DATED 15th February 2017

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

D J ATKINSON CONSTRUCTION LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land at King Street Elsecar Barnsley, in the County of South Yorkshire

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

THIS AGREEMENT (signed as a deed) is made the 15th day of February 2017

BETWEEN: -

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

(2) **D J ATKINSON CONSTRUCTION LIMITED** (Company Registration No: **03764106**) whose registered office is situate at 123 North Wingfield Road, Grassmoor, Chesterfield, Derbyshire, S42 5EB (**"Developer"**) of the second part

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 Developer is the freehold owner of the Site entitled to be registered as the freehold proprietor of the Site at H.M. Land Registry under title numbers SYK555160, SYK516051 and SYK607537

3. The Application was submitted to the Council by the Developer for planning permission for the Development.

4. The Council would not have been willing to grant the Planning Permission but for this Deed because of the need to secure the provision of a financial contribution to compensate the Council for the loss of existing green space as a result of the Development.

5. The Developer 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" has the same meaning given to it in annex 2 of the National Planning Policy Framework March 2012

"Affordable Housing Units" means **thirty** Dwellings of Affordable Housing comprising of Affordable Rented Dwellings and Intermediate Dwellings the precise proportion to be determined by the Registered Provider and otherwise provided in accordance with paragraph 1 of the First Schedule and "Affordable Housing Unit" shall be construed accordingly

"Affordable Rent" means an affordable rent of no more than 80% of the Market Rent;

"Affordable Rented Dwellings" has the same meaning as the term "affordable rented housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framework to be constructed on plots to be agreed in writing with the Council such properties to be made available at an Affordable Rent to persons in accordance with the Registered Provider's policy, and Affordable Rented Dwelling shall be construed accordingly;

"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; Together 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;

"Education Contribution" means the sum of £51,000 (fifty one thousand pounds) towards the provision of and/or improvement to secondary school education provision serving the occupants of the Development;

"Head of Planning, Building Control and Sustainability Development Services" means the Head of Planning, Building Control and Sustainability Development 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;

"Intermediate Dwellings" has the same meaning as the term "Intermediate housing" contained in the definition of Affordable Housing contained in the glossary at Annex 2 of the National Planning Policy Framewor to be constructed on such locations and / or house types that may be agreed in writing between the Owner and the Council from time to time such properties to be made available to persons in accordance with the Registered Provider's policy;

"Market Rent" means the average local market rent for a Dwelling in Barnsley with that number of bedrooms that would be leased between a willing lessor and willing lessee on appropriate lease terms in an arms-length transaction after proper marketing, and where the parties have each acted knowledgeably, prudently and without compulsion;

"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;

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

"Planning Permission" means the planning permission reference number 2016/1105 for the erection of 30 Dwellings on the Site;

"Protected Tenant" means any tenant including their successors in title, charges, mortgagees, receivers and administrative receivers) 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 acquires the relevant Affordable Housing Unit pursuant to a voluntary sales policy of his landlord;; or

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



Site location plan 1:1250

Site plan as existing 1:200

Atkinson

15-618-01

2.6 If the Planning Permission expires or is revoked or otherwise withdrawn or modified without the consent of the Developer this Deed shall cease to have effect from the date of the said expiration revocation withdrawal or modification (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 forthwith 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 Not used

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 an interest in.

2.13 Where the agreement, approval, consent or expression of satisfaction is required by the Developer 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, Building Control and Sustainability Development 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. EDUCATON CONTRIBUTION

The Developer covenants to pay to the Council the Education Contribution within seven Working Days from the date of this Agreement unless the same sum of money has been paid to the Council for the purposes identified in the Education Contribution as part of the proceeds of the sale of the Site from the Council to the Developer:

4 AFFORDABLE HOUSING

The Developer covenants to observe and perform the obligations in the First Schedule

5 INDEXATION

Any sum payable under this Deed by the Developer 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.

6. INTEREST

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

First Schedule

Affordable Housing

1 The Developer covenants to observe and perform the following obligations

1.1 The Affordable Rented Dwellings shall not be used or Occupied other than as Affordable Rented Dwellings and the Intermediate Dwellings shall not be used or Occupied other than as Intermediate Dwellings save that the Affordable Rented Dwellings may be used as Intermediate Dwellings and the Intermediate Dwellings may be used as Affordable Rented Dwellings with the written permission of the Head of Planning and Building Control.

1.2 The plot locations of the Affordable Housing Units are to be submitted to and approved in writing by the Council prior to the Commencement of Development.

1.3 Not to cause or permit any Dwellings to be Occupied until they have been transferred to a Registered Provider on terms that accord with the Homes and Communities Agency funding requirements current at the date of this Agreement.

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

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

1.4.2 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.

1.5 The Developer shall provide the Council notice within 14 days of the Practical Completion of the Affordable Housing Units.

1.6 The Developer shall use its reasonable endeavours to market the Affordable Housing Units to a Registered Provider appearing on the Council's Approved List and will promptly upon agreeing heads of terms for a transfer of the Affordable Housing Units to the Registered Provider submit to the Council the name of the chosen Registered Provider for the Council's approval (such approval not to be unreasonably withheld or delayed) (**"the Initial Registered Provider Transfer Terms"**). For the avoidance of doubt, the Developer shall not transfer the Affordable Housing Units to a Registered Provider not 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 Developer from time to time.

1.7 The Developer will thereafter use reasonable endeavours to exchange contracts with the Registered Provider agreed under paragraph 1.6 above for the sale of the Affordable Housing Units and will keep the Council informed on the progress.

1.8 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Developer will continue to use reasonable endeavours to exchange contracts with an alternative Registered Provider 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 Developer from time to time) and will keep the Council informed of progress.

1.9 The Developer shall construct the Affordable Housing Units in accordance with the Planning Permission and the appropriate design and space standards set out in the "South Yorkshire Residential Design Guide 2011" (or any guidance that supplements or replaces it) unless otherwise agreed in writing with the Council and shall provide each Affordable Housing Unit with all necessary rights of access and egress from the same together with all the essential water, sewerage and electricity supplies without the imposition of any financial cost or the creation of any ransom element.

1.10 The obligations in this Deed shall not be binding on:

1.10.1 any Protected Tenant or any mortgagee or chargee, receiver or administrative receiver 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 receivers of administrative receivers ;

1.10.2 any Chargee,subject to paragraph 1.11 , or

1.10.3 any purchaser from a mortgagee or chargee, of an Individual Affordable Housing Unit pursuant to any default by the individual mortgagor or any person deriving title from that individual mortgagor.

1.11 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 Days prior notice to the Council of its intention to dispose and:

1.11.1 in the event that the Council responds within 30 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 best endeavours to secure such transfer;

1.11.2 if the Council does not serve its response to the notice served under paragraph 1.13.1 of this Schedule within 30 Days then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule;

1.11.3 if the Council or any other person cannot within 30 Days of the date of service of its response under paragraph 1.13.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 1.13 of this Schedule the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 1.11 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must protect the interest of the Chargee and shall not require the Chargee to sell for any less than moneys outstanding under the charge mortgage (including interest costs and penalty payments due).

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

No. 206
IN REGISTER

EXECUTED as a **DEED** (but not)
delivered until the date hereof) by)
DJ ATKINSON CONSTRUCTION LIMITED)
acting by a Director)

in the presence of

Witness Signature: .....

Witness Name: JONATHAN R KNIGHT

Witness Address: GRAT COURT, 99 SALTERGATE CHESTERFIELD S40 1LD.

Witness Occupation: SOLICITOR