

THIS AGREEMENT is made the 20<sup>th</sup> day of March 20 13

BETWEEN:

- (1) **GLADEDALE (BARLBOROUGH) LIMITED** (Company No 3675479) whose registered office address is Ashley House Ashley Road Epsom Surrey KT18 5AZ (the Owner)

- (2) **THE BANK OF SCOTLAND PLC** whose registered office is at The Mound Edinburgh EH1 1YZ and its address for service is Princess House 7<sup>th</sup> Floor 1 Suffolk Lane London EC4R 0AX (the Mortgagee)

- (3) **ASHFIELD DISTRICT COUNCIL** of Council Offices, Urban Road, Kirkby-in-Ashfield, Nottinghamshire, NG17 8DA (the Council)

## 1. Definitions

IN THIS AGREEMENT the following words and phrases shall have the following meaning:-

1.1 "the Act" means Town and Country Planning Act 1990 (as amended) and terms not otherwise defined in this Agreement have the meaning ascribed to them in the Act unless a contrary intention appears

1.2 "the Application Site" means the land which is shown for the purposes of identification only edged red on the Revised Layout Plan

1.3 "the Approved Development" means residential development on the Application Site in accordance with the terms of the Existing Permission

1.4 "the Entire Site" means the land which was shown for the purposes of identification only edged red on the Plan attached to the Previous Agreement

1.5 "the Existing Permission" means the Planning Permission 2012/0275 issued by the Council on 6<sup>th</sup> September 2012

1.6 "the New Application" means the planning application dated 20<sup>th</sup> December 2012 in respect of the plot revision within the Revised Development to which has been allocated the Council's planning application reference no. 2012/0590

1.7 "the New Obligation" means the planning obligations referred to in Clause 3.1 of this Agreement and the Schedules of the Previous Agreement

1.8 "the New Planning Permission" means the grant of planning permission pursuant to the New Application

1.9 "the Previous Agreement" means an Agreement under and pursuant to Section 106 of the Act made between (1) Gladedale (Barlborough) Limited, (2) The Bank of Scotland PLC and (3) the Council hereto on 6<sup>th</sup> September 2012

1.10 "the Revised Development" means the Approved Development subject to the plot revision details for which approval is sought by the New Application

1.11 "the Revised Layout Plan" means the Plan bearing drawing number MILL-PL-02 dated 29<sup>th</sup> October 2012 a copy of which is attached to this Agreement and any reference to numbered Dwellings in this Agreement is to the corresponding plot number(s) on the Revised Layout Plan

1.12 Any term not otherwise defined in this Agreement has the meaning ascribed to it in the Previous Agreement unless the context requires otherwise

2. **Recitals**

WHEREAS:-

2.1 The Owner is registered at H.M. Land Registry as the proprietor of the Application Site with title absolute under title number NT 324726

2.2 The Mortgagee is mortgagee of the Application Site under a legal charge dated 15<sup>th</sup> June 2005 and made between the Owner and the Mortgagee

2.3 The Owner has submitted the New Application

2.4 The Owner desires to vary the house types on plot numbers 24 - 36

2.5 The Council acting through the delegated powers of its Head of Land and Property has decided to grant planning permission for the Revised Development in accordance with the New Application subject to conditions and subject to the making of this Agreement without which planning permission for the Revised Development would not have been granted

2.6 The Owner has agreed to enter into this Agreement for the purpose of varying the Previous Agreement in the manner following and for the purpose of procuring the issue of the New Planning Permission

## 2 Enabling Powers

2.1 The parties hereto enter into this Agreement under and pursuant to Sections 106 and 106A sub-sections 1(a) and 2 of the Act.

## 3 Planning Obligations

3.1 In exercise of its powers under Section 106 and Section 106A of the Act the Council hereby agrees that the Previous Agreement shall be varied with effect from the date of this Agreement so that all references in the Previous Agreement to the Layout Plan shall be read so as to incorporate references to the Revised Layout Plan in respect of the Application Site.

3.2 In all other respects the Previous Agreement remains unaltered

3.3 The Council is the Authority entitled to enforce the Previous Agreement as herein varied.

4. **Conditionality**

This Agreement is conditional upon the issue of the New Planning Permission.

5. **Covenant**

5.1 The Owner hereby covenants with the Council pursuant to Sections 106 and 106A of the Act that

5.1.1 the Entire Site shall continue to be bound by the Obligations in the Previous Agreement and for all purposes connected with the Previous Agreement pursuant to the New Planning Permission shall be carried out pursuant to the New Planning Permission as if it had been built or carried out pursuant to the Existing Permission

5.1.2 if (but only if) the New Planning Permission is implemented the Previous Agreement shall be varied in accordance with Clause 3.1 above and implemented accordingly

5.1.3 they will at their own expense duly carry out and perform the Previous Agreement (whether or not varied in accordance with sub-clause 5.1.2 above)

5.2 For the avoidance of doubt the sums due pursuant to the Second, Third, Fourth and Fifth Schedules of the Previous Agreement shall be payable only once, whether pursuant to the Previous Agreement or this Agreement.

7. **Agreements and Declarations**

It is agreed and declared as follows:

7.1 Any reference to a party to this Agreement shall where the context so admits shall include their successors in title and assigns

7.2 Words importing one gender shall be construed as importing any gender, and words importing the singular shall be construed as importing the plural and vice versa

7.3 No person shall be liable for breach of covenant contained in this Deed after he shall have parted with all interest in the Application Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

7.4 The Agreement is a Local Land Charge and shall be registered as such

7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

7.6 This Deed shall cease to have effect insofar only as it has not already been complied with if the New 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

7.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission other than the Existing Permission or the New Planning Permission granted whether or not on appeal after the date of this Deed

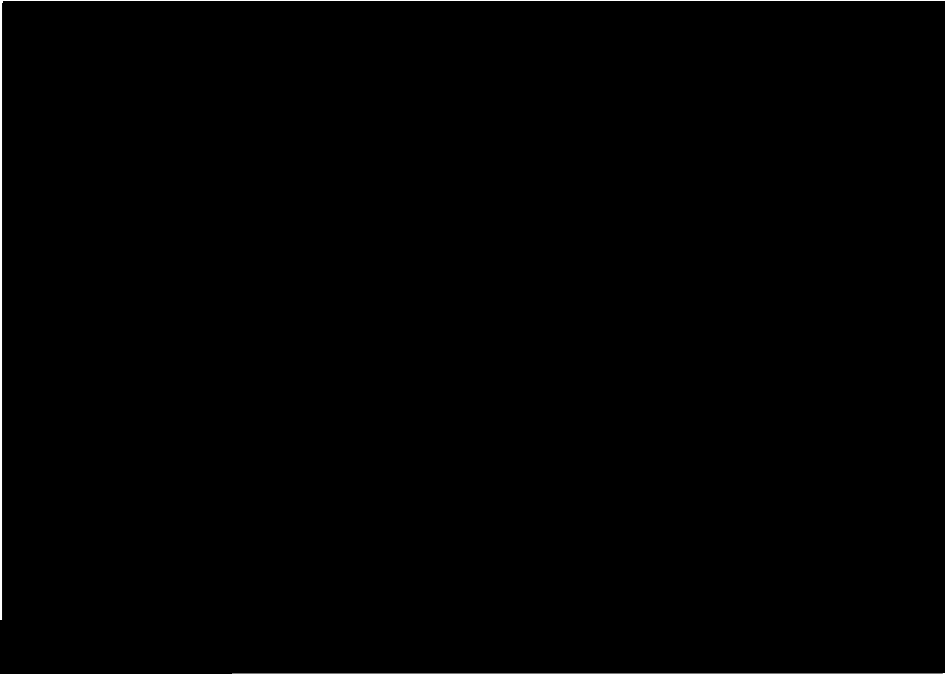
8. Costs

The Owner shall on the execution of this Deed pay the Council's costs incurred in the preparation and settlement of this Deed in the sum of £700.00 exclusive of VAT

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

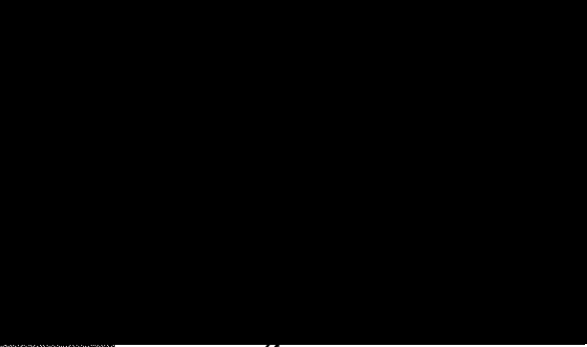
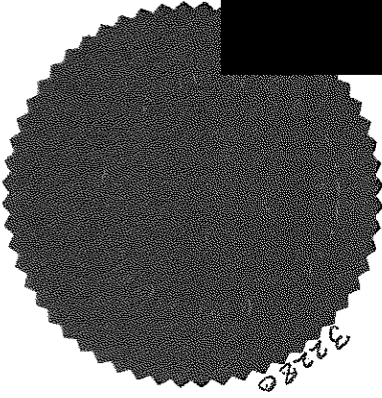
**EXECUTED AS A DEED by the said  
GLADEDALE (BARLBOROUGH) LIMITED  
acting by two Directors or a  
Director and its Secretary**

**EXECUTED AS A DEED by**



**EXECUTED AS A DEED by**

**ASHFIELD DISTRICT COUNCIL  
having affixed its COMMON SEAL  
to this deed in the presence of**





Title: Planning Layout - composite replan		Drawn: STE	Checked: -	Date: 29-10-12
Project: Residential Development at Mill Lane, Huthwaite		Drawing number: MILL-PL-02	Rev: -	
Scale: 1:500 @ A1				
<b>Ben Bailey HOMES</b> Ben Bailey Homes [Midlands] Decadate Ltd. 9 The Esplanade Barrow upon Trent Chesterfield S43 4WP				

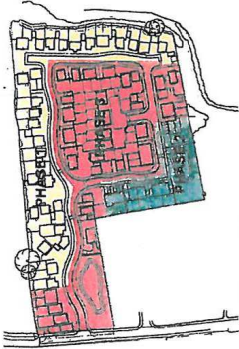


Site Layout  
scale 1:500



N <sup>o</sup>	Ref	Notes	Description
<b>Phase 1 - Hybrid House Types</b>			
6	MD	Midrange	2 Bed Detached
5	PC	Premium	4 Bed Detached
7	BP	Basic	3 Bed Detached
3	CA	Customer	3 Bed Detached
1	DA	Deliverable	4 Bed Detached
2	MI	Midrange	2 Bed Semi / Terrace
Total = 32			
<b>Phase 2 - Affordable Accommodation</b>			
4	CD	Customer	2 Bed Semi/terr / Terr
2	MD	Midrange	3 Bed Semi / Terrace
Total = 10			
<b>Phase 3 - New Product Range</b>			
6	APY	Apartment	4 Bed Detached
15	CDN	Customer	2 Bed Semi / Terrace
5	CDN	Customer	3 Bed Semi / Terrace
3	CDN	Customer	2 Bed Semi / Terrace
Total = 10			
Overall Total = 43			





Phase Plan  
scale NTS

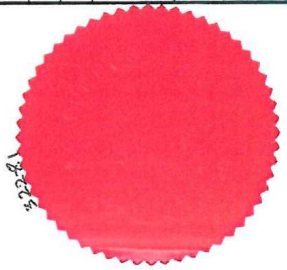


Jane Hamilton

Title: Planning Layout - composite replan		Date: 29-10-12
Project: Residential Development at Mill Lane, Huthwaite		Checked: SFE
Drawing number: MILL-PL-02		Rev: 1
Scale: 1:500 @ A1		



Ben Bailey Homes (Midlands)  
Gladeville Ltd.  
Dale House  
9 Talys End  
Barnborough  
Chichester  
SUSSEX BN15 9WP

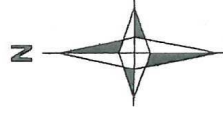


Site Layout  
scale 1:500

*[Signature]*  
CHAIRMAN

*[Signature]*  
AUTHORISED OFFICER

Ref	Area	Description
1	Phase 1 - Mixed House Types	3 Bed Detached
2	AC	4 Bed Detached
3	PD	3 Bed Detached
4	BN	3 Bed Detached
5	BN	4 Bed Detached
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MILL LANE