DATED 24th May 2017

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

PREMIER CONSTRUCTION (NORTHERN)LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land at Kings Road Wombwell Barnsley in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Director of Legal and Governance
Town Hall,
Barnsley,
S70 2TA.
PG/254/00402

THIS AGREEMENT (signed as a deed) is made the 24th day of May 2017

BETWEEN: -

(1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA (**"Council"**) of the first part; and

(2) **PREMIER CONSTRUCTION (NORTHERN) LIMITED** (company number 06846917) whose registered is at 18 Thorne Road, Doncaster, South Yorkshire DN1 2HS of the second part (**"Owner"**).

WHEREAS

1. The Council is the local planning authority pursuant to the Town and Country Planning Act 1990 for the area in which the Site is situated and is the authority by whom the planning obligations hereby created are enforceable.

2. The Owner is the freehold proprietor of the Site registered at H.M. Land Registry under title number SYK 515840.

3. The Owner by entering into this agreement does so to create planning obligations in respect of the Site and each part of it in favour of the Council pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained.

INTERPRETATION

In this Deed unless the context otherwise requires the following words and expressions shall have the meanings respectively assigned to them in this Clause:-

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

"Affordable Housing" means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally on the open market and which has the same meaning given to it in annex 2 of the National Planning Policy Framework

"Affordable Housing Commuted Sum" means the sum of £221,688 consisting of £73,896 per Affordable Housing Unit that may be used by the Council in lieu of the provision of Affordable Housing on the Site for the provision or improvement of Affordable Housing withinthe administrative ward of the Site or if in the reasonable opinion of the Council there are no or insufficient opportunities to apply this sum in whole or part within that ward any remaining sums may be applied in adjoining wards within the administrative area of the Council or if in the reasonable opinion of the Council there are no or insufficient opportunities to apply this sum in whole or part within adjoining wards any remaining sums may be applied within the administrative area of the Council and for the avoidance of doubt the provision or improvement of Affordable Housing may include the administrative costs incurred by the Council in securing that provision or improvement;

"Affordable Housing Units" means three Dwellings of Social Rent Affordable Housing comprising of three two bedroomed bungalows located on plots 9, 33 and 34 as shown on Plan 2 to be provided in accordance with the First Schedule and "Affordable Housing Unit" shall be construed accordingly

"Application" means the application for planning permission for 34 dwellings given the planning reference 2012/0473;

"Chargee" means any mortgagee or chargee of the Registered 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;

"Commencement of Development" means the date upon which any material operation within the meaning of Section 56 (4) of the 1990 Act forming part of the Development begins to be carried out;

"Council's Approved List" means the following Registered Providers: Berneslai Homes Limited; South Yorkshire Housing Association Limited; Yorkshire Housing Limited; Guinness Northern Counties Limited; Equity Housing Group Limited; Leeds and Yorkshire Housing Association Limited; Chevin Housing Association Limited; and Wakefield and District Housing Limited or such other Registered Provider(s) that may be agreed in writing between the Owner and the Council from time to time;

"Development" means the development of the Site in accordance with the Planning Permission;

"Dwelling" means any dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission;

"Green Space Contribution" means £25,000 (twenty five thousand pounds) to be applied towards the provision or improvement of greenspace within 2 kilometres of the boundary of the Site

"**Head of Planning and Building Control Services**" means the Head of Planning and Building Control Services of the Council for the time being or such other officer of the Council nominated by him or her for the purposes of this Deed;

"Index" means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if that Price Index ceases to exist such index as he Council reasonably nominates;

"Interest" means interest at the rate of 4 per cent above the base lending rate of Barclays Bank Plc from time to time or should this rate cease to exist such other bank lending rate as the Council may reasonably nominate;

"Occupation" means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the expression "Occupants" and "Occupied" shall be construed accordingly;

"Open Market Dwellings" means the residential units that may be built on the Site as part of the Development excluding the Affordable Housing Units and reference to "Open Market Dwelling" shall be construed accordingly;

"**Plan 1**" means the plan annexed hereto and marked "Plan 1";

"**Plan 2**" means the plan annexed hereto and marked "Plan 2";

"**Planning Permission**" means the planning permission granted pursuant to the Application;

"**Practical Completion**" means 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;

"Protected Tenant" means 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; or

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

(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 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;

"**Public Open Space Contribution**" means £59,486 (fifty nine thousand four hundred and eighty six poundsto be applied towards the provision or improvement of public open space within 2 kilometres of the boundary of the Site

"Registered Provider" means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency for receipt of social housing grant as may be proposed by the Owner and approved by the Council;

"Social Rent" has the same meaning given to it in annex 2 of the National Planning Policy Framework;

"**Site**" means the land at Kings Road Wombwell shown edged red on Plan 1;

"**Working Day**" means Monday to Friday in each week excluding bank and other public holidays.

OPERATIVE PROVISIONS

2.1 The Owner covenants with the Council to observe the restrictions and perform the obligations contained in this Deed

2.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed are entered into pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and all other enabling powers and create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner. For the avoidance of doubt the covenants, restrictions and requirements will not be enforced or enforceable against the mortgagee of any individual owner-occupier of any of the Dwellings.

2.3 The expressions "the Council" and "the Owner" shall include their successors in title and assigns.

2.4 No person shall be liable for breach of any covenant contained in this Deed after he shall have parted with all interest in the 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.

2.5 This Deed shall have effect from the date of this Agreement

2.6 If the Planning Permission expires or is revoked or otherwise withdrawn without the consent of the Owner this Deed shall cease to have effect from the date of the said expiration revocation or withdrawal (as the case may be) but without prejudice to any rights liabilities or obligations which may have been incurred by or shall have accrued to any party prior to such date

2.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted (whether or not on appeal) after the date of this Deed.

2.8 The obligations hereby created shall be registered as a Local Land Charge.

2.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

2.10 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed

2.11 The Owner shall pay the Council's reasonable and proper legal fees in respect of the preparation and negotiation and completion of this Deed of £1000

2.12 No person shall be liable for breach of any covenant contained in this Deed which relates to land that they do not have a legal interest in.

2.13 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deeds such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning and Building Control Services. Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

3. INDEXATION

Any sum payable under this Deed by the Owner shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable.

4. INTEREST

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

FIRST SCHEDULE

PLANNING OBLIGATIONS

The Owner covenants to observe and perform the following obligations

Affordable Housing

1.1 The Affordable Housing Units shall not be used or Occupied other than as Social Rent unless with the written permission of the Head of Planning and Building Control and further this obligation shall not be binding on:

1.1.1 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 charges;

1.1.2 any Chargee provided only that the Chargee shall have first complied with the obligations at paragraph 1.2 below; or

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

1.2 A Chargee shall prior to seeking to dispose of any Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 30 Working Days prior notice to the Council of its intention to dispose and:

1.2.1 in the event that the Council responds within 30 Working Days from receipt 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 shall use its reasonable endeavours to secure such transfer;

1.2.2 if the Council does not serve its response to the notice served under paragraph 1.2.1 of this Schedule within 30 Working Days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule as Open Market Dwellings;

1.2.3 if the Council or any other person cannot within 30 Working Days of the date of service of its response under paragraph 1.2.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.2 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule as Open Market Dwellings

PROVIDED THAT at all times the rights and obligations in this paragraph 1.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

1.3 Not to construct to Practical Completion more than 17 Dwellings on the Site until the Affordable Housing Unit situated on Plot 9 has been constructed to Practical Completion and transferred to a Registered Provider.

1.4 Not to construct to Practical Completion more than 30 Dwellings until the Affordable Housing Units situated on Plots 33 and 34 have been constructed to Practical Completion and transferred to a Registered Provider

1.5 The Affordable Housing Units shall be transferred to a Registered Provider with the benefit of the following:

1.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units; and

1.5.2 full and free rights to the passage of water soil electricity gas and other services through the pipes 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.

1.6 The Owner will use reasonable endeavours to exchange contracts with Registered Providers appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of progress.

1.7 If the Affordable Housing Unit situated on plot 9 has not been transferred to a Registered Provider within nine calendar months of the date of Practical Completion of that Affordable Housing Unit or such other date agreed in writing by the Council and the Council is satisfied that paragraph 1.6 has been complied with then the Owner shall forthwith pay one third of the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** upon such payment the Owner will be free to offer such dwellings for sale on the open market free from the affordable housing obligations in this Schedule.

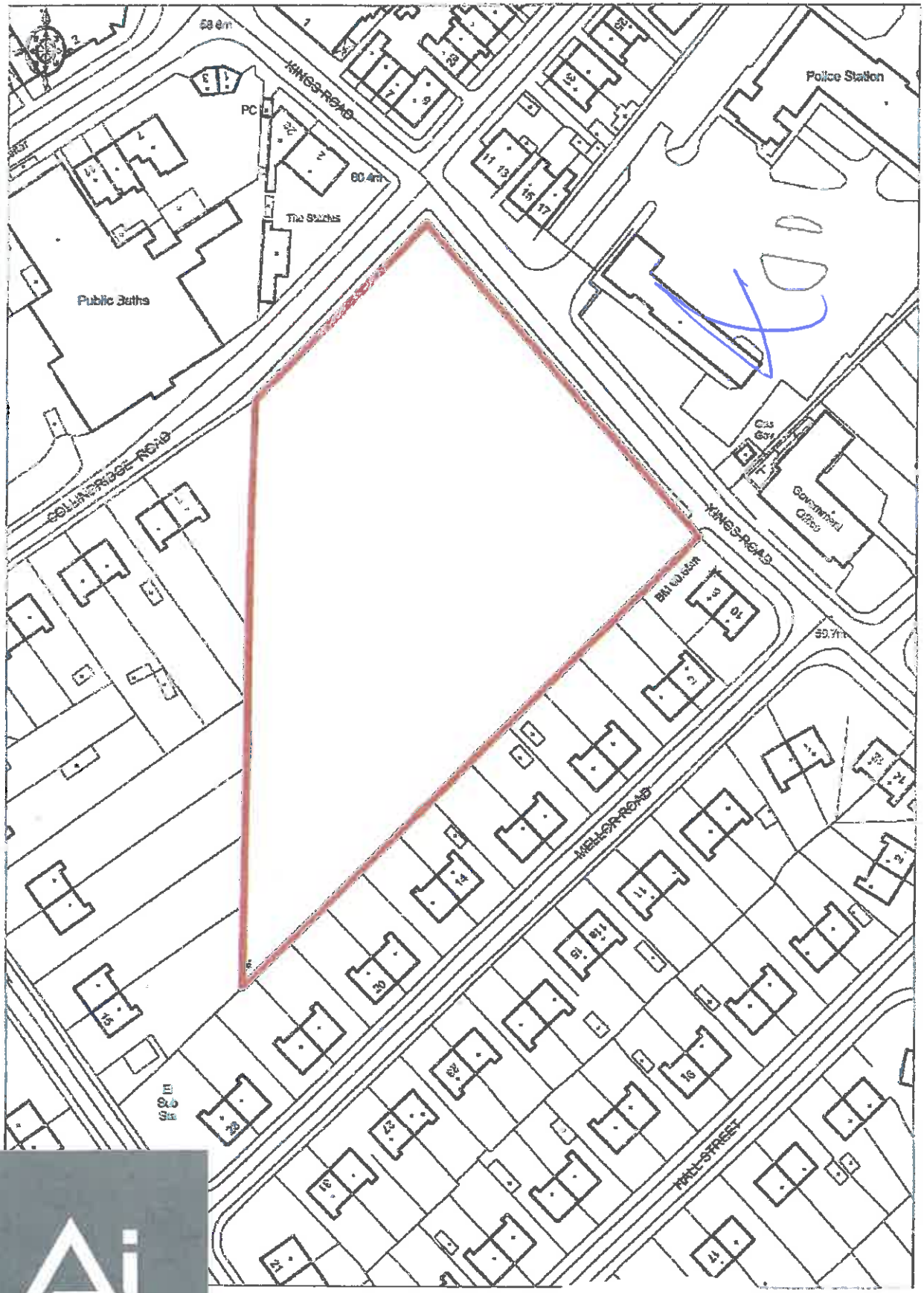
1.8 If the Affordable Housing Units situated on plots 33 and 34 have not been transferred to a Registered Provider within nine calendar months of the date of Practical Completion of those Affordable Housing Units or such other date agreed in writing by the Council and the Council is satisfied that paragraph 1.6 has been complied with then the Owner shall forthwith pay two thirds of the Affordable Housing Commuted Sum to the Council **PROVIDED THAT** upon such payment the Owner will be free to offer such dwellings for sale on the open market free from the affordable housing obligations in this Schedule.

1.9 If any of the Affordable Housing Units have not been constructed to Practical Completion within three years of the date of Commencement of Development the Owner shall forthwith pay the pro rata Affordable Housing Commuted Sum for each Affordable Housing Unit not so constructed **PROVIDED THAT** upon such payment the Owner will be free to offer such dwellings for sale on the open market free from the affordable housing obligations in this Schedule

Public Open Space and Green Space Contributions

2. The Owner hereby covenants to pay the Green Space Contribution and Public Open Space Contribution on or prior to Practical Completion of the seventeenth Dwelling to be constructed on the Site pursuant to the Planning Permission.

Land off Kings Road, Wombwell, Location Plan, 1:1250 scale



KINGS ROAD, WOMBWELL



Schedule of Accommodation

Bungalows		
K	2 bed semi	2
Houses		
F	3 bed semi	14
H	3 bed semi	3
G	3 bed semi - 2.5 storey	2
C	3 bed detached	1
Csp	3 bed detached	1
A	4 bed detached, integral garage	2
-	4 bed semi - 2.5 storey	4
D	4 bed detached, detached garage	2
Affordable		
-	2 bed bungalow	3
Totals		34

Legend

- Existing Dwellings
- Proposed Dwellings
- Shared Access
  5.5m wide carriageway - 0.7m wide margins
- Private Drive
- 1.8m high timber screen fence
- Front entrance door
- Lockable gate
- 32 * Affordable plots - plots 32 - 34

A: 24-01-17: Local Authority comments incorporated. 1 plot omitted.

Revision :

Scale : 1:500 @A2

Date : Dec'16

Drawn by : KL

Project :
Proposed Development off Kings Road Wombwell

Title :
Planning Layout

Drg No : KR-16 Rev :A

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

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

Director of Legal and Governance/Authorised Signatory

PRB 23/02/17 Min 84

No. 359
IN REGISTER

PREMIER CONSTRUCTION LIMITED

acting by a director

Signature of Director:

in the presence of:

Signature of witness

Name (in BLOCK CAPITALS MARTYN PLATTS

Address 88 Dove Road
Wombwell
Barnsley
S73 0TE