PLANNING AGREEMENT

between

(1) ROTHERHAM METROPOLITAN BOROUGH COUNCIL
and
(2) GLEESON DEVELOPMENTS LIMITED
and
(3) CRODA DISTILLATES LIMITED

Planning Obligation Agreement under
Section 106 Town & Country Planning Act 1990

relating to land at

the former Croda Site at Carlisle Street, Kilnhurst

Chattertons Solicitors
5 South Street
Horncastle
Lincs
LN9 6DS
DX 29501 Horncastle

Ref: JSP.RCH.GLEES003.55
THIS DEED is made the day of 2012

BETWEEN

1) ROTHERHAM METROPOLITAN BOROUGH COUNCIL of of Council Offices, Riverside House, Main Street, Rotherham. S60 1AE ("the Council")

2) GLEESON DEVELOPMENTS LIMITED whose registered office is at Sentinel House, Harvest Crescent, Ancells Business Park, Fleet, Hampshire, GU51 2UZ (Company Registration Number: 00848808 ("the Developer")

3) CRODA DISTILLATES LIMITED (Company Registration No: 00143637) whose registered office is at Cowick Hall, Snaith, Goole, East Yorkshire, DN14 9AA ("the Owner")

RECITALS

(A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Land is situated and by whom the obligations and covenants contained in this Deed are enforceable

(B) The Council is the housing authority for the purposes of the Housing Act 1985 and a local authority for the purposes of the 1972 Act and the 2000 Act

(C) The Council is the local education authority and the highways authority for the area in which the land is situated

(D) The Developer has the benefit of a conditional contract with the Owner for the purchase of the Land from the Owner.

(E) The Developer has submitted the Planning Application to the Council for the residential development of the Land

(F) To facilitate the granting of Planning Permission the parties have agreed to enter into this Deed to secure the obligations contained hereafter.

OPERATIVE PART

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Deed the following terms shall have the following meanings: -

"1972 Act" The Local Government Act 1972

"1990 Act" The Town and Country Planning Act 1990 (as amended)


"Commencement of Means the carrying out on the Land pursuant Development" to the Planning Permission a material
operation as specified in Section 56 (4) (a) - (d) of the 1990 Act provided that the term "material operation" shall not include operations consisting of or in connection with any work of or associated with demolition, site clearance (including works to adjust ground levels on site and the removal of vegetation), remediation and/or mitigation works in respect of any contamination or other adverse ground conditions, environmental investigations, site and soil surveys, the construction of any construction access or temporary buildings and structures, the erection of contractors work compound, the erection of site office, the erection of fencing to site boundary or any other temporary means of enclosure, the erection of hoardings, the diversion laying and removal of any services or archaeological investigations and the temporary display of sites notices or advertisements and "Commence" and "Commenced" shall be construed accordingly.

"Completed" and "Completion"

In respect of a Dwelling, the issue of a Final Certificate under the Building Act 1984

"Development"

Means the development of the Land pursuant to the Planning Permission

"Dwelling"

Means any dwelling (including a house flat or maisonette) to be constructed on the Land pursuant to the Planning Permission

"Ecological Enhancement Contribution"

Means the sum of £5,000 (Index-Linked) to be applied by the Council towards the enhancement of ecology in the locality of the Land

"Education Contribution"

Means the sum of £390,388 (Index-Linked) to be paid in accordance with the provisions of
“Index Linked”
Means such increase to the Education Contribution and the Ecological Enhancement Contribution on an annual basis or pro rata per diem from the date of grant of Planning Permission until such time that payment of the Education Contribution and the Ecological Enhancement Contribution is made such index linking to be equivalent to any inflationary increase or decrease in such sums in proportion to the increase or decrease taking as the measure of inflation the Retail Price Index last published before the grant of Planning Permission or any publication substituted for it.

“Interest”
2% above the base rate published by the Bank of England from time to time.

“Land”
Means the former Croda Works Land, Carlisle Street, Kilnhurst, Rotherham registered under title number SYK195904 and shown for identification purposes edged red on the Location Plan.

“Location Plan”
Means the plan annexed hereto and marked “Location Plan”.

“Landscaping Scheme”
Means the scheme approved by the Council for the landscaping of the Public Open Space (including the provision of the Play Area and the MUGA) to be approved by a reserved matters application in accordance with the Planning Permission.

“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 for the purposes carrying out future maintenance of the Public Open Space and:-
1. which is incorporated in England and Wales;
2. which has its registered office in England; and
3. whose primary objects permit it to maintain and renew areas of public open space;

“MUGA”
Means the multi use games area to be provided on the Land, as identified on the POS Plan and as further detailed on the MUGA Plan

“MUGA Plan”
Means the plan attached hereto marked as “MUGA Layout”

“North Area”
Means the northern part of the Land shown edged red on the plan attached hereto and marked “North Section Affordable Housing Plan”.

“Occupation”
“Occupation” 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 in relation to security operations and “Occupy” shall be construed accordingly;

“Play Area”
Means that part of the Land on which the Play Equipment is to be installed as identified on the POS Plan and further detailed on drawing number PL70 attached to this deed.

“Planning Permission”
Means the planning permission for residential development of the land and granted pursuant to the Planning Application

“Planning Application”
Means an outline application for planning permission for the erection of 381 dwellings
“Play Equipment” and allocated the Council’s reference number RB2006/1856

“POS Maintenance and Means the play equipment shown on the plan Management Scheme” attached and marked drawing number PL70

“POS Plan” Means a scheme that details the future maintenance of the Public Open Space which shall include a requirement that following completion the Public Open Space shall thereafter be retained repaired maintained and cleaned in accordance with the principles of good estate management and good horticultural practice and provide details of the party that will be responsible for the maintenance of the Public Open Space

“Public Open Space” Means the plan attached hereto and marked “Public Open Space Plan”

“Public Open Space” Means that part of the Land shown and marked on the plan POS Plan and edged green thereon, which includes the MUGA and the Play Area

“Residential Units” Means all of the Dwellings, excluding the Affordable Dwellings and “Residential Unit” shall be construed accordingly

“Retail Price Index” Means the 12 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;

“South Area” Means the southern part of the Land shown edged red on the plan attached and marked “South Section Affordable Housing Plan”
“Transport Agreement”

Means the executed Transport Agreement, a copy of which is annexed at Appendix 1 hereto.

“Working Days”

Means a weekday (Saturdays, Sundays and public holidays and the days between Christmas Day and New Year’s Day excepted) and reference to “Working Days” shall be construed accordingly.

1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed.

1.3. Where in any Schedule or part of any Schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that Schedule or (if relevant) part of that schedule.

1.4. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them and in respect of the Council shall include the successors to their respective statutory functions.

1.5. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.6. 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.

1.7. 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 against each individually unless there is an express provision otherwise.

1.8. 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. **LEGAL BASIS**

2.1. This Deed is made pursuant to Section 106 of the 1990 Act.
2.2. The covenants restrictions and requirements imposed upon the Owner and the Developer under this Deed create planning obligations pursuant to Section 106 of the 1990 Act and are intended to be enforceable by the Council as local planning, housing and education authority against the Owner and the Developer.

3. CONDITIONALITY

3.1. This Deed is conditional upon:

3.1.1. the grant of the Planning Permission

3.1.2. the Commencement of Development save for the provisions of clauses 4.1.3, 4.1.6 and 6.1.2, and Paragraph 1.1 of Schedule 4 which shall come into effect immediately upon completion of this Deed.

4. AGREEMENTS AND DECLARATIONS

4.1. The parties agree and declare that:

4.1.1. the provisions of this Deed shall not be enforceable by any person who is not a party to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

4.1.2. The covenants given in this Deed shall cease to have effect if

4.1.2.1. the Planning Permission is quashed revoked or otherwise withdrawn at any time; or

4.1.2.2. the Planning Permission expires prior to the Commencement of Development; or

4.1.2.3. the Planning Permission is modified by any statutory procedure without the consent of the Owner or the Developer

4.1.3. this Deed shall be registrable as a land charge by the Council as local planning authority

4.1.4. Following the performance and satisfaction of all of the obligations contained in this Deed or this Deed ceasing to have effect pursuant to clause 4.1.2 the Council shall at the Owner’s or the Developer’s expense effect the cancellation of all relevant entries made in the Register of Local Land Charges in respect of this Deed

4.1.5. No person or party shall be liable for a breach of the restrictions and obligations contained in this Deed after that person or party has parted with all of his interest in the Land or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting

4.1.6. the Owner and the Developer agree to give the Council immediate written notice of any change in ownership of its legal interest in the Land
occurring before all the obligations under this Deed have been discharged
save in respect of the sale of the completed Dwellings to consumers and
the sale of Lands for infrastructure purposes to any supplier of services
for the general use of the Development or any material part of it

4.1.7. 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

4.1.8. nothing contained in this Deed shall prejudice or affect the rights, powers,
duties and obligations of the Council in the exercise of its functions as
local authority and the local education authority and their rights, powers,
duties and obligations under all public and private statutes, byelaws and
regulations may be as fully and effectually exercised as if the Council
were not parties to this Deed

4.1.9. if any severable provision of this Deed shall be held to be invalid, illegal or
unenforceable, the validity, legality and enforceability of the remaining
provisions shall not in any way be deemed thereby to be affected or
impaired

4.1.10. no waiver unless in writing by the Council of any breach or default by the
Owner or the Developer in performing or observing any of the terms and
conditions of this Deed shall constitute a continuing waiver and no such
waiver shall prevent the Council from enforcing the said terms or
conditions of the Deed which are relevant to them or from acting upon any
subsequent breach

4.1.11. the obligations in this Deed shall not be enforceable against a statutory
undertaker after the transfer of the statutory apparatus and any land upon
or in which the statutory apparatus is situated to that statutory undertaker
nor enforceable against any highway authority which may be responsible
for any public highway maintainable at the public expense nor against any
purchaser, owner or occupier for the time being of a completed Dwelling
on the Land or their successors in title.

4.1.12. where the agreement approval consent or expression of satisfaction is
required by the Owner or the Developer from the Council under the terms
of this Deed such agreement approval consent or expression of
satisfaction shall not be unreasonably withheld or delayed

4.1.13. any notices, requests, demands or other written communications pursuant
to this Deed shall be deemed to have been properly served if sent by

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PLANNING AGREEMENT
DRAFT 18 25/05/2012
recorded delivery to the principal address or registered office (as appropriate) of the relevant party

4.1.14. If any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date payment is made

4.1.15. any sum referred to in this Deed shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such that sum becomes due

5. COUNCIL’S COVENANTS
The Council covenants to comply with its obligations set out in the Second and Fourth Schedules and further to grant the Planning Permission within 7 days of the date of this Deed.

6. OWNER / DEVELOPER’S COVENANTS
6.1. The Owner and the Developer covenant with the Council so as to bind the Land into whosoever hands the same may fall:-

6.1.1. to comply with its obligations as set out in the First, Second, Third, Fourth and Fifth Schedules.

6.1.2. to pay to the Council on the completion of this Deed the reasonable legal costs of the Council in preparing, negotiating and completing this Deed

7. JURISDICTION
This Deed shall be governed by and interpreted in accordance with the law of England and Wales.

8. WAIVER
No waiver (whether expressed or implied) by the Council, the Owner or the Developer 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 Council, the Owner or the Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. DISPUTE RESOLUTION
9.1. In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

9.1.1. The parties shall use their reasonable endeavours to resolve the dispute by agreement

9.1.2. If agreement cannot be reached the matter in dispute shall be referred to and settled by a single expert to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of any party after giving notice in writing to the other parties to this Deed
9.1.3 The person to be appointed pursuant to clause 9.1.2 shall be a person having ten years or more post qualification experience of projects comprising works of the scale and nature of the Development

9.1.4 Reference to the expert shall be on terms that determination shall take place within 28 Working Days of the expert accepting his instructions

9.1.5 The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the parties in equal shares

9.1.6 The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision

9.1.8 The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute.

10. VAT
All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

11. EXECUTION AND DELIVERY
This document is executed as a deed and is delivered on the date stated at the beginning of this Deed
SCHEDULE 1

Education Contribution

1.1 Not to allow or permit the Occupation of more than 25% of the Dwellings until the Owner or the Developer has paid to the Council in full the sum equal to 50% of the Education Contribution

1.2 Not to allow or permit the Occupation of more than 50% of the Dwellings until the Owner or the Developer has paid to the Council in full the sum equal to the remaining 50% of the Education Contribution
SCHEDULE 2
Affordable Housing

OPERATIVE PROVISIONS

1. To provide the Affordable Housing Units within the Development in accordance with the following provisions:-

“Affordable Housing” Subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with the definition in Annex 2 to the National Planning Policy Framework (or any future guidance or initiative that replaces or supplements it);;

“Affordable Housing Officer” Means an affordable housing officer at the Council who is responsible for this Development;

“Affordable Housing Provider” Means an organisation constituted for the purpose of providing and managing Affordable Housing to comply with The Housing and Regeneration Act 2008 or as redefined in any amendment replacement or re-enactment of such Act and reference to “Affordable Housing Provider” shall be construed accordingly;

“Affordable Housing Units” Means 28 of the overall number of Dwellings to be provided as Affordable Housing in accordance with this Schedule and of which (a) 19 shall comprise Social Rented Dwellings and (b) 9 shall compromise Intermediate Dwellings and which shall comprise the
following house types:-

a. 10 of the Social Rented Dwellings shall comprise two bedroomed semi-detached dwellings.

b. 9 of the Social Rented Dwellings to be provided shall comprise three bedroomed semi-detached dwellings.

c. 7 of the Intermediate Dwellings shall comprise two bedroomed semi-detached dwellings.

d. 2 of the Intermediate Dwellings to be provided shall comprise three bedroomed semi-detached dwellings.

“Chargee”

Any mortgagee or chargee of the Affordable Housing Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

“Chargee’s Duty”

the tasks and duties set out in paragraph 4 below

“Eligible Occupier”

Means a person or household identified in accordance with the Affordable Housing Provider selection criteria and who satisfies the residential conditions of the definition of Qualifying Person;
“Intermediate Dwellings”
Means Shared ownership Dwellings and Intermediate Rented dwellings and any other form or forms of intermediate affordable housing which comply with the definition of “intermediate affordable housing” in Annex 2 of the National Planning Policy Framework (March 2012) and any other forms which may be agreed with the Council or brought into force by way of government initiative.

“Market Housing Units”
that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;

“Practical Completion”
Means either: -
1. the issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect;
2. the issue of a buildmark cover note by the NHBC; or
3. the completion of a Dwelling so as to be fit for habitation as a residential housing unit

“Protected Tenant”
any tenant who:
(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any
equivalent contractual right) in respect of a particular Affordable Housing Unit

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(c) has been granted a shared ownership lease by a Affordable Housing Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) by the Affordable Housing Provider in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit;

"Qualifying Person"

Means a person who is an Eligible Occupier and who the Council (or the relevant Affordable Housing Provider) is satisfied does not own, or own any interest in, another property, is satisfied that the Affordable Housing Unit will be the person's only residential home and in addition satisfies one or more of the following residential conditions:

a) resides or has continually resided in or in the vicinity of Rotherham
for at least 12 months preceding the "Completion Date (being the date upon which a tenancy or shared ownership lease or transfer is formally completed between the Provider and the relevant tenant, leaseholder; or transferee)"

b) has been at any time previously resident in the Borough for a minimum of two years;

c) has strong local connections to the area (e.g. employment or close family association);

d) is a suitable person who qualifies as being in housing need and is eligible to apply for Affordable Housing under the Council's criteria or from the Council's waiting list or the criteria of a Provider.

"Social Rented Dwellings"

Means Affordable Housing owned and/or managed by an Affordable Housing Provider which is available for rent and for which guideline target rents are determined through the central government national rent regime. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant

2. Affordable Housing

Construction and Use of the Affordable Housing Units
2.1 Prior to a transfer to the Affordable Housing Provider as set out in paragraph 3 of this Schedule, to construct and complete ready for Occupation the Affordable Housing Units in conformity with current building regulations and to no lesser external standard of finish than the Market Housing Units.

2.2 To construct and connect the services for water gas, electricity and telecommunications for the Affordable Housing Units linking in each case to drains, sewers and service systems, and to construct and connect the Affordable Housing Units to roads, footpaths and access ways constructed and laid as part of the remainder of the Development prior to the disposal of the Affordable Housing Units which will enjoy such services/roads and footpaths.

2.3 To give written notice to the Affordable Housing Officer not later than 10 Working Days after each Affordable Housing Unit has reached the stage of Practical Completion pursuant to paragraph 2.1 of this Schedule.

2.4 To give written notice to the Affordable Housing Officer not later than 10 Working Days after the occurrence of the following stages of the Development:

2.4.1 upon 60% of the Market Housing Units reaching the stage of Practical Completion;

2.4.2 upon 80% of the Market Housing Units reaching the stage of Practical Completion; and

2.5 No more than:-

2.5.1 60% of Market Housing Units within the North Area shall be Occupied unless and until a contract to transfer the Affordable Housing Units within the North Area has been entered into between the Owner and an Affordable Housing Provider; and

2.5.2 80% of the Market Housing Units within the North Area shall be Occupied unless and until 100% of the Affordable Housing
Units within the North Area have reached the stage of Practical Completion and are ready for Occupation.

2.6 No more than:-

2.6.1 60% of Market Housing Units within the South Area shall be Occupied unless and until a contract to transfer the Affordable Housing Units within the South Area has been entered into between the Owner and an Affordable Housing Provider; and

2.6.2 80% of the Market Housing Units within the South Area shall be Occupied unless and until 100% of the Affordable Housing Units within the South Area have reached the stage of Practical Completion and are ready for Occupation.

2.7 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

2.7.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

2.7.2 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

3 Transfer of the Affordable Housing to the Affordable Housing Provider

3.1 Upon the Commencement of Development of either the South Area or the North Area to nominate one or more Affordable Housing Provider to whom the Owner and/or the Developer shall offer to contract to dispose of the Affordable Housing Units (on the South Area or North Area, as applicable) and to notify the Council of such nomination and further the Owner and/or the Developer will enter into negotiations with the nominated Affordable Housing
Provider and use reasonable endeavours to contract to dispose of the Affordable Housing Units to the nominated Affordable Housing Provider.

3.2 The transfer of the Affordable Housing Units to the Affordable Housing Provider shall contain:

3.2.1 a restriction that the Affordable Housing Provider shall not dispose of or cause or allow the disposal of an Affordable Housing Unit other than to a Qualifying Person:-

3.2.1.1 in respect of the Intermediate Affordable Housing by selling the freehold or leasehold or by letting the Intermediate Affordable Housing; and

3.2.1.2 in respect of the Social Rented Housing to be available for social rent:

(i) by way of an assured tenancy agreement complying with the guidance given by the Homes and Communities Agency under the Housing Act 1996; or

(ii) by way of any statutory right to buy or acquire

3.2.2 a covenant that provides that in respect of the disposal of 50% of the Affordable Housing Units the Qualifying Person shall be nominated by the Council (such nomination to be made within 28 Working Days of a request being received by the Council for such nomination failing which the Affordable Housing Provider shall be free to dispose of such Affordable Housing Units to any Qualifying Person)

3.2.3 a covenant that provides that in the event that the Affordable Housing Provider receives capital receipts of sale from any of the Affordable Housing Units (including as a result of staircasing) such receipts shall be used only for the purposes of providing Affordable Housing within the Borough

3.3 If following 2 months of any of the Affordable Housing Units reaching the stage of Practical Completion ("Completed Unit") no Affordable Housing Provider has entered into a contract to purchase the Completed Unit(s) (or any individual unit or units comprised in the Affordable Housing Units that has
I have not been transferred) the Owner and/or the Developer shall notify the Council as soon as reasonably practicable and shall provide written evidence of such non-acceptance of an offer or refusal to proceed with the transfer (if such evidence is available) and the Owner and/or the Developer and the Council shall enter into negotiations to vary the terms of this Deed if the Owner and/or the Developer can provide evidence that such variation is necessary to assist with the disposal of the Completed Unit(s) to include (but not be limited to) one or more of the following mechanisms:

(i) variation of the mix of Intermediate Housing Units and Social Rented Units to be delivered within the Site; and

(ii) the payment of a commuted sum for the delivery of off-site Affordable Housing by the Council in lieu of the non-delivery by the Owner and/or the Developer of all or part of the Affordable Housing within the Development and such commuted sum shall be determined by an independent valuer in accordance with the Interim Planning Statement. Any dispute regarding the determination of the value of the commuted sum shall be dealt with by an Expert in accordance with the dispute provisions in Clause 9 of this Deed SAVE THAT all costs arising from the reference to the Expert shall be borne by the Developer.

4 Chargee’s Duty

4.1 Any Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than 2 months’ prior notice to the Council of its intention to dispose and:

4.1.1 in the event that the Council responds within 20 Working Days from expiry of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
4.1.2 if the Council does not serve its response to the notice in accordance with paragraph 4.1.1 within the 20 Working Days then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply.

4.1.3 if the Council or any other person cannot within 40 Working Days of the date of service of its response under paragraph 4.1.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 4.1.1 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply.

PROVIDED THAT at all times the rights and obligations in this paragraph 4 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.
SCHEDULE 3

Public Open Space

The Owner hereby covenants with the Council:-

1. Not to permit Commencement of the Development without having first obtained the written approval of the Council to the Landscaping Scheme.

2. Not to permit Occupation of the First Residential Unit until the POS Maintenance and Management Scheme has been submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed).

3. Not to Occupy or Permit the Occupation of more than 50% of the Residential Units on the Land unless and until the Play Area shall have been laid out and the Play Equipment shall have been installed thereon, so as to be fit for use.

4. Not to Occupy or permit the Occupation of more than 80% of the Residential Units on the Land unless and until the MUGA has been provided and installed so as to be ready for use.

5. Not to Occupy or permit the Occupation of more than 75% of the Residential Units on the North Area unless and until the Public Open Space on the North Area (excluding the MUGA) has been landscaped and laid out in accordance with the Landscaping Scheme.

6. Not to Occupy or permit the Occupation of more than 75% of the Residential Units on the South Area unless and until the Public Open Space on the South Area (excluding the MUGA) has been landscaped and laid out in accordance with the Landscaping Scheme.

7. Following completion of the laying out and landscaping of the Public Open Space in accordance with paragraphs 5 & 6 above the Owner shall serve written notice of such completion to the Council.

8. Following the laying out and landscaping of the Public Open Space it shall be used for no other purpose than for providing public amenity open space and the Owner shall be responsible for the maintenance of the Public Open Space thereafter provided that the Owner may procure that the maintenance of the Public Open Space is taken over by individual owners of Dwellings, a management company, managing
agents or a private concern and may transfer the Public Open Space to any such person in order to achieve this.

9.1 The Owner may transfer the title of the Public Open Space to any person or a Management Company to allow that party to take over responsibility for the maintenance of the Public Open Space PROVIDED ALWAYS that prior to the transfer:

9.1.1 the identity of the party to take the transfer of the Public Open Space has been approved by the Council in writing (such approval not to be unreasonably withheld or delayed);

9.1.2 the terms of the transfer must have been agreed between the Owner, and the Council in writing (such agreement not to be unreasonably withheld or delayed) and shall include a covenant that the Public Open Space will only be used for public access and recreation and for no other purpose and that the Public Open Space will be maintained in accordance with the approved POS Maintenance & Management Scheme subject to any variations that may be agreed in writing from time to time between the Council and the Owner.
SCHEDULE 4

Transport Agreement/Bus Contribution

1.1 The Developer warrants that prior to the date of this deed the Transport Agreement has been entered into between the relevant parties thereto in order to secure the bus route intended to serve the Development in the manner appearing in the Transport Agreement.

1.2 The Developer covenants with the Council that it shall observe and perform its obligations, under the Transport Agreement, and without prejudice to the generality of paragraph 1.1 above it shall pay all sums payable on the part of the Developer by virtue of the terms of the Transport Agreement in the manner provided below:

1.2.1 Upon completion of the Agreement the Developer will pay to the Council the sum of £10,000

1.2.2 Upon Occupation of the 50th Residential Unit the Developer will pay to the Council the sum of £85,000.00 ("the First Payment")

1.2.2 Upon the first anniversary of the First Payment the Developer will pay to the Council the sum of £62,000.00

1.2.3 Upon the second anniversary of the First Payment the Developer will pay to the Council the sum of £50,000.00

1.2.4 Upon the third anniversary of the First Payment the Developer will pay to the Council the sum of £39,000.00

1.2.5 Upon the fourth anniversary of the First Payment the Developer will pay to the Council the sum of £30,000.00

Provided that nothing in this paragraph 1.2 shall act so as to duplicate the payments payable under the Transport Agreement.

2. The Council agrees:-

i. That it shall forthwith pay all such sums paid pursuant to Paragraph of this Schedule 4 in full without deduction, set off or counterclaim to SYPTTE or Stagecoach Yorkshire (as specified in the Transport Agreement) in satisfaction of the
Developer’s obligations to pay such sums under the Transport Agreement;

ii. The Council shall procure that SYPTE and Stagecoach Yorkshire issue a receipt in favour of the Developer in respect of such payments.
SCHEDULE 5

Ecological Enhancement Contribution

The Owner and the Developer hereby covenant with the Council to pay the Ecological Enhancement Contribution to the Council upon Commencement of the Development.
ANNEX 1

Transport Agreement
Transport Agreement

1 Introduction

1.1 This Transport Agreement is an agreed statement on public transport provision and accompanies the associated Section 106 Agreement for the Former Croda Site, Carlisle Street, Swinton, Rotherham ("the Site"). The document confirms the agreement between:

- The applicant Gleeson Regeneration Limited ("Gleeson")
- South Yorkshire Passenger Transport Executive ("SYPT")
- Rotherham Metropolitan Borough Council ("RMBC"); and
- Stagecoach Yorkshire ("Stagecoach"), as the local bus operating company.

1.2 The Statement is set out in the following sections:

- Section 2: Existing Public Transport Provision
- Section 3: The Masterplan – Main Vehicular and Bus Route
- Section 4: Public Transport Strategy
- Section 5: Signatures
1.3 Figure 1 below shows the local area around the Site with the existing public transport provision. The Site is located to the east of Swinton and to the south of Mexborough local centre. Although the area is well connected in terms of public transport, the Site is inaccessible due to the land-locked nature and inherent high walking distances to access public transport services from the Site.

Figure 1: Swinton Area
2 Existing Public Transport Provision

2.1 Bus Service 218 is currently the closest bus service to the site (600m from the centre of the site) and provides a connection to Rotherham and Barnsley Interchange passing through the following settlement of Rawmarsh, Kilnhurst, Mexborough, Goldthorpe, Darfield and Stairfoot. The service runs from Monday to Sunday with 3 buses within the rotation.

2.2 Monday to Friday, the first bus departs from Mexborough at 4:55 running a commuter service between Mexborough and Rotherham Interchange. The service then changes at 7:10 to run a half hourly service along the whole route from Rotherham to Barnsley and the last bus from Barnsley Interchange departs at 18:40. Services continue to run hourly from Mexborough to Rotherham on an hourly frequency until 22:08.

2.3 The journey takes approximately 1 hour 25 minutes depending on the time of day and direction of travel. Service 218 is operated by Stagecoach on a commercial basis.

2.4 There are slight variances to the Saturday services there are changes to the starting and ending times, however, it still provides a half hourly daytime frequency.

2.5 On Sundays, the service is reduced to an hourly service and only operates between the Rotherham and Mexborough section of the route, taking approximately 40 minutes to complete the full journey.

2.6 The northern section of the Site is located close to Swinton Rail Station where there are many regional rail services providing links to Doncaster, Leeds, Meadowhall, Sheffield, Wakefield and Worksop. However, it must be noted that the built environment of the area does not allow for direct access walking route to be achieved and create a barrier for many users to access these services.

2.7 In light of this, it is agreed by all parties that the Site is poorly connected to public transport services and further intervention would be required if the Site is to be developed.
3 The Masterplan – Main Vehicular Access and Bus Route

3.1 The Masterplan for the Site is highlighted in Figure 2. The main route for all vehicles through the Site will be from Carlisle Street (passing under the railway bridge), a turning circle is provided in the centre of the Site. It is intended that the bus will terminate after the loop section of the spine road. Future Masterplanning for the adjacent site may allow for the bus route to be extended to the southern end of the Site.

3.2 The main vehicular and bus route within the Site will be constructed to adoptable standards and offered to RMBC for adoption as a public highway. The route will provide a minimum width of 6.0m to allow buses and other vehicles to pass each other comfortably. The route should not include any vertical speed deflection and priority access under the bridge must be granted to bus services to reduce the possibility of collision.

Figure 2: Croda Site Masterplan
4 Public Transport Strategy

4.1 After investigating all the possible solutions to ensuring this site is sustainable in transport terms, all the signatories have agreed the most appropriate solution is to provide an extension to the existing commercial Stagecoach 224 service.

Stagecoach Service 224 – Croda Site – Swinton – Mexborough – Goldthorpe – Sprotbrough – Doncaster

4.2 When the main vehicular access/bus route through the Site between Carlisle Street and the internal loop road is suitable for buses (i.e. prior to occupation of the 50th dwelling on the Site as provided for below), it is agreed that an amendment to the Stagecoach 224 service will be initiated by Stagecoach. The proposed bus route with the extension is illustrated in Figure 3.

Figure 3: Existing and Extended Route of the Stagecoach 224

4.3 Stagecoach agrees that the current termination of the 224 at Mexborough will be extended to the Site, following the A6022, Lime Grove and Hithorne Road.

4.4 Stagecoach agree an extra bus will be added to the rotation to allow the service to be extended and maintain the 30 minute Monday to Saturday frequency into the site between the hours of 7:00 and 18:00.
4.5 It is agreed that Gleeson will pay to the RMBC and RMBC shall forthwith pay over to Stagecoach a total of £266,000 to be applied by Stagecoach to operate the extension to the existing 224 bus service proposed at clause 4.2 above with the objective to become commercially sustainable after 5 years of subsidy. The sum of £266,000 shall be paid by Gleeson over a period of 5 years by way of annual instalments at the times provided for below in accordance with the following details PROVIDED ALWAYS that RMBC may delay payment of the annual instalments if it is of the view acting reasonably that the Stagecoach’s obligations in this Agreement are not being performed to a satisfactory standard:–;

Year 1 - £85,000 – to be paid in accordance with clause 4.7 below
Year 2 - £62,000 – to be paid on the first anniversary on the first year payment having been paid
Year 3 - £50,000 – to be paid on the second anniversary of the first payment having been paid
Year 4 - £39,000 – to be paid on the third anniversary of the first payment having been paid
Year 5 - £30,000 – to be paid on the fourth anniversary of the first payment having been paid

Total - £266,000

4.6 The signing of this Transport Agreement requires Stagecoach to provide a half hourly service (07:00 – 18:00 Monday to Saturday) to Doncaster, from the Site following the route of the 224 bus service, when triggered by the occupation for residential purposes of the 50th dwelling on the Site.

4.7 Upon occupation of the 50th dwelling on the Site for residential purposes, Gleeson will pay Stagecoach the first instalment (the year one instalment) of the payment schedule (as agreed in section 4.5). Upon receipt of this payment, Stagecoach have 6 months to procure and timetable the amended 224 bus service. The service change is to be initiated in line with the South Yorkshire 4XY service changes/registrations.

**Bus Route**

4.8 Upon occupation of the 50th dwelling on the Site for residential purposes, buses will access the Site by using Carlisle Street, under the railway bridge and terminate at the internal loop road. It is essential that this route is suitable for use by bus vehicles.

4.9 In the unlikely event that the route is not formally adopted before the 50th dwelling on the Site is occupied for residential purposes;

- Gleeson would give permission to Stagecoach to route along the road;
- Gleeson would confirm that the route would not be moved arbitrarily;
- Gleeson confirms that the road will be in a fit condition for routing buses along it;

PROVIDED THAT

Stagecoach, as bus operator, has confirmed that the necessary insurance cover to allow them to route along unadopted roads.

**Bus Stops/Shelters**

4.10 On the signing of the Section 106 Agreement, it is agreed that Gleeson will pay RMBC and RMBC shall forthwith pay over to SYPTTE a sum of £10,000 (ten thousand pounds) to
facilitate the procurement and installations of a bus stop, located after the internal loop road at the centre of the site (as highlighted by the red dot in Figure 4).

4.11 Bus waiting (layby) facilities shall be provided by Gleeson at this stop (which will form the terminus of the diverted 224) prior to occupation of the 50th dwelling on the Site for residential purposes.

4.12 It is essential that direct, safe and attractive walking routes are provided to the on Site bus stop.

Figure 4: On Site Bus Stop Location

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Travel Planning

4.13 In order to encourage sustainable travel behaviour from the beginning of the development, Stagecoach agrees to provide each household - upon its occupation - with a 4 weekly Dearne Valley Megarider (or similar) Stagecoach Travel Ticket.

4.14 Gleeson is to use reasonable endeavours to agree a method with Stagecoach for ensuring that each dwelling is effectively issued with the aforementioned Travel Ticket.
5 Signatories Sign Off

5.1 [ ], Gleeson
Signed: ........................................... Date 25/5/12

5.2 [ ], Rotherham Metropolitan Borough Council
Signed ........................................... Date ........................................

5.3 [David Allatt ], South Yorkshire Passenger Transport Executive
Signed: D. Allatt Date 25/5/12

5.4 [Paul Lynch, managing director], The Yorkshire Traction Company Ltd
Signed: ........................................... Date 25/5/12
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL OF
ROtherham Metropolitan
BOROUGH COUNCIL was affixed in the presence of:

Jennifer

Authorised Signatory:

EXECUTED AS A DEED by
GLEESON DEVELOPMENTS LIMITED
acting by a Director in the presence of

Director

Signature of Witness
Name (Block Capitals) Matthew Smith
Address

3 Alexandra Road
Dershford
Derbyshire
S8 2LD
EXECUTED AS A DEED by
CRODA DISTILLATES LIMITED
acting by a Director in the presence of

Director

Signature of Witness
Name (Block Capitals)
Address

DEBORAH BOOTH
S LOOGE GARDENS
SNITH
GOOLE DN14 9HH