

DATED 13 May 2024

THE COUNCIL OF THE BOROUGH OF KIRKLEES (1)

and

BARKISLAND INVESTMENTS LIMITED (2)

**AGREEMENT UNDER SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**Relating to the development of land at
30 Market Street, Huddersfield HD1 2HG**

THIS DEED is made on this 13 day of

May

2024

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF KIRKLEES** of the Town Hall, Ramsden Street, Huddersfield, West Yorkshire HD1 2TA ("the Council"); and
- (2) **BARKISLAND INVESTMENTS LIMITED** company registration number: 13011015) whose registered office is at Imtiaz Malik Building, 47 Great Horton Road, Bradford, BD7 1AZ ("the Owner").

BACKGROUND:

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The Owner is the owner of the Site which is registered at the Land Registry under Title Number WYK504416 having received transfer of the freehold title in the Site by a transfer dated 20th October 2023 executed between the KEJ LLP (the Transferor) and the Owner and the Owner undertakes to apply to HM Land Registry for registration of the Owner's interest in the Site.
- (C) The Application was submitted on behalf of the Owner to the Council.
- (D) The Council resolved to grant planning permission in respect of the Site pursuant to the Application subject to the prior completion of this deed.
- (E) The Owner intends to develop the Site pursuant to the Planning Permission.
- (F) The Council and the Owner consider that the restrictions and obligations contained in this deed serve planning purposes, are material to the Application and comply with the statutory tests as set out in the Community Infrastructure Levy Regulations 2010.

THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this deed, unless the context otherwise requires, the following words have the following meanings:

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| "Act" | means the Town and Country Planning Act 1990; |
| "Application" | means the application for planning permission submitted to the Council for the Development and allocated reference number 2023/93113; |
| "Commencement of Development" | means the date on which any material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out 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;
"Commencement Date"	means the date of Commencement of Development;
"Default Interest Rate"	means interest at four per cent above the base rate of the Barclays Bank Plc from time to time;
"Development"	means the change of use and alterations to form student living accommodation with ancillary concierge and communal facilities including roof extension and roof terrace.
"Dwelling"	means any living accommodation constructed pursuant to 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;
"Occupation"	means the occupation of any Dwelling for the purposes permitted by the Planning Permission but shall not include day to day occupation by personnel engaged in construction, demolition, site clearance, ground investigations, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, site survey works, temporary access construction works, archaeological investigations, the installation of temporary fences, advertisements, notices and hoardings around the Site, fitting out, repairs, decoration or occupation for marketing or display or in relation to security operations;
"Public Open Space Contribution"	means the sum of £153,028 (One hundred and fifty-three thousand and twenty-eight pounds) payable by the Owner to the Council in accordance with clause 4.1 of this deed to be used and expended by the Council in the vicinity of the Development, including but not limited to Greenhead Park;
"Plan"	means the plan attached to this deed;
"Planning Permission"	means the planning permission which may be granted by the Council pursuant to the Application;

"Site"	means the land against which this deed may be enforced as shown edged red on the Plan;
"Working Day"	means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2 The interpretation and construction of this deed shall be subject to the following provisions:

- 1.2.1 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;
- 1.2.2 words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 1.2.3 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;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 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 respective statutory functions.
- 1.2.7 The Public Open Space Contribution 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.

2. LEGAL BASIS

- 2.1 This deed is made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 with the intention of binding the Site.
- 2.2 The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority.

3. CONDITIONALITY

This deed is conditional upon:

- 3.1 the grant of the Planning Permission; and
- 3.2 the Commencement of Development,
save for the provisions of clauses 4.2 and 6.2 which shall come into effect immediately upon completion of this deed.

4. THE OWNER'S COVENANTS

- 4.1 The Owner covenants with the Council to pay to the Council the Public Open Space Contribution as follows:-
 - 4.1.1 50% payable on the Commencement of Development;
 - 4.1.2 25% payable prior to the date of first Occupation;
 - 4.1.3 25% payable within six months of the date of first Occupation;
- 4.2 The Owner covenants to pay the Council reasonable fees in respect of this deed to a maximum sum of £1,000 inclusive of VAT.

5. THE COUNCIL'S COVENANT

The Council covenants with the Owner to use all sums received from the Owner under the terms of this deed only for the purposes specified in this deed for which they are to be paid.

6. MISCELLANEOUS

- 6.1 No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 6.2 This deed shall be registrable as a local land charge by the Council.
- 6.3 Following the performance and satisfaction of all the obligations contained in this deed the Council shall upon written request effect the cancellation of all entries made in the Register of Local Land Charges in respect of this deed.
- 6.4 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.
- 6.5 This deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 6.6 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.
- 6.7 The covenants restrictions and obligations contained in this deed shall be enforceable without any limit of time against the Owner and their successors in title and assigns or

any person claiming title through or under the Owner to the Site or any part thereof as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person provided that no person shall be liable for any breach of the covenants restrictions or obligations contained in this deed occurring after he has parted with the whole of his interest in the Site or the part in respect of which such breach occurs save and without prejudice to the rights of the Council in relation to any subsisting antecedent breach of those covenants restrictions or obligations prior to the parting of such interest.

- 6.8 In the event that an application is made in respect of the Development pursuant to Section 73 of the 1990 Act and planning permission is granted (whether or not on appeal) in respect of the Section 73 Application and the Council is satisfied that no revised planning obligations are required of the result of the Section 73 Permission then references to the planning permission in this Deed shall be construed to include the Section 73 Permission and this Deed shall apply and remain in full force in respect of that Section 73 permission without the need for a further agreement to be entered into pursuant to Section 106 or 106A of the 1990 Act.

7 WAIVER

No waiver (whether expressed or implied) by the Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8 INTEREST

If the Owner fails to pay any sums due under the terms of this deed within 14 days of the due date the Owner shall become liable to pay interest on such sums at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9 JURISDICTION

This deed is governed by and interpreted in accordance with the law of England and Wales.

10 DELIVERY

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.

IN WITNESS whereof the parties hereto have executed this deed on the day and year first before written

The Corporate Common Seal of **THE COUNCIL**)
OF THE BOROUGH OF KIRKLEES was)
hereunto affixed to this deed in the presence of:)



021263

Authorised Signatory/~~Service Director~~ – Legal, Governance & Commissioning

Executed as a Deed by **BARKISLAND**)
INVESTMENTS LIMITED by JARAIR)
IMTIAZ MALIK, a Director, in the)
presence of:-)

Witness Signature...

Witness Name..

Witness Address.....

.....

.....

Witness Occupation.....

Location Plan

Site Address: 30, Market Street, Huddersfield, HD1 2HG

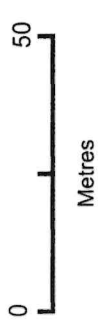


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