Wood and Jonathan David Wood of 2a Beech House Road, Hemingfield, Barnsley, South Yorkshire, quoting the Application reference number 2024/0122.
- (d) HL under the terms of this Agreement such notice or confirmation shall be marked for the attention of [] of Hargreaves Land Limited at [], quoting the Application reference number 2024/0122.

3.4.6 The covenants given by the Owners contained herein are made with the intent that the covenants will bind its interest in the Land and be binding on and enforceable against their successors in title or assigns and subject to clause 3.4.1 those deriving title under the Owners **PROVIDED THAT** it is agreed that each Planning Obligation contained in Schedule 1 shall bind only in respect of the land forming the parcel of land owned by each relevant Owner such that the First Owner shall not be liable for the breach of any of the planning obligations or other provisions of this Agreement that occur in relation to the Second Owner's Land and the Second Owner shall not be liable for the breach of any of the planning obligations or other provisions of this Agreement that occur in relation to the First Owner's Land.

- 3.4.7 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owners) (other than a modification under section 73 or 96A of the 1990 Act) or revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.8 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.9 The obligations hereby created shall be registered as a Local Land Charge.
- 3.4.10 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 3.4.11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.
- 3.4.12 HL shall forthwith pay to the Council its reasonable legal fees incurred in the preparation negotiation and completion of this Agreement.
- 3.4.13 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owners such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 3.4.14 The Parties shall act reasonably and in good faith in the performance of their obligations in this Agreement.
- 3.4.15 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 Agreement shall continue in full force in respect of the Planning Permission with the relevant condition or conditions as so varied.

- 3.4.16 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and planning permission 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 in this Agreement shall be to both the Planning Permission and a new planning permission granted pursuant to Section 73 of the 1990 Act and this Agreement shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement or deed to be entered into pursuant to Section 106 or 106A of the 1990 Act.
- 3.4.17 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 3.4.18 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 3.4.19 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.
- 3.4.20 If an Inspector or the Secretary of State in his/her Decision Letter concludes that any of the Planning Obligations) are incompatible with Regulation 122 of the CIL Regulations and expressly states in his/her Decision Letter that he/she 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 Owners shall be under no obligation to comply with that Planning Obligation but the remaining Planning Obligations shall remain in full force and effect.

SCHEDULE 1
(“the Owners' Covenants”)

The Owners hereby covenant with the Council:

1. Bus Service Contribution

1.1. To pay the First Bus Service Contribution Instalment to the Council within 5 (five) Working Days of either:

1.1.1. the 1 (one) year anniversary of Occupation of the 1st (first) Dwelling; or

1.1.2. Occupation of the 50th (fiftieth) Dwelling;

(whichever is the sooner) and not to Occupy more than 50 (fifty) Dwellings until the First Bus Service Contribution Instalment has been paid to the Council.

1.2. To pay the Second Bus Service Contribution Instalment to the Council on the first anniversary of the date of payment of the First Bus Service Contribution Instalment pursuant to paragraph 1.1 of this Schedule.

1.3. To pay the Third Bus Service Contribution Instalment to the Council on the anniversary of the date of payment of the Second Bus Service Contribution Instalment pursuant to paragraph 1.2 of this Schedule.

2. Bus Stops Infrastructure Contribution

2.1. To pay the Bus Stops Infrastructure Contribution to the Council prior to the Occupation of any of the Dwellings and not to Occupy any of the Dwellings until the Bus Stops Infrastructure Contribution has been paid to the Council.

3. Skylark Mitigation Contribution

3.1. To notify the Council prior to the Commencement of Development and not to Commence Development until the Skylark Mitigation Contribution as Index Linked has been paid to the Council.

SECOND SCHEDULE
(“the Council’s Covenants”)

The Council hereby covenants with the Owners:

General

1. The Council will on the reasonable written request of the Owners at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.
2. To issue separate receipts on request for any sum or Contribution paid to the Council under this Agreement.

Contributions

3. To apply the Contributions towards the purposes specified in this Agreement and not to apply the Contributions for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.

Repayment

4. That in the event the Contributions or any part or parts thereof are not expended within 10 (ten) years of the date of payment (or the date of payment of the final instalment if applicable) of such payment then the sum or sums not expended plus interest accrued will be repaid to the Owners or their nominee.

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

 Authorised Signatory

EXECUTED as a **DEED** by)
GEORGE NEWTON WRIGHT)
 in the presence of:)

 Signature

Signature of witness:
 Name of witness:
 Address:

 Occupation:

EXECUTED as a **DEED** by)
MARGARET MARY WOOD)
 in the presence of:)

 Signature

Signature of witness:
 Name of witness:
 Address:

 Occupation:

EXECUTED as a **DEED** by)
MARCUS JAMES WOOD)
in the presence of:)

Signature

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

EXECUTED as a **DEED** by)
JONATHAN DAVID WOOD)
in the presence of:)

Signature

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

EXECUTED AS A DEED (but not delivered)
until the date hereof) by)
HARGREAVES LAND LIMITED)
acting by a director in the presence of a witness)

Director

Signature of witness: _____
Name of witness: _____
Address: _____

Occupation: _____

Annex 1
(Plan 1)