DATED 28th December 2021

BARNSLEY METROPOLITAN BOROUGH COUNCIL

And

A N K DEVELOPER LTD

AGREEMENT

under Section 106 of the Town and Country Planning Act 1990 relating to land Land to rear of 31 Mansfield Road, Athersley, Barnsley, S71 3BQ.

Garry Kirk,
Legal Service Director & Solicitor to the Council
Barnsley Metropolitan Borough Council
Town Hall, Barnsley, S70 2TA.

THIS DEED OF AGREEMENT is made the 28th day of [redacted] Two Thousand and Twenty One

BETWEEN

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

(2) **A N K DEVELOPER LTD** , (co regn no 11027191) whose registered office is at 43 Kilton Road, Worksop, England, S80 2EG , ("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 of the Land registered under Land Registry Title Number SYK623878 free from encumbrances.

(3) The Owner submitted the Applications to the Council seeking Planning Permission for the Development.

(3) The parties have agreed to enter into this Deed in order to secure the

planning obligations contained in this Agreement and agree that the obligations comply with 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)

"**the Application**" means the planning application with the reference numbers 2021/0647 submitted to the Council to construct of 4 dwellings and associated works

"**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 and "Commence Development" is to be construed accordingly

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

"Dwelling Units" means the apartments or other forms of residential accommodation to be created on the Land pursuant to the Planning Permissions

"the Greenspace Contribution" means the sum of £16,458.84 (sixteen thousand four hundred and fifty eight pounds eighty four pence) to be paid to the Council and used by the Council towards purposes identified in the SPD re Open Space Provision on New Housing Developments adopted May 2019

"**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 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 Land" means the freehold land described in the First Schedule hereto against which this Agreement may be enforced.

"Occupation and Occupied": means occupation for the purposes permitted by the Planning Permission from which the Development benefits 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 "Occupy" shall be construed accordingly.

"**the Plan**" means the plan annexed hereto

"**the Planning Permissions**" means the planning permissions to be granted pursuant to the Application.

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 Agreement 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 the local planning authority against the Owner

COMMENCEMENT

4 The provisions of this Deed shall have immediate effect upon the completion of this Deed

OWNER AND COUNCIL COVENANTS

5.1 The Owner covenants with the Council as set out paragraph 1 of the Second Schedule

5.2 The Council covenants with the Owner as set out in paragraph 2 of the Second Schedule

MISCELLANEOUS

6.1 The Owner shall pay to the Council on completion of this Deed the sum of £750.00 (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 Head of Planning and Building Control and any notices shall be deemed to have been properly served if sent by recorded delivery or special 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 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.

6.9 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.

INDEXATION

8 Any sum payable under this deed by the Owner remaining unpaid six months following the date hereof 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

9 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.

[redacted]

[redacted]

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 known as Land to rear of 31 Mansfield Road, Athersley, Barnsley, S71 3BQ.and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

1 The Owner covenants to pay the Greenspace Contribution to the Council prior to the Occupation of any Dwelling Units and without prejudice to this there is to be no Occupation of any Dwelling Units until the Greenspace Contribution is paid to the Council.

2 The Council covenants to repay the Greenspace Contribution to the Owner upon written request if the Contribution has not been expended or committed to be expended within 10 years from its receipt by the Council.

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

)
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)
)

No. 216
IN REGISTER

[redacted]

HEAD OF LEGAL
AUTHORISED SIGNATORY

Executive director Core Services/
Legal Services Director /
Authorised Signatory

EXECUTED AS A DEED by _____)
A N K DEVELOPER LTD acting by its directors)

Asif Kajani

Nisha Asif Kajani

[redacted]