

DATED *28th September*

2017

**BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)**

-and-

**KIER PROPERTY DEVELOPMENTS LIMITED (2)**

-and-

**KIER LIVING LIMITED (3)**

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to land at the Former Royston Comprehensive School, Station Road, Royston, Barnsley

**WALKER MORRIS**

Kings Court  
12 King Street  
LEEDS  
LS1 2HL  
Tel: 0113 2832500  
Fax: 0113 2459412

THIS AGREEMENT (signed as a deed) is made the 20<sup>th</sup> day of September 2017

BETWEEN: -

- (1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of Smithies Lane Depot, Smithies Lane, Barnsley S71 1NL ("**Council**") of the first part;
- (2) **KIER PROPERTY DEVELOPMENTS LIMITED** (company registration number 873685) whose registered office is at Tempsford Hall, Sandy, Bedfordshire SG19 2BD ("**Owner**"); and
- (3) **KIER LIVING LIMITED** (company registration number 775505) whose registered office is at Tempsford Hall, Sandy, Bedfordshire SG19 2BD ("**Developer**").

## 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

### DEFINITIONS

#### GENERAL DEFINITIONS

- "1990 Act" means the Town and Country Planning Act 1990 as amended;
- "Application" means the application reference number 2016/1078 for 'erection of 77 no dwellings with associated highways, drainage, parking, garages and gardens (amended plans)';
- "Commencement of Development" means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56(4) of the 1990 Act Save That the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary and reference to "**Commence Development**" shall be construed accordingly;

<b>"Development"</b>	means the development of the Land in accordance with the Planning Permission;
<b>"Dwellings"</b>	means the residential units that may be built on the Land as part of the Development and reference to <b>"Dwelling"</b> shall be construed accordingly;
<b>"Education Contribution"</b>	means the sum of £239,734.00 (two hundred and thirty nine thousand seven hundred and thirty four pounds zero pence) Index Linked to be paid by the Owner to the Council as its total contribution towards the provision of and or improvement to primary school educational facilities within three miles of the boundary of the Land the need for which arises directly from the Development;
<b>"Head of Planning, Building Control and Sustainability Development Services"</b>	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 Agreement;
<b>"Independent Surveyor"</b>	means a member of the Royal Institution of Chartered Surveyors appointed by the Owner but first approved by the Council and reference to <b>"Independent Surveyors"</b> shall be construed accordingly;
<b>"Index"</b>	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;
<b>"Index Linked"</b>	means such increase to sum or sums payable to the Council under this Agreement on an annual basis or pro rata per diem from the date of this Agreement to the date of payment based upon the specified Index last published before the date of the decision to approve the grant of Planning Permission or any publication substituted for it;

<b>"Interest Rate"</b>	means interest at 4 per cent above the base lending rate of the Bank of England from time to time and in every case compounded on the first day of June and December in each year;
<b>"Land"</b>	means all that land registered under title number SYK521579 shown for identification purposes only edged red on Plan 1;
<b>"National Planning Policy Framework"</b>	means the National Planning Policy Framework as published in March 2012 by the Department for Communities and Local Government (or any future guidance or initiative that replaces or supplements it);
<b>"Off-Site Open Space Contribution"</b>	means the sum of £135,642.82 (one hundred and thirty five thousand six hundred and forty two pounds and eighty two pence) to be paid to the Council by the Owner and used by the Council in lieu of the provision of publically accessible open space on the Land for the provision of, or improvements to, public open space within three kilometres of the Land the need for which directly arises from the Development;
<b>"Planning Permission"</b>	means a planning permission to be granted pursuant to the Application;
<b>"Plan 1"</b>	Means the indicative plan numbered A729-01-F appended to this Agreement;
<b>"Plan 2"</b>	Means plan 2 of the agreement for the sale and purchase of former Royston High School site Royston dated 9 <sup>th</sup> March 2013 between the Council and the Owner
<b>"Reasonable Endeavours"</b>	means it is agreed by the parties that the party under such obligation shall not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing but subject thereto such party shall be bound to attempt to fulfil the relevant obligation(s) by the expenditure of such effort and / or sums of money and the

engagement of such professional or other advisers as in all the circumstances (including any adverse commercial implications to the party to perform such obligation) may be reasonable;

**"Specification"**

Means the specification for the car parking spaces annexed to this agreement or as may otherwise be agreed in writing with the Council

**"Statutory Undertaker"**

means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;

**"Working Day"**

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 the context so requires:

- 1.2.1 The singular includes the plural and vice versa and words importing the masculine gender only include the feminine gender and extend to include a corporation sole or aggregate;
- 1.2.2 References to any party in this Agreement shall include the successors in title and assigns of that party and in the case of the Council shall include any successor local planning authority exercising planning powers under the 1990 Act;
- 1.2.3 Where a party includes more than one person any obligations of that party shall be joint and several;
- 1.2.4 Any covenant by the Owner not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing;
- 1.2.5 A reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it and any regulations or statutory instrument made under it;

1.2.6 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Agreement and are for reference only and shall not affect the construction of this Agreement; and

1.2.7 Clause headings are for reference only and shall not affect the construction of this Agreement.

## **2 RECITALS**

2.1 By virtue of the 1990 Act the Council is the local planning authority for the purposes of this Agreement for the area in which the Land is situated and is the Authority by whom the planning obligations hereby created are enforceable.

2.2 The Owner is the registered proprietor with absolute title of the part of the Land registered at HM Land Registry under Title Number SYK521579.

2.3 The Application was submitted to the Council on behalf of the Developer for planning permission for the Development.

2.4 The Council would not grant Planning Permission for the Development unless the planning obligations contained herein were entered into by the Owner and the Developer.

2.5 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land 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.

## **3 OPERATIVE PROVISIONS**

3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other powers so enabling.

3.2 The planning obligations comprised in this Agreement shall not become effective until the following conditions are satisfied:-

3.2.1 the Planning Permission has been granted; and

3.2.2 (except where stated otherwise in this Agreement) the Commencement of Development.

3.3 Subject to clause 3.2: -

3.3.1 The Owner hereby covenants with the Council that the Land shall be permanently from the date hereof bound by and subject to the restrictions and provisions regulating the Development and use thereof specified in the First Schedule and the Developer acknowledges that its interest in the Land will be bound by the planning obligations in the First Schedule; and

3.3.2 The Council covenants with the Owner to comply with its obligations in the Second Schedule.

3.4 It is agreed and declared as follows: -

3.4.1 No party shall be bound by the terms of this Agreement or be liable for the breach of any covenants restrictions or obligations contained in this Agreement: -

- (a) occurring after he or it has parted with his or its interest in the Land 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);
- (b) if he shall be an occupier or tenant of any of the Dwellings or a purchaser of an individual Dwelling;
- (c) if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.

3.4.2 Any dispute-arising between the parties as to their respective rights-duties or obligations or as to the failure of the Council to give or confirm its consent where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter may be referred in accordance with clauses 3.4.3 and 3.4.4 to the determination of a person ("**Expert**").

3.4.3 Any reference to an Expert in accordance with clause 3.4.2 shall be to a reputable person unconnected to any of the parties hereto and experienced in matters to which the subject matter of the dispute relates and who shall be agreed between the parties

to the dispute or appointed on the application of any party to the dispute made at any time by the President of the Law Society and the decision of the Expert shall be final and binding upon the parties to the dispute and the parties hereby agree to act in accordance with the decision (save for manifest error).

- 3.4.4 Each of the parties to the dispute referred to an Expert pursuant to clause 3.4.3 shall be entitled to submit to the Expert representations and cross representations with such supporting evidence as they shall consider necessary and the Expert shall have regard thereto in making his decision which he shall deliver in writing as expediently as possible and the reference to him shall include authority to determine in what manner all the costs of the referral (whether incurred by the parties to the dispute or the Expert himself) shall be paid.
- 3.4.5 Where any notice or confirmation is to be served on the Council under the terms of this Agreement such notice or confirmation shall be sent to Head of Planning, Building Control and Sustainability Development Services at Barnsley Metropolitan Borough Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2016/1078.
- 3.4.6 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) or revoked this Agreement shall terminate and cease to have effect and the Council shall immediately remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.4.7 Nothing in this Agreement shall be construed as restricting the exercise by the Council of any power or discretion exercisable by it under the 1990 Act or under any other Act of Parliament nor prejudicing or affecting the Council's rights powers duties and obligations in any capacity as a local or public authority.
- 3.4.8 The obligations hereby created shall be registered as a Local Land Charge.
- 3.4.9 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

- 3.4.10 Nothing in this Agreement 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 after the date of this Agreement.
- 3.4.11 The Developer shall pay to the Council its reasonable legal fees incurred in the preparation negotiation and completion of this Agreement.
- 3.4.12 Wherever this Agreement requires the approval agreement determination or consent of the Council or the Owner such approval agreement determination or consent is not to be unreasonably withheld or delayed.
- 3.4.13 The parties shall act reasonably and in good faith in the performance of their obligations in this Agreement.
- 3.4.14 If the Council does not receive payment of any money due under this Agreement on the due date the Owner or the Developer (whosoever is responsible for making such payment under the terms of this Agreement) will pay interest on the money concerned to the Council at the Interest Rate from the due date until the date of actual receipt by the Council provided that this sub-clause shall not prejudice any other right or remedy of the Council for the recovery of any money due.

**FIRST SCHEDULE**  
("the Owner's Covenants")

The Owner hereby covenants with the Council: -

**1. EDUCATION CONTRIBUTION**

1.1 To notify the Council prior to the Occupation of more than 10 Dwellings and not to Occupy more than 10 of the Dwellings until 50% of the Education Contribution as Index Linked has been paid to the Council.

1.2 To notify the Council prior to the Occupation of more than 40 of the Dwellings and not to Occupy more than 40 of the Dwellings until the remaining 50% of the Education Contribution as Index Linked has been paid to the Council.

**2. OFF-SITE OPEN SPACE CONTRIBUTION**

2.1 To notify the Council prior to the Occupation of more than 10 Open Market Dwellings and not to Occupy more than 10 of the Dwellings until 50% of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.

2.2 To notify the Council prior to the Occupation of more than 40 Open Market Dwellings and not to Occupy more than 40 of the Dwellings until the remaining 50% of the Off-Site Open Space Contribution as Index Linked has been paid to the Council.

**3. CAR PARKING PROVISION**

3.1 Prior to first occupation of the Dwellings to secure the provision of 23 (twenty three) car parking spaces for use by customers of Royston Leisure Centre Royston Lifelong Learning Centre and Royston Civic Hall all of Station Road Royston and any other local organisation the Council reasonably permits ("the **Car parking Customers**"). The spaces are to be provided in the area outlined in red on Plan 2.

3.2 To complete the car parking spaces in accordance with the Specification and make them permanently available for use by the Car parking Customers prior to the Occupation of 50% of the Dwellings.

**4. MEMORIAL TREE RE-PLANTING**

4.1 To retain the memorial tree coloured green on Plan 3 in situ unless replanted within the Land in a location to be agreed in writing with the Local Planning Authority and upon relocation to retain in situ thereafter.

Specification

**40mm wearing course (0/10mm CG Surface Course 125 Pen H/Stone to BS 4987-1:Clause 7.4)**

**60mm binder course (0/20mm DBM 125 Pen Binder Course H/Stone to BS 4987-1: Clause 6.5)**

**100mm Basecourse (0/32mm DBM 125 Pen Base L/Stone to BS 4987-1: Clause 5.2).**

**200mm Sub base (Type 1 Sub-Base to comply with Specification for Highway Works Clause 803.).**

**400mm Capping (6F2). Not included.**

**CBR testing to ensure  $\geq 2.0\%$  on formation. Additional cover may be required. Soft spots to be excavated to firm ground and inspected by highways engineer. Fill material to be agreed on site (6f2 / Type 1 as necessary).**

**SECOND SCHEDULE**  
("the Council's Covenants")

The Council hereby covenants with the Owner: -

**General**

- 1 The Council will on the reasonable written request of the Owner at any reasonable time or times after any of the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and / or at any reasonable time after all of the planning obligations under this Agreement have been fulfilled or at any reasonable time after this Agreement ceases to have effect issue written confirmation thereof and thereafter cancel all relevant entries in the Register of Local Land Charges.
- 2 To issue separate receipts on request for any sum or contribution paid to the Council under this Agreement.

**Contributions**

- 3 To apply the Education Contribution towards the purposes specified in this Agreement the need for which directly arises from the Development and not to apply the Education Contribution for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied
- 4 To apply the Off-Site Open Space Contribution towards the purposes specified in this Agreement the need for which directly arises from the Development and not to apply the Off-Site Open Space Contribution for any other purposes and the Council shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.

**Repayment**

- 5 That in the event the Education Contribution and / or Off-Site Open Space Contribution or any part or parts thereof are not expended or committed to spend (such evidence of committal to be provided in writing on request) within five years of the date of payment (or the date of payment of the final instalment if applicable) of such payment then the sum or sums not expended plus interest accrued will be repaid to the Owner or its nominee.

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:- )

Borough Secretary/Authorised Signatory

PRB 18th April 2011 Min 102

No. 538  
IN REGISTER

SIGNED as a DEED by )  
KIER PROPERTY DEVELOPMENTS )  
LIMITED )  
acting by a Director )  
in the presence of )

  
.....  
Director

Witness Signature

Name of Witness BEN PARKINS

Address UNIT 2180, THORPE PARK,

CENTURY WAY, LEEDS

LS15 828

SIGNED as a DEED by  
KIER LIVING LIMITED  
acting by a Director  
in the presence of

)  
)  
)  
)



.....  
Director

Witness Signature



Name of Witness

BEN PARKINS

Address

UNIT 2180, THORPE PARK,  
CENTURY WAY, LEEDS  
LS15 8ZB