

DATED 29th April 2015

- (1) THE COUNCIL OF THE BOROUGH OF KIRKLEES
- (2) PARK CRESCENT LIMITED
- (3) INVESTEC BANK (CHANNEL ISLANDS) LIMITED

AGREEMENT

Relating to Land at Leeds Road, Mirfield, West
Yorkshire

Druces LLP

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Ref: SML/AMF/PAR48.08

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THIS DEED is made this 29th day of April 2015

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of Civic Centre 3 Market Street Huddersfield HD1 1WG ("the Council")
- (2) **PARK CRESCENT LIMITED** (company number 653909) incorporated in the British Virgin Islands whose address is Trident Trust Co (BVI) limited, Trident Chambers PO Box Road Tortola British Virgin Islands ("the Developer")
- (3) **INVESTEC BANK (CHANNEL ISLANDS) LIMITED** (a company number incorporated in Guernsey) whose registered office is at PO Box 188 La Vielle Cour St Peter Port Guernsey ("the Mortgagee")

RECITALS

(A) STATUTORY AUTHORITY

The Council is the local planning authority for the purposes of the 1990 Act and is the highway authority for the purposes of the Highways Act 1980 for the area within which the Land is situate

(B) INTERESTS IN THE SITE

The Developer is possessed of all that freehold property comprising "the Land" and the Mortgagee has a first registered legal charge over the Land.

(C) PLANNING

The Council would not have been willing to grant the Planning Permission but for this Deed because of the need for the provision of:-

- (i) a financial contribution towards junction improvements;
- (ii) a financial contribution towards local Infrastructure provision and improvement including education, public open space

- (iii) the provision of a travel plan and promotion of sustainable transport
- (iv) the phasing of the Development
- (v) securing the provision of a marketing plan and exercise
- (vi) a financial contribution towards off-site drainage
- (vii) a financial contribution towards affordable housing

NOW THIS DEED WITNESSES as follows:

1 INTERPRETATION

- 1.1 In this Deed the following words and expressions shall have the following meanings: -

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

"Commercial Units" any unit of B1 B2 and/or B8 use constructed on the Land pursuant to the Planning Permission as part of the Development.

"Commence" and "Commencement" mean the date upon which the Development is commenced pursuant to the Planning Permission by the carrying out of a Material Operation on the Land Provided That for the avoidance of doubt the Development shall not be deemed to have been commenced by the carrying out of any survey sampling inspections or remediation works or archaeological works or demolition or site clearance or site preparation or work involving the diversion of services on site for constructions purposes or soil investigations or the erection of any boundary fences or hoarding as a preliminary to the commencement of works on the Land and "Commencement of the Development" shall be construed accordingly

"Deed" means this Deed of Agreement

"Development" means the development authorised by the Planning Permission

"Employment Land" means that part of the Development with planning consent for Commercial Units

"End User" means in the case of any office or industrial unit on the Land which has been practically completed and is ready for occupation and use the first (and any subsequent) buyer or occupier of such office or industrial unit

"Infrastructure" means the provision or improvement of educational facilities, public open space and transport

"Land" means part of that land at Slipper Land Mirfield as the same is comprised in title numbers WYK798666 and WYK713003 and shown edged in red on the Plan

"Material Operation" shall have the meaning attributed to it by Section 56(4) of the 1990 Act

"Occupy" means the occupation of any part or parts of the relevant building or land for the use for which permission is being granted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation for marketing or display or occupation in relation to security operations and the word "Occupation" shall be construed accordingly

"Parties" means all the parties to this Deed

"Plan" means the plan attached to this Deed showing the location of the Land edged in red

"Planning Application" means the application for planning permission in respect of the Development received by the Council bearing reference number 2014/90688 for B1/B2/B8 use and C3 use

"Planning Permission" the planning permission issued by the Council in respect of the Planning Application

"Practical Completion" means practical completion of the Development as certified by the Developer's surveyor in writing

"Residential Unit" means any unit of residential occupation constructed on the Land pursuant to the Planning Permission as part of the Development.

"Residential Land" means that part of the Development with planning consent for Residential Units

"Travel Plan" means the travel plan approved by the Council pursuant to the terms of the Planning Permission

"Travel Plan Officer" means a person appointed by the Council to monitor and review the Developer's compliance with the Travel Plan

"Works" means the works referred to in paragraph 3 of Schedule 1.

2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to a clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph 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 natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner

2.4 The headings used in this Deed shall not affect its interpretation

2.5 Any covenant not to act includes an obligation not to allow permit or suffer that act or thing to be done by another person and any covenant to do any act or thing includes an obligation to procure the doing of that act or thing by any other person

2.6 Any reference to an Act of Parliament shall include any modification extension

or re-enactment thereof 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 thereunder or deriving validity therefrom

3 ENFORCEMENT

- 3.1 Subject to clause 3.2 the covenants and restrictions and requirements imposed upon the Developer in this Deed are enforceable not only against the Developer but also against its respective successors in title (and any person corporate or otherwise deriving through or under them) to an interest or legal estate in any part of the Land as if that person had also been an original covenanting party to this Deed to bind such interest or legal estate.
- 3.2 This Deed shall be enforceable by the Council and its successors as local planning authority or local highway authority as the case may be.
- 3.3 The obligations in this Deed on the Developer to make financial contributions to the Council pursuant to Schedule 1 shall not be enforceable against End Users or occupiers of the Residential Units and the Council shall not require this Deed to be registered against the land registry titles
- 3.4 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission other than the Planning Permission which may be granted (whether or not on appeal) after the date of this Deed
- 3.5 Where under this Deed any notice approval consent certificate agreement action is required by the Council (or any officer of the Council) including without limitation where the Council is required to be satisfied such notice approval consent certificate agreement action or satisfaction shall not be unreasonably withheld or delayed.
- 3.6 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after it has parted with its interest in the Land but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

4 PLANNING OBLIGATIONS

- 4.1 This Deed is made in pursuance of Section 106 of 1990 Act Sections 38 and 278 of the Highways Act 1980 Section 111 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and all other powers and enactments which may be relevant to the purpose of giving validity to this Deed or for facilitating the enforcement of the obligations contained in it with intent to bind interests of the Developer in the Land and its successors in title
- 4.2 The covenants and restrictions and requirements imposed upon the Developer under this Deed create planning obligations binding on the Land pursuant to Section 106 of the 1990 Act
- 4.3 For the purposes of section 106(9) of the 1990 Act the Council is the local planning authority by whom the planning obligations within this Deed are enforceable

5 COVENANTS

- 5.1 On Commencement of any part of the Development the Developer agrees and undertakes and covenants with the Council as set out in Schedule 1
- 5.2 The Developer warrants that it has full power to enter into this Deed and that to the best of its knowledge and belief there is no other person or persons or bodies who have a charge over the Land or any interest in it other than the parties to this Deed
- 5.3 For the avoidance of doubt the contributions referred to in Schedule 1 are inclusive of any value added tax which may be chargeable thereon

6 COUNCIL'S COSTS

The Developer shall pay to the Council upon completion of this Deed the reasonable legal costs of the Council properly incurred in connection with the negotiation preparation and execution of this Deed such costs not to exceed £2000:00 (two thousand pounds)

7 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms other than the parties to it under that Act

8 AGREEMENTS AND DECLARATIONS

- 8.1 It is agreed and declared that the covenants and stipulations contained in this Deed are intended to run with the Land and each and every part thereof and to bind the owners and occupiers thereof from time to time and that this Deed shall accordingly be registrable as a local land charge by the Council
- 8.2 Insofar as any clause or clauses in this Deed are found (for what ever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 8.3 Nothing in this Deed shall be construed so as to fetter to an extent which may be unlawful any of the Council's powers and duties in its capacity as local planning authority and/or local highway authority and/or in any other capacity
- 8.4 Save where otherwise expressly state all covenants given by the Developer under this Deed shall be complied with entirely at the expense of the party or parties giving the covenant or covenants

9 CONDITIONALITY

Save for the provisions of clause 6 (which shall come into effect immediately upon completion of this Deed) this Deed shall not take effect until the grant of the Planning Permission

10 COUNCIL COVENANTS

Following written request from the Developer the Council hereby covenants to repay to the Developer the balance of any financial contribution paid by the Developer under the terms of this Deed which at the date of the receipt of such written request has not been expended together with any interest which it has accrued on the balance (after deduction of tax where required) from the date of receipt contribution to the date of payment of the unexpended balance to the Developer provided always that no such

request shall be made prior to the expiration of five years from the date of payment of the Contribution.

11 THE MORTGAGEE

The Mortgagee on behalf of itself and its successors in title and all persons claiming under or through it or them consents to the Developer entering into this Agreement and agrees to be bound by the covenants contained herein in the event that (but not further or otherwise) the Mortgagee becomes a mortgagee in possession of the Land.

12 THIRD PARTY RIGHTS

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999, but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the Council's statutory functions

13 DISPUTE RESOLUTION

In the event of any dispute arising from the application or interpretation of this deed and of the obligations hereunder the same may be referred for determination by either party to a person to be agreed between the Developer and the Council (or in default of agreement) to be appointed by the president for the time being of the law society (in matters of interpretation or law) or of the royal institution of chartered surveyors (in matters within the institution's field of expertise) and in accordance with and subject to the provisions of the Arbitration Acts 1996 ("the Arbitrator") and the findings of the arbitrator shall be final and binding and the Arbitrator's costs shall be payable by the parties in equal shares unless the Arbitrator shall determine otherwise

IN WITNESS whereof the parties to this Deed have executed it as a Deed on or before the date first before written and have given authority to their respective Solicitors to date and deliver the same and (where appropriate) a duplicate or counterpart hereof such dating being conclusive proof of delivery on the date first before written.

SCHEDULE 1

1 Travel Plan

- 1.1 Within three months of any of the Residential Units being Occupied to implement the Travel Plan to the reasonable satisfaction of the Council's Travel Plan Officer.
- 1.2 Within six months of the Residential Units being Occupied the Developer will send a report to the Travel Plan Officer indicating the progress the Developer has made in complying with the obligations contained in paragraph 1.1 of this Schedule.
- 1.3 If the Council's Travel Plan Officer is not satisfied with the progress made in connection with the obligations in Clause 1.1 hereof the Developer will comply with any reasonable recommendations the Travel Plan Officer makes in response to the progress reports required under paragraph 1.2
- 1.4 Any changes to the Travel Plan shall be submitted to the Council for the written approval of the Travel Plan Officer.
- 1.5 On or before Occupation of the Employment Land to pay to the Council Three Thousand Pounds (£3,000) and every anniversary thereafter for a period of 5 years provided that such sum shall be expended by the Council on monitoring the implementation of the Travel Plan.
- 1.6 On or before Occupation of the Residential Units to pay to the Council Two Thousand Pounds (£2,000) and every anniversary thereafter for a period of 4 years provided that such sum shall be expended by the Council on monitoring the implementation of the Travel Plan.
- 1.7 The Council covenants that in the event that any of the said monies referred to in clause 1.5 or 1.6 any parts thereof are not expended within 5 (five) years of the date of receipt of the payment by the Council then the sum or sums not expended plus Interest accrued from the date of receipt will be repaid to the payer.

1.8 Contributions

The Developer covenants with the Council to pay to the Council the following sums:

1.8.1 Church Lane Contribution

Twenty five thousand pounds (£25,000) towards the provision of traffic calming and management measures on Church Lane, Mirfield to be paid before the Occupation of any Residential Units

1.8.2 Leeds Road Contribution

Thirty five thousand pounds (£35,000) towards the improvement of the shared pedestrian / cycling lanes on Leeds Road, Mirfield to be paid before the Occupation of the 30th Residential Unit

1.8.3 Stocks Bank Contribution

Thirty five thousand pounds (£35,000) towards junction and signalling improvements on Stocks Bank Road, Mirfield to be paid before Occupation of any Residential Unit

1.8.4 Roberttown contribution

Thirty five thousand pounds (£35,000) towards traffic management / calming improvements at Roberttown, Mirfield ("the Roberttown Contribution") to be paid before Occupation of any Residential Unit

1.8.5 Offsite Drainage Contribution

Thirty thousand pounds (£30,000) towards off-site drainage works adjacent to Old Engine Close (the "Offsite Drainage Contribution") to be paid before Occupation of the 30th Residential Unit and the Council acknowledges that upon payment of such sum the Developer shall not be under any obligation to carry out any off-site drainage works pursuant to conditions 26 and 27 (residential) and conditions 32 and 34 (industrial) of the Planning Permission.

2 Infrastructure Contribution

2.1 The Developer covenants to pay to the Council £970,000 (Nine hundred and seventy thousand pounds) for the provision of and improvement to Infrastructure within the Council's administrative area such Infrastructure namely the provision of education facilities at Old Bank Infant and Junior School and Mirfield Free Grammar and the improvement to public open space at Fox Royd and Southway Island and the provision of affordable housing within the vicinity of the Development e in the following tranches:

2.1.1 £242,500 (Two hundred and forty two thousand and five hundred pounds) prior to the Occupation of the 30th Residential Unit

2.1.2 £242,500 (Two hundred and forty two thousand and five hundred pounds) prior to the Occupation of the 60th Residential Unit

2.1.3 £242,500 (Two hundred and forty two thousand and five hundred pounds) prior to the Occupation of the 90th Residential Unit

2.1.4 £242,500 (Two hundred and forty two thousand and five hundred pounds) prior to the Occupation of the 120th Residential Unit

3 PHASING OF THE DEVELOPMENT

Prior to Occupation of any Residential Unit within the Development the Developer shall:-

3.1 undertake all necessary earthworks to the Employment Land in accordance with details submitted to and approved in writing by the Council to create a plateaued surface.

3.2 have constructed two vehicular accesses to serve the Employment Land in accordance with the Planning Permission and to the satisfaction of the Council;

3.3 undertake all necessary remediation works to the Employment Land in accordance with details submitted to and approved in writing by the Council;

- 3.4 have provided up to the boundary of the Employment Land services including communications, electricity, water/foul drainage and gas supply to the Council's written satisfaction.
 - 3.5 have undertaken all necessary ground stabilisation works to the Employment Land in accordance with details submitted to and approved in writing by the Council which shall include:
 - 3.5.1 locating and sealing / grouting mine shafts
 - 3.5.2 locating and grouting coal seams
 - 3.5.3 intrusive investigation to locate and remediation of potential voids
 - 3.5.4 lime stabilisation
 - 3.6 In the event that the Developer fails to materially complete the Works to the reasonable satisfaction of the Council the Council may demand that the Developer pays to the Council the lower of:
 - 3.6.1 £3,000,000 (three million pounds); or
 - 3.6.2 such sum as represents a fair and reasonable proportion of the proper costs of carrying out the remainder of the Works
- provided that any sums paid by the Developer pursuant to paragraph 3.6 shall be spent by the Council on Infrastructure.

4 MARKETING OF EMPLOYMENT LAND

- 4.1 Prior to occupation of any Residential Unit the Developer shall submit to the Council for its written approval a marketing programme to attract End Users to Occupy the Employment Land
- 4.2 The Developer shall implement the marketing programme by conducting a marketing exercise to commence within a timeframe approved by the Council which shall extend for a minimum of twelve months from the date of the

Council's approval of the marketing programme.

THE CORPORATE COMMON SEAL of)
THE COUNCIL OF THE BOROUGH)
OF KIRKLEES was hereunto affixed in the)
presence of:-)



Acting Assistant Director: Legal,
Governance and Monitoring/Authorised
Signatory

Signed as a deed on behalf of **PARK
CRESCENT LIMITED** a company
incorporated in the British Virgin Islands by
GREGORY SHELDON COATES
being [a] person[s] who, in accordance with
the laws of that territory, [is] [are] acting
under the authority of the company

/
)
)
)
) Authorised signatory

SIGNED as a DEED by **INVESTEC BANK**)
(CHANNEL ISLANDS) LIMITED acting by)
two directors or one a director and)
secretary)



Land Registry
Official copy of
title plan

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The official copy issued on 8 August 2012 shows the name of the title after on 8 August 2012 at 15:14:28, it is identical in all respects to the original (a.k.a. Lami Squigglione, 1st 2003). The title page shows the journal citation, and the second line of the bottom line. It may be subject to deletion in some. Measurements obtained from the plan may not match measurements between the same points on the ground. See Land Transfer Public Consult 19 - This Plan and Boundaries. The title is shown with the Land Registry, Oxford Office.

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

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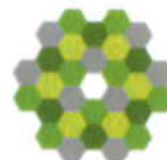
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Land Registry
Official copy of
title plan

Title number **WYK713003**
Ordnance Survey map reference **SE1921NW**
Scale **1:1250**
Administrative area **WEST YORKSHIRE:**
KIRKLEES



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