

**DATED**

26 November

**2018**

**SCARBOROUGH BOROUGH COUNCIL (1)**

**GASCOINES GROUP LIMITED (2)**

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**AGREEMENT**

pursuant to section 106

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

relating to the development of land adjacent to Limestone Road Burniston

Scarborough North Yorkshire

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Legal Services

Scarborough Borough Council

Town Hall

St Nicholas Street

Scarborough

YO11 2HG

GAC/000673

THIS DEED is made the 26 day of November 2018

BETWEEN: -

- (1) **SCARBOROUGH BOROUGH COUNCIL** of Town Hall, St Nicholas Street, Scarborough, North Yorkshire, YO11 2HG (the "Borough Council");
- (2) **GASCOINES GROUP LIMITED** (Company No. 00340076) whose registered office is situate at 1 Church Street Southwell Nottinghamshire NG25 0HQ (the "Owner")

WHEREAS:

- (A) The Borough Council is the local planning authority for the purposes of the Act for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
- (B) The Owner is registered at the Land Registry as proprietor of the Land with absolute freehold title under Title Number NYK295859
- (C) The Owner has submitted the Planning Application to the Borough Council for permission to carry out the Development on the Land.
- (D) The Owner submitted the Appeal to the Planning Inspectorate on 28 June 2018 due to non-determination of the Planning Application.
- (E) The Owner by entering into this Deed does so to create planning obligations in favour of the Borough Council and the County Council pursuant to section 106 of the Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Deed.

NOW THIS DEED WITNESSES as follows:

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and expressions shall where the context so requires or admits have the following meanings: -



<b>"Act"</b>	means the Town and Country Planning Act 1990 (as amended);
<b>"Affordable Housing"</b>	has the meaning given to it in Annex 2 of the NPPF;
<b>"Affordable Housing Commuted Sum"</b>	means 60% of the Market Value in respect of each Affordable Housing Unit sold on the open market pursuant to paragraph 2.14 of the Second Schedule which is Affordable Housing for Rent and 55% of the Market Value in respect of each Affordable Housing Unit sold on the open market pursuant to paragraph 2.14 of the Second Schedule which is Low Cost Home Ownership Housing;
<b>"Affordable Housing for Rent"</b>	has the meaning given to it in Annex 2 of the NPPF and includes Affordable Rented Housing and Social Rented Housing
<b>"Affordable Housing Requirement"</b>	means 30% of the total number of Dwellings to be constructed on the Land which are required to be provided as Affordable Housing Units in accordance with the Second Schedule or such other percentage as is required by the Borough Council's Affordable Housing SPD or Policy HC3 of the Local Plan, whichever is the lower;
<b>"Affordable Housing Scheme"</b>	means a written scheme (subject to such written variations thereto as may be agreed in writing from time to time by the Owner and the Borough Council) which details :



- (a) the total number of Affordable Housing Units to be provided within the Development;
- (b) the Tenure Mix of the relevant Affordable Housing Units
- (c) the location/distribution of the relevant Affordable Housing Units by reference to a schedule and plans
- (d) the Affordable Housing Type Mix of the relevant Affordable Housing Units
- (e) the proposed standards of design, specification and construction of the relevant Affordable Housing Units such standards to accord with the Affordable Housing Standards
- (f) details of the Affordable Housing Units and any other land to be transferred to the Registered Provider in connection with the relevant Affordable Housing Units to ensure all Affordable Housing Units are used for the provision of accommodation by a Registered Provider and to ensure compliance with paragraphs 2.8 to 2.17 of the Second Schedule
- (g) the intended timing of construction of both the Affordable Housing Units and the Open Market Dwellings within the Development to ensure compliance



with the commencement and completion of construction obligations in paragraph 2.6 of the Second Schedule;

**“Affordable Housing SPD”** means the Borough Council’s Affordable Housing Supplementary Planning Document adopted by the Borough Council on 2 March 2018;

**“Affordable Housing Standards”** means such specifications and standards for the design construction and layout of the Affordable Housing Units as shall meet the nationally described space standards outlined in the Department for Communities and Local Government’s Technical housing standards as may from time to time be published by the Ministry of Housing Communities and Local Government and/or the Affordable Housing SPD and shall be visually indistinguishable from the Open Market Dwellings unless otherwise agreed between the Owner and the Registered Provider in consultation with the Borough Council;

**“Affordable Housing Type Mix”** means the mix of house types (type of Dwelling, number of bedrooms and size of Dwelling) which the relevant Affordable Housing Units comprise;

**“Affordable Housing Units”** means the Dwellings to be constructed on the Land as part of the Development as Affordable Housing and **“Affordable Housing Unit”** shall mean an individual one of the



	Affordable Housing Units;
"Affordable Rent"	has the meaning given to it in Annex 2 of the NPPF;
"Affordable Rented Housing"	has the meaning given to it in Annex 2 of the NPPF
"Appeal"	means the appeal reference APP/H2733/W/18/3205993 submitted to the Planning Inspectorate by the Owner on 28 June 2018 against the refusal of the Planning Application by the Borough Council;
"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 Act <b>save that</b> the term " <i>material operation</i> " shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office or erection of fencing to site boundary and reference to <b>"Commence Development"</b> and <b>"Commencement of Development of each Phase of the Development"</b> shall be construed accordingly;
"County Council"	means North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, North Yorkshire DL7 8AD, the body



	responsible for education for the area in which the Land is situated;
<b>"Development"</b>	means the development to be carried out on the Land pursuant to the Planning Permission;
<b>"Dwelling"</b>	means a residential unit that may be built on the Land as part of the Development and reference to <b>"Dwellings"</b> shall be construed accordingly;
<b>"Burniston Children's Play Facilities Contribution"</b>	<p>means a sum (Index Linked) calculated in accordance with the formula contained in the Green Space SPD, which is to be paid to the Borough Council by the Owner in accordance with paragraph 6 of the Second Schedule, the formula being:</p> <p>Offsite: Number of people generated by development (as per table 6.1 of the SPD) x cost per resident (as per table 6.6 of the SPD) = offsite contribution</p>
<b>"Burniston Parks and Gardens Facilities Contribution"</b>	<p>means a sum (Index Linked) calculated in accordance with the formula contained in the Green Space SPD, which is to be paid to the Borough Council by the Owner in accordance with paragraph 6 of the Second Schedule the formula being:</p> <p>Offsite: Number of people generated by development (as per table 6.1 of the SPD) x cost per resident (as per table 6.6 of the SPD)</p>



= offsite contribution

**“Burniston Sports Facilities Contribution”**

means a sum of (Index Linked) calculated in accordance with the formula contained in the Green Space SPD which is to be paid to the Borough Council by the Owner in accordance with paragraph 6 of the Second Schedule the formula being:

Offsite: Number of people generated by development (as per table 6.1 of the SPD) x cost per resident (as per table 6.6 of the SPD)  
= offsite contribution

**“Education Contribution”**

means the sum (Index Linked) to be paid to the Borough Council on trust for the County Council, the calculation of such sum being based on the number of units proposed with more than one bedroom as part of the detailed scheme submitted for Reserved Matters Approval in accordance with the Education Payments SPD (Page 15) and being a contribution towards the cost of providing additional places at Lindhead School Burniston which might arise as a result of the development proposed in the Reserved Matters Application;

**“Education Payments SPD”**

means the Borough Council's Education Payments Supplementary Planning Document adopted by the Borough Council on 12 May



2008 and updated in April 2012;

**“Green Space Facilities Requirement”** means the Burniston Children’s Play Facilities Contribution, the Burniston Parks and Gardens Facilities Contribution, the Burniston Sports Facilities Contribution and any On-site Green Space Provision as identified and calculated in accordance with the Green Space SPD the formula being:

Offsite: Number of people generated by development (as per table 6.1 of the SPD) x cost per resident (as per table 6.6 of the SPD) = offsite contribution

Onsite: X ha per 1000 population (relevant standard as per table 5.2 of the SPD) x number of people generated by developer = quantitative requirement (ha)

**“Green Space SPD”**

means the Borough Council’s Green Space Supplementary Planning Document adopted by the Borough Council on 3 November 2014 ;

**“HCA “**

means the Homes and Communities Agency or any body undertaking the existing functions of the Homes and Communities Agency 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 Building Costs Information All in Tender Price Index published by the Royal Institution of Chartered Surveyors (or



	contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution thereof;
<b>"Index Linked"</b>	means increased on an annual basis or pro rata per diem from the date of this Deed until such time that payment of any sum in this Deed is made such index linking to be equivalent to any inflationary increase in such sums taking as the basis for the measure of inflation the Index last published before the date of this Deed or any publication substituted for it;
<b>"Interest"</b>	means interest at the rate of 2% above the base lending rate of the Bank of England in force at the due date which shall mean the date when interest first becomes payable;
<b>"Land"</b>	means the land adjacent to Limestone Road Burniston Scarborough which is for the purposes of identification shown edged in red on the Plan
<b>"Low Cost Home Ownership Housing"</b>	means low cost homes for sale or shared ownership being forms of intermediate housing that meet the criteria of Affordable Housing as defined in Annex 2 of the NPPF;
<b>"Local Allocations Scheme"</b>	means a written scheme agreed between the Borough Council and the Registered Provider (subject to any written variations thereto which may be agreed from time to time)



which accords with the Borough Council's adopted allocations policies from time to time and specifies the arrangements for the nomination and allocation by the Borough Council and the Registered Provider respectively of tenants and purchasers of any Affordable Housing Unit

**"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 Owner and for the purposes of carrying out future maintenance of the On-site Green Space Provision and: -

1. which is incorporated in England and Wales or Scotland;
2. which has a registered office in England or Scotland; and
3. whose primary objects permit it to maintain and renew the On-site Green Space Provision;

**"Market Value"**

means the amount for which a Dwelling should sell on the open market on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and assuming that any restrictions imposed on the Dwelling by reason of this Deed are disregarded



		PROVIDED THAT for the purposes of paragraph 2.14 of the Second Schedule the valuation date shall be the date of sale of the relevant Affordable Housing Unit on the open market;
<b>"NPPF"</b>		means the Department for Communities and Local Government document entitled "National Planning Policy Framework" (July 2018) or any replacement or modification thereof in force from time to time
<b>"Occupation"</b>		means the beneficial occupation for the purpose for which a Dwelling was granted planning permission but shall exclude occupation for the purposes of decoration, fit out or marketing and reference to <b>"Occupy"</b> and <b>"Occupied"</b> shall be construed accordingly;
<b>"On-Site Green Space Provision"</b>		means the area(s) within the Development to be laid out as open space (whether or not provided with play and / or sports facilities) in accordance with the On-site Green Space Facilities Scheme and/or any conditions annexed to the Planning Permission and made available for public use and provided in accordance with paragraph 5 of the Second Schedule;
<b>"On-site Green Space Facilities Scheme"</b>		means a scheme to provide manage and maintain the On-site Green Space Provision to include details of: -



1. a programme relating to timescales for implementation;
2. the proposed maintenance of the On-site Green Space Provision setting out how it will be repaired maintained and cleaned in accordance with the principles of good estate management and good horticultural practice and complying with all current safety standards in respect of a regular safety inspection regime and an annual independent inspection by a Royal Society for the Prevention of Accidents approved inspector; and
3. the proposed long term ownership and management of the On-site Green Space Provision and the maintenance of appropriate insurances including adequate third party liability insurance;

**"Open Market Dwelling"**

means a residential unit that is built on the Land as part of the Development which is not an Affordable Housing Unit and reference to **"Open Market Dwellings"** shall be construed accordingly;

**"Parties"**

means the parties to this Deed;

**"Plan"**

means the plan attached at the First Schedule;

**"Planning Application"**

means the outline application submitted by the Owner to the Borough Council and validated



	by the Borough Council on 13 March 2018 for residential development on the Land and allotted reference 18/00505/OL;
<b>"Planning Obligation"</b>	means the obligations imposed on the Owner and contained in Schedule 2;
<b>"Planning Permission"</b>	means a planning permission subject to conditions granted pursuant to the Appeal bearing reference APP/H2733/W/18/3205993;
<b>"Practical Completion"</b>	means the issue of a certificate(s) of practical completion in relation to any aspect of the Development by an architect or such other person who has been supervising the Development;
<b>"Protected Tenant"</b>	means any tenant who: <ul style="list-style-type: none"> <li>(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or</li> <li>(c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned</li> </ul>



by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

**“Registered Provider”**

means a registered provider operating in the area of the Land as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered by the HCA under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the HCA for receipt of social housing grant as may be proposed by the Owner and approved by the Borough Council;

**“Reserved Matter”**

means any one of access, appearance, landscaping, layout and scale as defined by Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010, as amended

**“Reserved Matters Application”**

means an application for approval of one or more of the Reserved Matters in respect of the Development of the Land;

**“Reserved Matters Approval”**

means an approval of Reserved Matters issued by the Borough Council pursuant to a



Reserved Matters Application;

**"Social Rent"**

has the meaning given to it in Annex 2 of the NPPF;

**"Social Rented Housing"**

has the meaning given to it in Annex 2 of the NPPF

**"Tenure Mix"**

means the percentage split between Rented Affordable Housing and Low Cost Home Ownership Housing within the Overall Affordable Housing Requirement

**"Working Day"**

means any day except Saturdays Sunday or a bank holiday and reference to **"Working Days"** shall be construed accordingly.

## **2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning shall where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.



2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Borough Council the successors to its statutory functions.

2.7 The headings are for reference only and shall not affect construction.

### **3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and all other powers so enabling.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Borough Council as local planning authority against the Owner and any person deriving title under him.

### **4 CONDITIONALITY**

4.1 The planning obligations contained in this Deed shall not become effective until the following conditions are satisfied: -

4.1.1 the Planning Permission has been granted; and

4.1.2 unless otherwise stated the Commencement of Development

save for the provisions of clauses 8.1, 9, 11, 15 and 16 which shall come into effect immediately upon completion of this Deed.

### **5 CIL 123 LIST**

The parties agree that:



- 5.1 if the Secretary of State in his decision letter concludes that any of the Planning Obligations set out in this deed (or relevant part of a Planning Obligation) are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly expressly states in his decision letter that he attaches no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation(s) (or part of the Planning Obligation(s) as appropriate) shall from the date of the decision letter immediately cease to have effect and the Owner shall be under no obligation to comply with that Planning Obligation (or the relevant part of the Planning Obligation as appropriate) but the remaining Planning Obligations shall remain in full force and effect; and
- 5.2 if, after the date of this deed, but prior to the Planning Permission being issued by the Secretary of State, Community Infrastructure Levy ("CIL") is applicable to the Development then, in so far as it is lawful to do so, the parties to this deed shall use Reasonable Endeavours to agree variations to this deed with the intent that the Owner is not required to contribute (whether by financial contribution or in kind or both) more than once for any item of infrastructure (as defined by the Community Infrastructure Levy Regulations 2010 and / or as amended applied and / or supplemented by any relevant charging schedule adopted including any related document issued by the Council from time to time during the delivery of the Development) through both the terms of this deed and through CIL **PROVIDED THAT** nothing in this clause 5.2 shall: -
- 5.2.1 fetter the discretion of the Council acting as local planning authority; nor
- 5.2.2 require the Council to act contrary to law in the charging, collecting or spending of CIL.

## 6 THE OWNER'S COVENANTS

The Owner hereby covenants with the Borough Council so as to bind the Land to perform the obligations and observe the restrictions specified in the Second Schedule.



## **7 THE BOROUGH COUNCIL'S COVENANTS**

The Borough Council covenants with the Owner to perform the obligations and observe the restrictions specified in the Third Schedule.

## **8 MISCELLANEOUS**

- 8.1 The Owner shall pay to the Borough Council on completion of this Deed the sum of £1,750.00 (One thousand seven hundred and fifty pounds) being a contribution to the reasonable legal costs and disbursements of the Borough Council incurred in the negotiation, preparation and execution of this Deed
- 8.2 This Deed does not nor is intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999.
- 8.3 This Deed shall be registrable as a local land charge by the Borough Council.
- 8.4 Following the performance and satisfaction of all the planning obligations contained in this Deed the Borough Council shall following receipt of a written request forthwith effect the cancellation of all related entries in the Register of Local Land Charges in respect of this Deed.
- 8.5 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.6 Insofar as any clause or clauses of this Deed 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 Deed.



- 8.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.8 The covenants contained in this Deed shall not be enforceable against:
- (a) (save in respect of paragraph 2.15 of the Second Schedule which shall (subject to the provisions of the Second Schedule) apply to owner-occupiers of Affordable Housing Units (as defined therein)) owner-occupiers tenants or occupiers of Dwellings nor against those deriving title from them;
  - (b) a statutory undertaker after the transfer or lease of the statutory apparatus and any land upon or in which the statutory undertaker's apparatus is situated by the Owner to that statutory undertaker;
  - (c) any mortgagee or chargee which shall have the benefit from time to time of a mortgage or charge of or on part or parts of the Land unless such mortgagee or charge has entered into possession of the Land or any part thereof to which such obligation relates
- 8.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.10 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 8.11 Any notice agreement consent acknowledgment or approval required to be given under this Deed shall not be unreasonably withheld or delayed and shall be in writing and shall be delivered personally or sent by pre-paid first class recorded delivery post or facsimile transmission.



8.12 The address for service of any such notice consent acknowledgment or approval as aforesaid shall: -

8.12.1 in the case of service upon the Borough Council be at its address aforesaid or such other address for service as shall have been previously notified by the Borough Council;

8.12.2 in the case of service upon the Owner be at its address aforesaid or such other address for service as shall have been previously notified by the Owner; and

8.13 A notice agreement consent acknowledgment or approval under this Deed shall be deemed to have been served as follows: -

8.13.1 if personally delivered at the time of delivery;

8.13.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom;

8.13.3 if sent by facsimile transmission at the time of successful transmission on the day of transmission if sent before 3.30pm otherwise the following working day;

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid or recorded delivery envelope (as appropriate) or that the facsimile was successfully transmitted on a tested line as the case may be.



## **9 DISPUTE PROVISIONS**

- 9.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president (or his deputy) for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an Expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares
- 9.2 In the absence of agreement as to the appointment of suitability of the person to be appointed pursuant to clause 9.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society (or his deputy) for him to appoint a solicitor to determine the dispute such solicitor acting as an Expert and his decision shall be final and binding on all Parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties in equal shares. If a solicitor is appointed pursuant to this clause 9.2 then he may appoint as assessor to assist him in his determination and the costs of the assessor shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties in equal shares



- 9.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation
- 9.4 The Expert shall be required to give notice to each of the said Parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and each will be entitled to make a counter written submission within a further ten Working Days.
- 9.5 For the purposes of this clause 9 the term "Expert" shall mean the Expert appointed pursuant to clause 9.1 or 9.2 as the context admits

## **10 WAIVER**

No waiver (whether expressed or implied) by the Borough Council (or the Owner) of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council (or the Owner) from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **11 CHANGE IN OWNERSHIP**

The Owner agrees with the Borough Council to give the Borough Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan.



## **12 INDEXATION**

Any sum referred to in the Third Schedule shall be Index Linked.

## **13 INTEREST**

If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

## **14 VAT**

The amount of all considerations, contributions and payments referred to in this Deed shall be increased by any value added tax properly payable on the consideration, contribution or payment.

## **15 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

## **16 DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof this Deed has been duly executed by the parties the day and year first before written



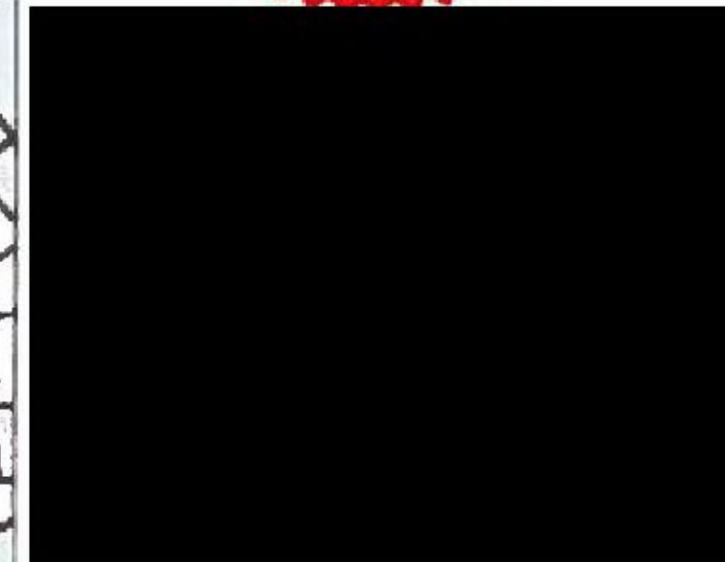
## FIRST SCHEDULE

### The Plan





KEY  
 Site location



# LIMESTONE ROAD, BURNISTON, NORTH YORKSHIRE - SITE LOCATION PLAN





## **SECOND SCHEDULE**

### **Owner's Covenants**

The Owner hereby covenants with the Borough Council as follows: -

1. To notify the Borough Council in writing seven Working Days prior to Commencement of Development
2. **AFFORDABLE HOUSING**
  - 2.1 To provide Affordable Housing corresponding to the Affordable Housing Requirement with a Tenure Mix and Affordable Housing Type Mix as required by the Borough Council
  - 2.2 Not to allow the Commencement of Development until it has submitted and the Borough Council has approved in writing the Affordable Housing Scheme with the proviso that the Owner shall submit the Affordable Housing Scheme for approval prior to submission of the Reserved Matters Application
  - 2.3 The Borough Council shall give notice of approval or rejection of the Affordable Housing Scheme submitted pursuant to paragraph 2.2 of this Schedule not later than 20 Working Days from the date of receipt by the Borough Council of the Affordable Housing Scheme and in the event of its rejection set out its reasons for rejection and specify the measures required to produce an acceptable Affordable Scheme
  - 2.4 In the event that the Borough Council rejects the Affordable Housing Scheme submitted pursuant to paragraph 2.2 of this Schedule the Owner may submit a revised Affordable Housing Scheme to the Borough Council for approval whereupon the Borough Council will again issue its decision in respect of such Affordable Housing Scheme in accordance with paragraph 2.3 above.
  - 2.5 The Owner shall be entitled to invoke paragraph 2.4 of this Schedule as many times as is necessary in order to secure an approval in respect of an



Affordable Housing Scheme submitted to the Borough Council pursuant to paragraph 2.2 of this Schedule

- 2.6 From the Commencement of Development the Owner shall proceed to construct the Affordable Housing Units in accordance with the Affordable Housing Scheme approved pursuant to paragraphs 2.3 or 2.4 of this Schedule subject to such written variations thereto as may be agreed between the Owner and the Borough Council from time to time and the owner :-

2.6.1 shall not allow the Occupation of more than 50% of the Open Market Dwellings until construction of the Affordable Housing Units has commenced; and

2.6.2 shall not allow the Occupation of more than 80% of the Dwellings within the Development until the Practical Completion of the Affordable Housing Units

- 2.7 Upon the Commencement of Development the Owner shall nominate in writing one or more Registered Provider(s) to whom the Owner proposes to transfer the Affordable Housing Units for the Borough Council's written approval **PROVIDED THAT** if the Borough Council does not notify the Owner within 30 Working Days of receipt of the Owner's nomination (or such longer period if agreed between the Borough Council and the Owner) of its approval or disapproval of the Registered Provider(s) nominated by the Owner it shall be deemed that the Borough Council has approved the Registered Provider(s) nominated by the Owner.

- 2.8 As soon as reasonably practicable following the Commencement of Development or following the Borough Council's approval of the Registered Provider(s) nominated by the Owner pursuant to paragraph 2.7 of this Schedule (whichever is the later) the Owner will make an offer to the Registered Provider(s) approved pursuant to paragraph 2.7 above for the disposal of the relevant Affordable Housing Units **PROVIDED THAT** for the



avoidance of doubt there shall be no obligation upon the Owner to have commenced construction of the Affordable Housing Units at the point when the said Affordable Housing Units are offered in accordance with this paragraph 2.8

- 2.9 From the date the Affordable Housing Units are first offered to a Registered Provider(s) pursuant to paragraph 2.8 above or paragraph 2.11 below of this Schedule the Owner shall act in good faith and use reasonable endeavours in seeking to transfer the relevant Affordable Housing Units to the approved Registered Provider(s) in accordance with the terms of this Deed
- 2.10 In the event that the nominated Registered Provider declines to accept a transfer of all or some of the Affordable Housing Units or no transfer of all or some of the Affordable Housing Units has been effected within three calendar months from the date when the Owner offered them to the Registered Provider(s) in accordance with paragraph 2.8 of this Schedule then paragraph 2.11 of this Schedule shall apply
- 2.11 Where this paragraph 2.11 applies then :
- (a) The Owner may submit to the Borough Council in writing evidence (such evidence to include a list of Registered Providers who have been invited to accept a transfer of the Affordable Housing Units and copies of any offers or bids received by the Owner) as to why it is unable to achieve a transfer of the relevant Affordable Housing Units despite complying with paragraph 2.9 of this Schedule together with evidence from the Registered Provider(s) that they are not willing to accept a transfer of the relevant Affordable Housing Units
- (b) Within 20 Working Days from receipt of the Owner's written evidence pursuant to sub-paragraph 2.11 (a) above the Borough Council and the Owner shall seek to jointly appoint an independent and suitable person who is a member of the Royal Institution of Chartered Surveyors or who holds



such other appropriate qualifications as may be agreed between the parties to provide a valuation of :

- (i) The Market Value of each of the relevant Affordable Housing Units; and
- (ii) The affordable value of each of the relevant Affordable Housing Units
- (c) In the event that the parties are unable to agree the identity of the person to be jointly appointed in accordance with sub-paragraph 2.11 (b) of this Schedule within the 20 Working Day period then the matter may be referred to the President of the Royal Institution of Chartered Surveyors by either party and he shall nominate a suitable person in the absence of such agreement and the parties shall within 7 Working Days of such nomination jointly appoint the nominated person to carry out the valuations in accordance with sub-paragraph 2.11 (b) of this Schedule
- (d) In the event that the person appointed by the Owner and the Borough Council pursuant to sub-paragraphs 2.11 (b) or 2.11 (c) of this Schedule notifies the parties in writing that the affordable value for any relevant Affordable Housing Unit is the same or less than the best offer from a Registered Provider received by the Owner and notified to the Borough Council in accordance with sub-paragraph 2.11 (a) of this Schedule then the Owner shall make a further offer to transfer that Affordable Housing Unit to that Registered Provider and thereafter paragraph 2.9 of this Schedule shall apply in respect of such an offer **PROVIDED THAT** if the Registered Provider still does not complete the transfer of the relevant Affordable Housing Unit within a further three calendar months of such an offer then sub-paragraph 2.11 (f) of this Schedule shall apply
- (e) In the event that the person appointed by the Owner and the Borough Council pursuant to sub-paragraphs 2.11 (b) or 2.11 (c) of this Schedule notifies the parties in writing that the affordable value for any relevant Affordable Housing Unit is higher than the best offer from a Registered Provider received by the Owner and notified to the Borough Council in



accordance with sub-paragraph 2.11 (a) of this Schedule then sub-paragraph 2.11 (f) of this Schedule shall apply

(f) In the event that this sub-paragraph 2.11 (f) applies then the Borough Council shall nominate to the Owner in writing an alternative Registered Provider which it reasonably believes will agree to accept the transfer of the relevant Affordable Housing Units at the price which is not less than the affordable value **PROVIDED THAT** if the Borough Council does not advise the Owner in writing of such nomination within the said 20 Working Day period the Owner will be entitled to nominate an alternative Registered Provider of its choice

(g) As soon as is reasonably practicable following either receipt of confirmation of the Council's nominated alternative Registered Provider or (where no such nomination is made by the Borough Council) the expiry of the 20 Working Day period referred to in sub-paragraph 2.11(b) above (whichever is the later date) the Owner will make an offer to the alternative Registered Provider for the disposal of all of the relevant Affordable Housing Units to the alternative Registered Provider and thereafter the Owner shall comply with the terms of paragraph 2.9 of this Schedule in respect of such an offer

2.12 Subject to paragraph 2.13 of this Schedule the procedure set out in paragraph 2.11 of this Schedule may be repeated by the Owner as many times as is necessary in order to secure the transfer of all of the relevant Affordable Housing Units in accordance with the terms of this Deed

2.13 In the event that :

- (a) The Owner has invoked the procedure set out in paragraphs 2.11 and 2.12 of this Schedule a minimum of three times; and
- (b) Some or all of the Affordable Housing Units have still not been transferred to a Registered Provider; and
- (c) A period of 20 calendar months from the Commencement of Development has expired



Then paragraph 2.14 of this Schedule shall apply

2.14 Where this paragraph 2.14 applies then:

- (a) The Owner may notify the Borough Council in writing that the conditions set out in paragraph 2.13 above have been satisfied; and
  - (b) The Borough Council shall thereafter acknowledge receipt of the Owner's written notice served pursuant to sub-paragraph 2.14(a) above within 20 Working Days from receipt of the same provided that if the Borough Council fails to issue the acknowledgement within the said 20 Working Day period then it shall be deemed to have acknowledged the Owner's written notice; and
  - (c) Upon receipt of the Council's acknowledgement or deemed acknowledgement pursuant to sub-paragraph 2.14 (b) above :
    - (i) The Owner shall have no further obligation to offer the Affordable Housing Units to any Registered Provider; and
    - (ii) The Owner shall be entitled to sell the Affordable Housing Units that have not been transferred to a Registered Provider on the open market free of the obligations contained in this Deed PROVIDED THAT within 28 Working Days of the completion of the sale of the final Affordable Housing Unit which is sold on the open market the Owner shall pay to the Council the Affordable Housing Commuted Sum which is attributable to each Affordable Housing Unit which has been sold on the open market pursuant to this paragraph 2.14
- 2.15 Subject to paragraph 2.16 of this Schedule from the date of its Practical Completion each Affordable Housing Unit shall be used only as Affordable Housing and :-
- (a) each Affordable Housing Unit which is identified in the relevant approved Affordable Housing Scheme as Low Cost Home Ownership Housing shall be



used only as Low Cost Home Ownership Housing in accordance with the relevant Local Allocations Scheme;

- (b) each Affordable Housing Unit which is identified in the relevant approved Affordable Housing Scheme as Social Rented Housing shall be used only as Social Housing in accordance with the relevant Local Allocations Scheme and shall be offered for letting at a rent no higher than the Social Rent; and
- (c) each Affordable Housing Unit which is identified in the relevant Affordable Housing Scheme as Affordable Rented Housing shall be used only as Affordable Rented Housing in accordance with the relevant Local Allocations Scheme and shall be offered for letting at a rent not exceeding the Affordable Rent

unless otherwise agreed in writing with the Borough Council

2.16 The restrictions set out in paragraph 2.15 of this Schedule shall not be binding on:

- (a) any Protected Tenant; or
- (b) any mortgagee or chargee of such Protected Tenant; or
- (c) any person deriving title from such Protected Tenant or any successor in title thereto and their respective mortgagees and charges
- (d) any mortgagee in possession of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor but the successors in title to such mortgagee in possession shall be bound by the restrictions

2.17 The Owner shall ensure that any transfer of an Affordable Housing Unit to a Registered Provider shall contain the following provisions unless the Parties agree otherwise in writing :-

- (a) full and free rights of access both pedestrian and vehicular to the Affordable Housing Units from the public highway;
- (b) full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which



- shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Units, all such services to be connected to the mains;
- (c) a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Dwellings; and
  - (d) the imposition of such covenants as the Owner shall reasonably require as are consistent with the sale of any Open Market Dwellings.

### **3. EDUCATION CONTRIBUTION**

To pay the Education Contribution to the Borough Council in the following instalments:

- 3.1 50% prior to Occupation of the first Dwelling;
- 3.2 The remaining 50% prior to Occupation of 50% of the Dwellings within the Development

### **4. GREEN SPACE FACILITIES REQUIREMENT**

To provide the Green Space Facilities Requirement in accordance with paragraphs 5, 6.1, 6.2 and 6.3 of this Schedule

### **5. ON-SITE GREEN SPACE PROVISION**

- 5.1 The Owner shall not Commence Development until it has submitted to the Borough Council for approval the On-Site Green Space Facilities Scheme.
- 5.2 Within 50 Working Days of the Borough Council receiving from the Owner the On-site Green Space Facilities Scheme the Borough Council will notify the Owner in writing of its approval to the On-site Green Space Facilities Scheme proposed by the Owner or will acting reasonably provide in writing its proposed amendments to the On-site Green Space Facilities Scheme pursuant to which the Owner acting reasonably shall submit an On-site Green Space Facilities Scheme incorporating those amendments as are reasonable and accepted **PROVIDED THAT** if the Borough Council does not notify the



Owner of its approval or proposed amendments to the On-site Green Space Facilities Scheme within the 50 Working Days referred to above (or such other period of time that may be agreed) it shall be deemed that the Borough Council has approved the On-site Green Space Facilities Scheme submitted by the Owner **AND FURTHER PROVIDED THAT** if agreement cannot be reached between the Borough Council and the Owner within 80 Working Days of the date of its submission to the Borough Council (or such other period of time that may be agreed) then the provisions of clause 8 relating to expert determination can be invoked by any party in relation to only those matters that are in dispute.

- 5.3 Upon receipt of the Borough Council's approval or deemed approval to the On-site Green Space Facilities Scheme pursuant to paragraph 5.2 of this Schedule (or upon receipt of expert determination in relation to the On-site Green Space Facilities Scheme if applicable) the Owner shall implement the On-site Green Space Facilities Scheme in accordance with the implementation programme agreed as part of the On-site Green Space Facilities Scheme and: -

- 5.3.1 subject to paragraph 5.5 of this Schedule allow the public access to the On-site Green Space Provision on foot only (and where applicable on foot and cycle) at all times;
- 5.3.2 ensure that the On-site Green Space Provision is kept in a clean and tidy state and properly maintained at all times as specified in the On-site Green Space Facilities Scheme.

- 5.4 Upon the On-site Green Space Provision being completed to the Borough Council's reasonable satisfaction in accordance with the Planning Permission and approved plans the Owner will either: -

- 5.4.1 maintain and manage in perpetuity the On-site Green Space Provision in accordance with the approved On-site Green Space Facilities Scheme (or any variations that may be agreed in writing from time to



time between the Borough Council and the Owner) **IN DEFAULT OF WHICH** the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Owner to carry out any maintenance works reasonably required to the On-site Green Space Provision and recover the proper and reasonable costs and expenses involved from the Owner; or

5.4.2 Within 6 months of completion of the On-site Green Space Facilities Scheme transfer title for the On-site Green Space Provision to a Management Company (having supplied to the Borough Council a certified copy of the Memorandum and Articles of Association of the Management Company) on the terms agreed between the Owner and the Management Company in consultation with the Borough Council and all further maintenance shall be thereafter carried out by the Management Company **PROVIDED THAT** it shall be a term of the transfer that the Management Company will: -

- (a) maintain and manage in perpetuity the On-site Green Space Provision in accordance with the approved On-site Green Space Facilities Scheme or any variations that may be agreed in writing by the Borough Council from time to time **In Default of Which** the Borough Council shall be entitled upon giving reasonable prior written notice of no less than 25 Working Days to the Management Company to carry out any maintenance works reasonably required to the On-site Green Space Provision and recover the proper and reasonable costs and expenses involved from the Management Company; and
- (b) only allow the use of the On-site Green Space Provision for public access and recreation and for no other purpose;

5.5 To allow public access to the On-site Green Space Provision but subject to the following provisions: -



- 5.5.1 access shall be subject to such other requirements and regulations as may from time to time be imposed by the Owner having regard to overriding reasons of safety, security and prudent building management **PROVIDED THAT** such requirements and regulations shall not be imposed without the Borough Council's prior approval;
- 5.5.2 the Owner may erect notices on the On-site Green Space Provision and access to them will be denied by the Owner for one day each year in order to prevent public rights of way or common rights coming into being;
- 5.5.3 access may be denied by the Owner for the maintenance, repair, cleansing or renewal of the On-site Green Space Provision or any building or land abutting it subject to the Borough Council's prior approval; and
- 5.5.4 the Owner may close the On-site Green Space Provision or any part thereof for reasonable periods by reason of emergency; cleansing, maintenance and repair; at the direction of the emergency services or other lawful authority; or for construction activities whilst the Development is being built.

5.6 The Owner hereby declares that pursuant to Section 31(6) Highways Act 1980 the Onsite Green Space Provision has not been dedicated to the public nor is any use by the public of any part of the On-site Green Space Provision to be taken in any way as an intention by the Owner to dedicate the same as highway.

Upon the tenth anniversary of the practical completion of the On-site Green Space Provision the Owner may invite the Borough Council to accept a transfer of the On-site Green Space Provision at nil cost and on the terms to be agreed between the Owner and the Borough Council. In the event that the Borough Council does not accept the transfer of the On-site Green Space Provision in accordance with the provisions of this paragraph 5.7 the Owner



will continue to maintain and manage the On-site Green Space Provision in perpetuity in accordance with paragraphs 5.4.1 or 5.4.2 of this Schedule as the case may be and in accordance with the On-site Green Space Facilities Scheme.

#### **6.1 BURNISTON CHILDREN'S PLAY FACILITIES CONTRIBUTION**

To pay the Burniston Children's Play Facilities Contribution to the Borough Council in the following instalments:-

- (i) 50% on Commencement of Development
- (ii) The remaining 50% prior to Occupation of 50% of the Dwellings within the Development

#### **6.2 BURNISTON PARKS AND GARDENS FACILITIES CONTRIBUTION**

To pay the Burniston Parks and Gardens Facilities Contribution to the Borough Council in the following instalments:-

- (i) 50% on Commencement of Development
- (ii) The remaining 50% prior to Occupation of 50% of the Dwellings within the Development

#### **6.3 BURNISTON SPORTS FACILITIES CONTRIBUTION**

To pay the Burniston Sports Facilities Contribution to the Borough Council in the following instalments:-

- (i) 50% on Commencement of Development
- (ii) The remaining 50% prior to Occupation of 50% of the Dwellings within the Development



**THIRD SCHEDULE**  
**(Borough Council's Covenants)**

The Borough Council covenants with the Owner: -

1. To apply the Burniston Children's Play Facilities Contribution towards the provision/improvement/enhancement of new or existing children's play facilities in the Parishes of Burniston and/or Cloughton Scarborough
2. To apply the Burniston Parks and Gardens Facilities Contribution towards the provision/improvement/enhancement of new or existing parks and gardens facilities in the Parishes of Burniston and/or Cloughton Scarborough
3. To apply the Burniston Sports Facilities Contribution towards the provision/improvement/enhancement of new or existing sports facilities in the Parishes of Burniston and/or Cloughton Scarborough
4. In the event that the Burniston Children's Play Facilities Contribution, the Burniston Parks and Gardens Facilities Contribution or the Burniston Sports Facilities Contribution or any part or parts thereof are not expended within ten years after Practical Completion of the Development then the sum or sums not expended plus interest accrued will be repaid to the person who paid the sum or sums.
5. To hold the Education Contribution on trust for the County Council and the Owner and when required to pay it to the County Council but solely on the condition that the County Council: -
  - 5.1 applies the Education Contribution towards the provision of educational facilities at Lindhead School Limestone Road Burniston the need for which is generated by the Development and the County Council shall (on the reasonable request of the payee or the payee's nominee) provide written evidence that the monies have been so applied; and
  - 5.2 repays to the Borough Council any part or parts thereof which remains unspent within ten years of Practical Completion of the Development;



6. That as soon as reasonably practicable following repayment by the County Council of the Education Contribution or any part or parts thereof in accordance with paragraph 5.2 of this Schedule then the sum received will be repaid to the person who paid the sum or sums or its nominee;



**EXECUTED AS A DEED BY  
SCARBOROUGH BOROUGH COUNCIL**

whose COMMON SEAL was  
hereunto affixed in the presence of



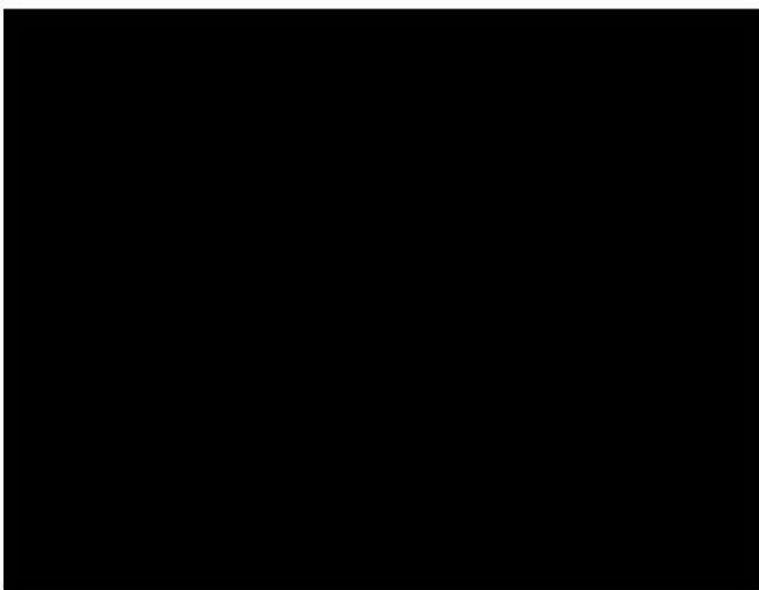
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Authorised Signatory

Rebecca Jackson, Solicitor  
Legal Services Manager

**EXECUTED as a DEED** (but not  
Delivered until the date hereof) by  
**GASCOINES GROUP LIMITED**  
acting by:  
a director and the company secretary; or  
by two directors; or by a director in the  
presence of: -



*Witness signature* .....


*name* .....

*address* .....

.....

*occupation* .....



	Delegated - Marcus Whitford
	20/11/2018
	GAC
	26/11/2018
	
	GAC
	24/11/2018