DATED 21st March 2013

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

JAGUAR ESTATES LIMITED and WORTLEY CONSTRUCTION LIMITED

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 (as amended) relating to development on land off Bridge Lane Thurnscoe Barnsley in the County of South Yorkshire

A.C. Frosdick, LL.B. DipLG,
Assistant Chief Executive
(Legal and Governance)
Town Hall,
Barnsley S70 2TA.

THIS DEED OF AGREEMENT is made the 21st day of March Two Thousand and Thirteen

BETWEEN

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

(2) **JAGUAR ESTATES LIMITED** Company Number 2190562) whose registered office is The Griffin 8 Town End Road Sheffield South Yorkshire S35 9YY AND **WORTLEY CONSTRUCTION LIMITED** (Company Number 01048904) whose registered office is situate at Unit 1 Wortley Court Fall Bank Industrial Estate Dodworth S75 3LS ("the Owner") of the second part

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Agreement for the area within which the land described in the First Schedule hereto ("the Land") is situated and is the authority by whom the obligations contained in this Agreement are enforceable

(2) The Owner is the registered proprietor with Title Absolute of the Land under Land Registry Title Number SYK381004

(3) The parties agree that the obligations within this Agreement comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010

NOW THIS DEED WITNESSETH AS FOLLOWS:-

DEFINITIONS

1 For the purposes of this Deed the following expressions shall have the following meanings

"**the 1990 Act**" means the Town and Country Planning Act 1990 (as amended)

"**Affordable Housing**"- has the meaning given to it in annex 2 of the National Planning Policy Framework as published by the Department for Communities and Local Government in March 2012

"**Affordable Housing Units**" means three of the twenty five dwellings to be provided under the Planning Permission, the tenure size and location of the dwellings to be approved by the Council acting reasonably and in accordance with the housing needs for the local area

"**the Application**" means the application for outline planning permission submitted to the Council for residential development with the reference number 2012/1135

"**the Chargee**" means any mortgagee or chargee of the Registered Provider of Social Housing 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

"**the Chargee's Duty**" means the tasks and duties set out in paragraph 2.4 of the Second Schedule

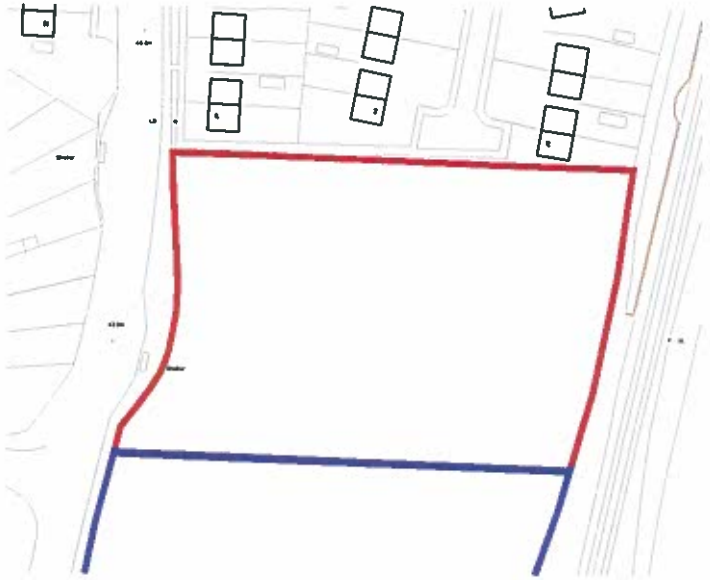
"**the Commencement of Development**" means the actual date upon which the Development is begun by the carrying out of any material operation as defined by Section 56(4) of the Town and Country Planning Act 1990 excluding (for the purposes of this Deed and for no other purpose) operations consisting of the clearance, demolition work, archaeological and ecological investigations and mitigation works, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclose, the temporary display of site notices or advertisements and "Commence Development" is to be construed accordingly

"**the Development**" means the development of the Land for residential development in accordance with the Planning Permission

"**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



SITE PLAN 1:500



LOCATION PLAN 1:1250

Coda Studios Ltd
Hope Works, 25 Mowbray St, Sheffield, S3 8EL
t 0114 279 6003 f 0114 279 6004
e.information@codastudios.co.uk

DRAWN	CHECKED	DATE	SCALE	REVISION
LJ	DC	09/12	1:500/1:1250	B

Client	Jaguar Estates
Job	THURNSCOE
Title	LOCATION & SITE PLAN
Dwg. No.	1989-001

© COPYRIGHT EXISTS ON THE DESIGNS AND INFORMATION SHOWN ON THIS DRAWING
The Contractor must verify all dimensions on site before making shop drawings or commencing work of any kind. No dimensions to be scaled from this drawing. Architect to be notified of any discrepancies in dimensions immediately.

organisation or if that Price Index ceases to exist such index as the Council reasonably nominates

"**Interest**" means interest at 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

"**the Market Housing Units**" means that part of the Development which is general market housing for sale on the open market and which is not the Affordable Housing Units

"**Occupation**" means the first occupation of the Market Housing Units for residential purposes excluding occupation for the purposes of construction, fitting out, security or marketing and "Occupied" is to be construed accordingly

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

"**the Planning Permission**" means the planning permission granted or to be 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**" – 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 Registered Provider of Social Housing (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant or a share is owned by the Registered Provider of Social Housing) in respect of a particular Affordable Housing Unit and the tenant has

subsequently purchased from the Registered Provider of Social Housing all the remaining shares so that the tenant owns the entire Affordable Housing Unit

"**the Public Open Space Commuted Sum**" means the sum of £40,796.78 (forty thousand seven hundred and ninety six pounds and seventy eight pence) to be used to provide or improve open space projects within the administrative ward or any location that is used or likely to be used by those affected by the Development or living in the new Development

"**Registered Provider of Social Housing**" means a registered provider of social housing as defined in Part 2 of the Housing and Regeneration Act 2008 ("the 2008 Act") who is registered with the regulator of social housing called the Office for Tenants and Social Landlords in the 2008 Act, referred to as the Regulator of Social Housing in other enactments or instruments, and known as the Tenant Services Authority pursuant to section 3 of the Housing Act 1996 ("the 1996 Act") or section 116 of the 2008 Act and has not been removed from the register pursuant to section 4 of the 1996 Act or section 118 of the 2008 Act who is approved by the Council (such approval not to be unreasonably withheld or delayed)

CONSTRUCTION OF THIS DEED

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

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

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against

all of them jointly and against each individually unless there is an express provision otherwise.

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

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

LEGAL BASIS

3 This Deed is made pursuant to section 106 of the Town and Country Planning Act 1990 section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers and is a planning obligation for the purposes of and as defined in the said Section 106 and the covenants restrictions and requirements imposed on the Owner herein are enforceable by the Council as local planning authority against the Owner

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed other than the obligations in Clause 5 and the Second Schedule which shall have effect upon the Commencement of Development

OWNER AND COUNCIL COVENANTS

5 The Owner covenants with the Council as set out in the Second Schedule

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £1,000 (on which no VAT shall be payable) in respect of the legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.3 This Deed shall be registrable as a local land charge by the Council.

6.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or by the Council from the Owner under the terms of this Deed 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 Assistant Director of Planning and Regulatory Services and 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.

6.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon receipt of a written request by the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

6.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

6.8 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

6.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

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

6.11 This Deed is governed by and interpreted in accordance with the law of England and Wales.

INDEXATION

7 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.

INTEREST

8 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.

EXPERT DETERMINIATION

9 In the event of any dispute or conflict arising between the parties to this Deed in respect of any valuations under paragraph 2.6 of the Second Schedule of this Deed either party may refer such dispute or difference to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.

FIRST SCHEDULE

All that land off Bridge Lane Thurnscoe Barnsley for the purpose of identification shown edged red on Plan 1

SECOND SCHEDULE

The Owner covenants with the Council to observe and perform the following obligations:

Public Open Space

1 The Owner shall pay to the Council 50% of the Public Open Space Commuted Sum upon Commencement of Development and 50% of the Public Open Space Commuted Sum upon Occupation of the first Market Housing Unit

Affordable Housing

2.1 No more than 50% of the Market Housing Units shall be Occupied until all the Affordable Housing Units have been constructed in accordance with the Planning Permission and this Schedule and transferred to a Registered Provider of Social Housing on terms that accord with the Homes and Communities Agency funding requirements current at the date of such transfer SUBJECT TO the provisions of paragraphs 2.5 and 2.6 of this Schedule

2.2 The Affordable Housing Units shall be constructed to a standard and quality at least equal to the Market Housing Units be constructed to a minimum of Code 3 of the Code for Sustainable Homes and meet Housing Quality Indicator standards unless otherwise agreed in writing by the Council

2.3 The Affordable Housing Units shall not be used for any purposes other than Affordable Housing save that this obligation shall not be binding on:

2.3.1 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

2.3.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty ;or

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

2.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than three months' prior notice to the Council of its intention to dispose and:

2.4.1 in the event that the Council responds within two months 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

2.4.2 if the Council does not serve its response to the notice served under paragraph 2.4 within two months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule

2.4.3 if the Council or any other person cannot within one month of the date of service of its response under paragraph 2.4.1 secure such transfer then then provided that the Chargee shall have complied with its obligations under paragraph 2.4.1 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 2.4 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 monies outstanding under the charge or mortgage

2.5 If the Affordable Housing Units shall not have been transferred to the Registered Provider of Social Housing within eighteen calendar months of the date of Practical Completion of all the Affordable Housing Units or such earlier

date agreed in writing by the Council and the Owner has produced evidence in writing to the reasonable written satisfaction of the Council that they have made all reasonable endeavours to secure a transfer of the Affordable Housing Units to a Registered Provider of Social Housing then the Owner will be free to offer such dwellings for sale on the open market free from the obligations in this Schedule subject to paragraph 2.6 below

2.6 In the event that the Owner is free to offer all the Affordable Housing Units for sale on the open market pursuant to the provisions of paragraph 2.5 above, the Owner shall forthwith pay to the Council a sum equivalent to the difference between the open market value of the Affordable Housing Units free from the obligations under this Schedule and the value of the Affordable Housing Units with the restrictions imposed by this Schedule,

2.7 The date of valuation under paragraph 2.6 above is the date the Owner is free to offer the Affordable Housing Units for sale on the open market free from the obligations in this Schedule pursuant to paragraph 2.5.

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

Authorised Signatory

60 IN REGISTER

EXECUTED AS A DEED by **WORTLEY CONSTRUCTION LIMITED** in the presence of:)

Director:

Director/Secretary: Y. Addy

EXECUTED AS A DEED by)

JAGUAR ESTATES LIMITED)

in the presence of:)

Director:

Director/Secretary: