

DATED 23rd September 2016

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

PARK GROVE BURLEIGH LIMITED

**AGREEMENT**

under Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to development on land at Burleigh Street Bamsley, S70 1XY, in the County  
of South Yorkshire

A.C. Frosdick, LL.B. DipLG,  
Director of Legal and Governance  
Town Hall,  
Bamsley,  
S70 2TA.  
PG/254/00384

**THIS AGREEMENT** (signed as a deed) is made the *23rd* day of *September* 2016

**BETWEEN: -**

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**Council**") of the first part; and
- (2) **PARK GROVE BURLEIGH LIMITED** (Company Registration No: 09408176) whose registered office is situate at 31 Clarkehouse Road Sheffield ("**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 Council is the freehold proprietor of the Site registered at H.M. Land Registry under title number SYK630961.
3. The Developer has an interest in the Site by virtue of the Conditional Contract
4. The Application was submitted to the Council by the Developer for planning permission for the Development.
5. 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.
6. 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;

"**Application**" means the application reference number 2016/0300 for the erection of a two storey medical centre with integrated pharmacy retail unit and associated parking on the Site;



**“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;

**“Conditional Contract”** means the contract between the Council and the Developer dated [                      ];

**“Development”** means the development of the Site in accordance with the Planning Permission;

**“Green Spaces Contribution”** means the sum of £32,000 (thirty two thousand pounds) towards the provision of and/or improvements to informal open space and/or sports and/or recreation facilities within one mile of the boundary of the Site;

**“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 the 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;

**“Plan 1”** means the plan annexed hereto and marked “Plan 1”

**“Planning Permission”** means the planning permission to be granted pursuant to the Application substantially in the form of the draft is annexed in the First Schedule;

**“Second Section 106 Agreement”** means an agreement under section 106 of the 1990 Act substantially in the form annexed in the Second Schedule

**“Site”** means the land at Burleigh Street, Barnsley, S70 1XY, 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 Developer covenants with the Council to observe the restrictions and perform the obligations contained in this Deed following its acquisition of the Site pursuant to the Conditional Contract except that the obligation in clause 2.11 shall be binding on the Developer on the date this agreement is completed.

- 2.2 The covenants, restrictions and requirements imposed upon the Developer 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 Developer..
- 2.3 The expressions "the Council" and "the Developer" 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 not become effective (save for clause 2.11 which is effective at the date of this Agreement) until the following conditions are satisfied:  
(a) the Planning Permission shall have been granted  
(b) except where otherwise stated in this Deed the Planning Permission has been Implemented
- 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 The Developer shall pay the Council's reasonable and proper legal fees in respect of the preparation and negotiation 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 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. GREEN SPACES CONTRIBUTION**

Within 28 days of the Commencement of Development the Developer covenants to pay to the Council the Green Spaces Contribution.

### **4. 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 of completion of the Second Section 106 Agreement until the date on which such sum is payable.

### **5. 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.

### **6. FURTHER AGREEMENT**

6.1 Upon the date of the transfer of the freehold interest in the Site from the Council, the Developer shall simultaneously execute and deliver to the Council the Second Section 106 Agreement relating to the Site

6.2 Upon receipt of the executed Second Section 106 Agreement referred to at clause 6.1 above, the Council shall immediately thereafter execute and complete the said agreement.

6.3 The obligation in clause 6.1 does not apply if the obligation to pay the Green Spaces Contribution plus the payment of any sums due under clauses 4 and 5 has been completed prior to the date of transfer of the Site

6.4 The Developer shall not Commence Development unless the Second Section 106 Agreement referred to at clause 6.1 above has been executed and delivered to the Council or the conditions in clause 6.3 have been satisfied.

**FIRST SCHEDULE**  
**("Draft Decision Notice")**

## Draft Decision Notice

2016/0300

Dr Sumanth Chikthimma  
124 - 126 Park Grove  
Barnsley  
South Yorkshire  
S70 1QE

Erection of two storey medical centre with integrated pharmacy and retail unit including associated parking and landscaping.

Burleigh Street  
Barnsley  
South Yorkshire  
S70 1XY

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.  
Reason: In order to comply with the provision of Section 91 of the Town and Country Planning Act 1990.
  
- 2 The development hereby approved shall be carried out strictly in accordance with the amended plans and specifications as approved unless required by any other conditions in this permission:  
2562-D-20-001 REV E Elevations sheet 1 amended plan received 27 May 2016  
2562-D-20-002 REV E Elevations sheet 2 amended plan received 27 May 2016  
2562-D-20-003 Sectional Plans Showing Context  
2562-D-22-001 REV F Proposed Floor Plans amended plan received 20 May 16  
2562-D-90-002 REV B Proposed site layout and roof plan Amended plan received 20 May 16  
Planning Statement  
2562-D-90-001 OS Site Location Plan  
2562-D-90-003 Proposed Site Layout and Context  
12864-108 Topographical Survey  
12864-108 Utility Location Survey  
Y379/00/01 Drainage Layout (preliminary)  
Copy of Letter from Yorkshire Water dated 1st February 2016  
YK5053M-001 Site visibility  
YK5053M-002 Vehicle swept path analyss  
Sustainability and Energy Statement by CJR Maintenance Solutions Ltd dated March 2016  
Ecological Appraisal by Ecus Environmental Consultatnts dated March 16  
BS5837 Tree Survey, Arboricultural Impact Assessment and Arboricultural Method Statement dated March 2016  
L7570/1 Figure 2 Tree Survey and Tree Constraints Plan  
L7570/02 Figure 3 Tree Protection Plan  
L7570/03 Landscape Proposals and Planting Schedule  
L7570/04 Outline specification and maintenance schedule  
Transport Statement by Matrix Transport Planning dated March 2016  
Phase I Desk Study 12864/5006 by Met Engineers dated December

2014

Phase II Desk Study 12864/5006 by Met Engineers dated July 2015

Reason: In the interests of the visual amenities of the locality  
accordance with Core Strategy Policy CSP 29, Design.

- 3 No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- The parking of vehicles of site operatives and visitors
- Means of access for construction traffic
- Loading and unloading of plant and materials
- Storage of plant and materials used in constructing the development
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- Wheel washing facilities
- Measures to control the emission of dust and dirt during construction
- Measures to control noise levels during construction

Reason: In the interests of highway safety, residential amenity and visual amenity and in accordance with Core Strategy Policy CSP 26, New Development and Highway Improvement, and CSP 29, Design.

- 4 No development shall take place until:

(a) Full foul and surface water drainage details, including a scheme to reduce surface water run off by at least 30% and a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority:

(b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways;

Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development.

Reason: To ensure proper drainage of the area in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.

- 5 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which die within a period of 5 years from the completion of the development, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with other of similar size and species.

Reason: In the interests of the visual amenities of the locality and in accordance with Core Strategy Policy CSP 36, Biodiversity and Geodiversity.

- 6 Prior to occupation of the building, full details of lighting shall be submitted to and approved in writing by the Local Planning Authority. Details shall include the location, orientation, angle and luminance of the lighting. The approved details shall be implemented prior to occupation of the building of the use and retained as such thereafter.

Reason: To protect the amenity of existing and future occupiers from glare and/or nuisance light in accordance with Core Strategy Policy CSP 40.

- 7 Prior to occupation of the building, a waste management plan, detailing how waste generated by the development is dealt with, shall have been submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the approved waste management plan shall be fully implemented and complied with for the life of the development.
- Reason: To ensure that all waste generated by the development is properly managed in accordance with policy WCS7 of the Barnsley, Doncaster and Rotherham Joint Waste Plan.
- 8 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material ( ie not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.
- Reason: to ensure that satisfactory off street parking/manoeuvring are provided, in the interests of highway safety and the free and safe flow of traffic and in accordance with Core Strategy Policy CSP26, New Development and Highway Improvement.
- 9 Sightlines, having the dimensions 2.4m x43m, shall be safeguarded at the entrance/exit, such that there is no obstruction to visibility at a height exceeding 1.0m above the nearside channel level of the adjacent highway.
- Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.
- 10 Visibility splays, having the dimensions 2.4m x 43mm, shall be safeguarded at the junction of Burleigh Street such that there is no obstruction to visibility and forming part of the adopted highway.
- Reason: In the interest of highway safety, in accordance with Core Strategy Policy CSP 26.
- 11 All surface water run off shall be collected and disposed of within the site and shall not be allowed to discharge onto the adjacent highway.
- Reason: In the interests of highway safety in accordance with Core Strategy Policy CSP 40, Pollution Control and Protection.
- 12 Prior to the commencement of development, details shall be submitted to and approved in writing by the Local Planning Authority of arrangements which secure the following highway improvement works:
- Measures to prevent parking on Burleigh Street.

The works shall be completed in accordance with the approved details and a timetable to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety and the free flow of traffic in accordance with Core Strategy policy CSP 26.

- 13 Prior to any works commencing on-site, a condition survey (including structural integrity) of the highways to be used by construction traffic shall be carried out in association with the Local Planning Authority. The methodology of the survey shall be approved in writing by the Local Planning Authority and shall assess the existing state of the highway. On completion of the development a second condition survey shall be carried out and shall be submitted for the written approval of the Local Planning Authority, which shall identify defects attributable to the traffic ensuing from the development. Any necessary remedial works shall be completed at the developer's expense in accordance with a scheme to be agreed in writing by the Local Planning Authority.

06 November 2002

**SECOND SCHEDULE**

("Second Section 106 Agreement to be entered into upon transfer of freehold interest to Developer")

DATED

2016

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

PARK GROVE BURLEIGH LIMITED

**AGREEMENT**

**(SECOND AGREEMENT)**

under Section 106 of the Town and Country Planning Act 1990 (as amended)  
relating to development on land at Burleigh Street Barnsley, S70 1XY, in the County  
of South Yorkshire

A.C. Frosdick, LL.B. DipLG,  
Director of Legal and Governance  
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Barnsley,  
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**BETWEEN: -**

- (1) BARNSELY METROPOLITAN BOROUGH COUNCIL** of Town Hall, Barnsley, South Yorkshire, S70 2TA ("**Council**") of the first part; and
- (2) PARK GROVE BURLEIGH LIMITED** (Company Registration No: 09408176) whose registered office is situate at 31 Clarkehouse Road Sheffield ("**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 entitled to be registered as the freehold proprietor of the Site at H.M. Land Registry under title number SYK630961.
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.
6. This Agreement is entered into pursuant to an earlier section 106 agreement relating to the Site between the parties dated [            ]. For the avoidance of doubt the Council acknowledges that once the Developer has paid a Green Spaces Contribution pursuant to an obligation under either section 106 agreement the obligation to pay the Green Spaces Contribution ceases under both section 106 agreements

**INTERPRETATION**

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

**“Application”** means the application reference number 2016/0300 for the erection of a two storey medical centre with integrated pharmacy retail unit and associated parking on the Site;

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**“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 the 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;

**“Plan 1”** means the plan annexed hereto and marked “Plan 1”

**“Planning Permission”** means the planning permission to be granted pursuant to the Application substantially in the form of the draft is annexed in the First Schedule;

**“Site”** means the land at Burleigh Street, Barnsley, S70 1XY, shown edged red on Plan 1;

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

## **OPERATIVE PROVISIONS**

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- 2.2 The covenants, restrictions and requirements imposed upon the Developer 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 Developer..
- 2.3 The expressions "the Council" and "the Developer" 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 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 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.
- 2.12 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. GREEN SPACES CONTRIBUTION**

Within 28 days of the Commencement of Development the Developer covenants to pay to the Council the Green Spaces Contribution.

**4. 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.

**5. 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.

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

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

Director of Legal and Governance/Authorised Signatory

**EXECUTED** as a **DEED** (but not  
delivered until the date hereof) by  
**PARK GROVE BURLEIGH**  
**LIMITED** acting  
by two Directors or by a Director  
and its Secretary

Director

Director/Secretary

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



EXECUTED as a DEED (but not delivered until the date hereof) by PARK GROVE BURLEIGH LIMITED acting by ~~two Directors or by~~ a Director and its ~~Secretary~~ in the presence of:

Director [Redacted]

~~Director/Secretary~~  
Witness signature: [Redacted]

Witness Name: [Redacted]

Witness Address: [Redacted]

Witness Occupation: [Redacted]