

DATED 16th February 2016

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

SUPERIOR LIVING LIMITED

AGREEMENT

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

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

THIS DEED is made the *16th* day of *February* Two Thousand and Sixteen

BETWEEN

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

(2) **SUPERIOR LIVING LIMITED** (company number 08241332) OF Colourstyle House Lees Road Knowsley Industrial Park Liverpool L33 7SE, ("the Owner") of the second part;

RECITALS

(1) The Council is the Local Planning Authority for the purposes of this Deed 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 Deed are enforceable

(2) The Owner is the registered proprietor with absolute title of the Land registered under Land Registry Title Numbers SYK537699 and SYK 622584

(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

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

"the Application" means the planning application for residential development with planning reference 2015/1460, submitted to the Council to vary a condition under planning permission granted under planning reference 2014/0570

"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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" is to be construed accordingly

"the Development" means the development of the Land 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 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 land described in the First Schedule hereto against which this Deed may be enforced

“the Plan” means the plan annexed hereto

“the Planning Permission” means a planning permission to be granted pursuant to the Application

“the Public Open Space Contribution” means the sum of £58,000 (fifty eight thousand pounds) to be used towards the provision and/or improvements to a scheme of works intended to improve parking and visual amenity to public open space at Park Road Barnsley and/or elsewhere within the Council’s Central Ward

CONSTRUCTION OF THIS DEED

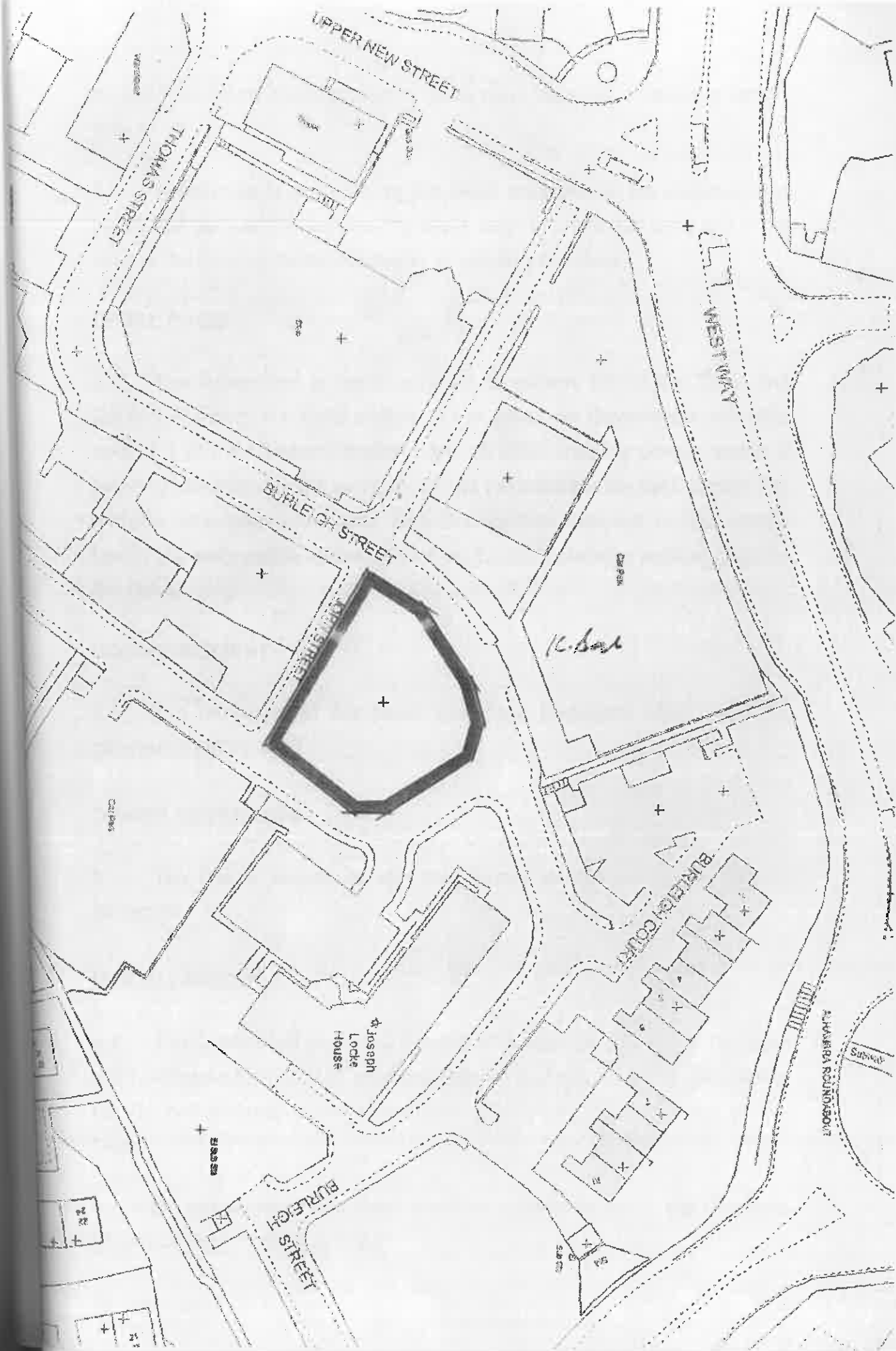
2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

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 1 of the Localism Act 2011 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 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 registered 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 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

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

10 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

DELIVERY

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

JURISDICTION

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.

INTEREST

7 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.

INDEXATION

prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

FIRST SCHEDULE

All that land at Heelis Street Barnsley South Yorkshire S70 1LW registered at the Land Registry under title numbers SYK537699 and SYK 622584 and for the purpose of identification shown edged red on the Plan

SECOND SCHEDULE

The Public Open Space Contribution

1. The Owner hereby covenants

1.1 not to Commence Development until the Public Open Space Contribution has been paid.

1.2 to pay the Public Open Space Contribution to the Council within one month of the date of this Agreement

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



Director of Legal and Governance/Authorised Signatory

No 2040
IN REGISTER

Executed as a Deed by)
SUPERIOR LIVING LIMITED)
RODIE JAMES BAKER)
acting by ~~two directors or~~ a director/secretary)

IN THE PRESENCE OF:-



Director *H. Baker*

Director/ Secretary

Howard S Norman
Solicitor
LIVERPOOL