

DATED 16 March 2016

NORFOLK COUNTY COUNCIL

- and -

KIER LIVING LIMITED

DEVELOPER DESIGN AND BUILD

AGREEMENT

relating to land at Garden Farm,
South of Yarmouth Road, Blofield

Head of Law
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 2DH

THIS AGREEMENT is made by Deed

the 16 day of March 2016

BETWEEN:-

NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2DH
(the "County Council") (1) and Kier Living Limited (Co. Regn. No. 775505) of
Lysander House, Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the "Developer")
(2)

RECITALS:-

- (1) The County Council is the Highway Authority within the meaning of the Highways Act 1980 for the area within which the Land is situated and has powers under parts III and or V of the Highways Act 1980 to carry out the Works and wishes to secure the execution of the Works on the terms and conditions of this Agreement on behalf of and at no cost to the County Council being satisfied that it will be of benefit to the public
- (2) This Agreement is made pursuant to Parts III and or V and section 278 of the Highways Act 1980 section 111 of the Local Government Act 1972 section 38 of the Highways Act 1980 and all other enabling powers
- (3) The Developer wishes to carry out the Development and the Works afford an access or other facility to the Development

DEFINITIONS & INTERPRETATION:-

1.1 In this Agreement unless the context otherwise requires the following words shall have the following meanings:

"Admin Fee" means the sum of £848.76

"Bond" means a performance bond securing the Bond Sum with a financial institution approved by the County Council in a form approved by the County Council

"Bond Sum" means the sum of £42,438 being a guarantee for the due performance of the obligations and covenants contained in this Agreement.

"Certificate of Final Completion" means a certificate issued by the County Council following completion of the Defects Period and satisfactory completion of any Remedial Works

"Certificate of Substantial Completion" means a certificate issued by the County Council confirming substantial completion of the Works

"Commuted Maintenance Sum" means the sum of £14,646 towards the future cost of maintenance of the Works such sum to be Index Linked

"Dedication Land" means the land shown coloured pink on the plan numbered 756-02-03 Rev 1 Location Plan attached to this Agreement

"Defects Period" means the period ending 12 months after the date of the Certificate of Substantial Completion

"Development" means the development of the Land as Garden Farm, South of Yarmouth Road, Blofield authorised by Broadland District Council under reference 2012/1587

"Index Linked" means index-linked from the date of this Agreement until such time that payment of any sum specified in this Deed is made such index linking to be equivalent to any increase in such sums in proportion to the increase in the Retail Price Index (All Items) published by the Office for National Statistics (or if either such index ceases to be published such other index as the County Council shall reasonably determine)

"Land" means the land edged red on the attached plan numbered 12-2127/005

"Remedial Works" all works of repair amendment reconstruction rectification and making good of defects as may be required in writing by the County Council during the period ending 12 months after the date of the Certificate of Substantial Completion as certified by the County Council as necessary

"Works" means the works outlined in Schedule 1 to be carried out in accordance with and subject to Schedule 2 of this Agreement

AGREEMENT:-

Developers Covenants

1. The Developer hereby covenants with the County Council as follows:-

Works

- 1.1 To carry out the Works at the Developers expense to the reasonable satisfaction of the County Council

Bond

- 1.2.1 On the date of this Agreement to enter into a Bond as a guarantee for the due performance by the Developer of the covenant in 1.1
- 1.2.2 Where the Works have not been completed within twelve months of the date of this Agreement the Developer shall amend the Bond Sum to such sum as the County Council may reasonably determine on or after the first anniversary of this Agreement and thereafter at no less than 12 monthly intervals

Consents for the Works

- 1.3 To obtain (at no cost to the County Council) all necessary statutory consents orders easements or licences and the like prior to the commencement of the Works and supply to the County Council such information as the County Council require in order to carry out their obligations under Part III of the New Roads and Street Works Act 1991 (control and co ordination of street works)

Co-ordination of Street Works

- 1.4 To comply with any reasonable request of the County Council the purpose of which is to ensure that the County Council meet their obligation under Section 59 of the New Roads and Street Works Act 1991

Drawings

- 1.5 Upon adoption of the Works to give to the County Council copies of the health and safety file prepared under regulation 20(1)(c) and (2)(e) of the Construction (Design and Management) Regulations 2007 or any successor act or provision to include "as built" drawings documents and maintenance

records for the Works in a form and reasonable quantity to be approved by the County Council such approval not to be unreasonably withheld

Compensation

1.6 To reimburse the County Council within 28 days of demand:-

1.6.1 any compensation properly paid by the County Council under Parts I and II of the Land Compensation Act 1973 or Regulations made thereunder or any statutory modification or re-enactment thereof as a result of the carrying out of or use of the Works and

1.6.2 any damages for nuisance or negligence or claims under the Human Rights Act 1998 properly paid or met by the County Council as a result of the carrying out of the Works

1.6.3 together in both cases with all fees costs and expenses reasonably and properly incurred by the County Council in connection therewith all as reasonably certified by the County Council

PROVIDED THAT:

- (i) Where such a claim arises partly or wholly as a result of any negligent act or omission of the County Council this shall be taken into account when calculating any claims and costs payable; and
- (i) the County Council shall notify the Developer within a reasonable period of time of receipt of any claims actions demands or proceedings in respect thereof; and

- (ii) the County Council shall keep the Developer informed of the nature of the claim demand and/or action and the stage such claim demand or action has reached; and
- (iii) the County Council shall take into account any representations made by the Developer within 10 working days of notification of the claim to the Developer.

Costs

1.7 to pay to the County Council the following sums:-

- 1.7.1 The County Councils reasonable and proper legal costs on this agreement upon completion
- 1.7.2. the Admin Fee upon completion of this Agreement to cover the costs incurred by the Planning & Transportation Department in connection with this Agreement
- 1.7.3. A sum to cover the actual staff costs (including overheads) incurred by the County Council in approving any revised plans or drawings for the Works and in checking the as built drawings supplied pursuant to clause 1.5 within 28 days of demand
- 1.7.4. Any further costs in respect of design work or approval of design work carried out or checked by the County Council or its agents
- 1.7.5. A sum to cover the actual costs (including overheads) incurred by the County Council in ascertaining the prevailing noise levels for eligible buildings within the meaning of the Noise Insulation Regulations 1975 or any statutory modification or re enactment thereof insofar as they apply to the Works within 28 days of demand

1.7.6. A sum to cover the actual costs (including overheads) incurred by the County Council in supervising the carrying out of the Works within 28 days of demand.

Such sums to be paid within 28 days of demand (or on completion of this Deed where specified) and in any event prior to the issue of the Certificate of Substantial Completion and / or Certificate of Final Completion as the case may be

Maintenance Contribution

1.8 Prior to the issue of the Certificate of Substantial Completion to pay the Commuted Maintenance Sum to the County Council

Assignment

1.9 The Developer shall not assign this Agreement without the consent of the County Council

[Developer / Owner Covenants]

New Public Highway

1.10 Upon commencement of the Works the Developer hereby gives up and dedicates the Dedication Land as highway for use by the public.

Sale of the Land

1.11 To notify the County Council within seven days of a sale lease or other disposition of the Land

County Councils Obligations

Authority for the Works

2. The County Council subject to compliance with this Agreement hereby authorises the execution of the Works on its behalf in the highway by the Developer or by a contractor introduced by the Developer

Discharge of bond

3. The County Council agrees that on the date issue of the Certificate of Substantial Completion the amount of the Bond Sum shall be reduced by 80% and the remaining 20% shall be discharged on the first anniversary of such certificate provided that the Remedial Works have been completed to the satisfaction of the County Council in accordance with this Agreement or if later upon the satisfactory completion of such Remedial Works

Adoption of new highway

4. Upon the date of the Certificate of Substantial Completion the Dedication Land shall become maintainable at the public expense without prejudice to the Developers obligation to deal with Remedial Works

Costs Breakdown

5. The County Council shall in respect of any undefined sums to be paid by the Developer deliver to the Developer if so requested in writing a breakdown of all costs incurred by the County Council

Other agreed matters

Arbitration

- 6.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 6.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution
- 6.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties
- 6.4 Nothing in this clause shall apply to the recovery of a liquidated sum or prevent the parties from commencing or continuing court proceedings

Late Payment

7. All sums payable by the Developer under this Agreement shall carry interest at the rate of 4% above the base rate of the Co Operative Bank PLC from the date due until payment

Waiver of Breaches

8. No waiver (whether express or implied) by the County Council of any breach or default by the Developer or their successors in title in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the terms and conditions or from acting upon any subsequent breach or default in respect thereof by the Developer or their successors in title or assignees

Third Parties

9. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement

Determination

10. In the event of any sale transfer charge or other disposition of the Dedication Land prior to the commencement of the Works this Agreement shall absolutely determine

SCHEDULE 1

Part 1 - The Works

1. The formation, laying out and construction of site access, footway, carriageway narrowing road markings as shown on General Layout Drawing No.765-02-01 Rev 5 attached and the other drawings listed in part 2 or such other Drawings as may be approved by the County Council.
2. The provision/alteration of any necessary surface water drainage systems all as reasonably required by the County Council
3. The reinstatement resurfacing re-grading re-seeding or where necessary the construction in full or in part of the existing highway disturbed by the carrying out of the Works described above all as reasonably required by the County Council.
4. The provision and laying of all road markings reasonably required by the County Council.
5. The re-siting or provision erection and connection of all street lighting columns where required including services for both temporary and permanent arrangements in connection with the works.

6. The re-siting or provision and erection of all traffic signs reasonably required by the County Council including services for both temporary and permanent arrangements in connection with the works.
7. All statutory undertakers' diversion works and the making good of any damage caused to any statutory undertakers' installation as a result of the carrying out of the Works
8. The execution of any additional works or works of amendment as may be required following the completion by the County Council of any Road Safety Audit in respect of the Works in accordance with Norfolk County Council procedures based on the Department of Transport Safety and Traffic Department Standard HD 19/03 or any similar procedures that may be in force from time to time
9. All necessary ancillary highway works.

Part 2 – The Drawings

765-02-01 Rev 5 s278 Highways Works Layout

765-02-02 Rev 2 s278 Highway Works Details

765-02-03 Rev 3 s278 Highway Works location Plan

765-02-03 Rev 1 Location Plan

SCHEDULE 2

- (1) The name of any contractor introduced by the Developer shall be notified in writing to the County Council not less than twenty-eight days before the commencement of the Works
- (2) The Developer shall only be entitled to introduce contractors who are specifically approved by the County Council such approval not to be unreasonably withheld or delayed
- (3) The Developer shall upon receiving a written request produce to the County Council for inspection any contract documents in respect of the Works
- (4) (a) The Works shall be carried out:-
 - (i) In accordance with a timetable to be approved by the County Council before the commencement of the Works such approval not to be unreasonably withheld or delayed
 - (ii) Under the supervision of the County Council
 - (iii) In accordance with the reasonable requirements and specifications of the County Council
 - (v) So as to ensure the safety of the public at all times during the carrying out of the Works
- (b) The Works shall not be commenced until the Developer have received from the County Council a written authorisation to commence the Works such authorisation not to be unreasonably withheld or delayed

- (5) The Developer shall be responsible for producing contract drawings for the Works which shall require the approval of the County Council such approval not to be unreasonably withheld or delayed
- (6) During the carrying out of the Works the Developer shall provide free of charge within the site or in its immediate vicinity a suitable office for use by the County Council for the purpose of the Works
- (7) The Developer shall be responsible for ensuring that any requirements of statutory undertakers are met prior to the commencement of the Works and the cost of any works required by the statutory undertakers shall be met in full by the Developer
- (8) The Works shall be completed to the reasonable satisfaction of the County Council who shall give the Developer a Certificate of Substantial Completion as soon as reasonably possible after satisfactory completion of the Works
- (9) The Developer shall be responsible for the Remedial Works during the Defects Period
- (10) Nothing in this Schedule shall imply any obligation on the part of the County Council to the Developer or to any other person to ensure that the Works or any part or parts thereof are properly designed and constructed and the

County Council shall have no responsibility for producing any documentation for the Works including schedules designs calculation and contract drawings

- (11) (a) The County Council reserve the right to terminate forthwith in writing the arrangement whereby the Developer (or their contractor) carry out the Works if the conditions set out in this Agreement are not strictly complied with

(b) Upon termination under Paragraph (11)(a) above the County Council shall be entitled to call in the Bond for the purposes either of completing the Works or reinstating the site to its condition immediately prior to the commencement of the Works
- (12) In the event of the County Council terminating these arrangements they shall not be liable in any way for any direct or indirect loss resulting from termination
- (13) The County Council its servants and authorised agents shall at all times during the Works and the Defects Period have access to the Works
- (14) (a) Throughout the execution of the Works and the Defects Period the Developer shall insure against any damage loss or injury which may occur to any property or to any person by or arising out of the execution of the Works such insurance to be effected with an insurer in terms approved by the County Council for FIVE MILLION POUNDS (5,000,000) for any one claim

- (b) Prior to the commencement of the Works the Developer shall forward to the County Council evidence of their insurance cover
- (15)
- (a) A competent and authorised representative of the Developer shall be available throughout the carrying out of the Works
 - (b) Such authorised representative shall receive on behalf of the Developer directions from the County Council or the County Council's representative and shall be competent to determine the action required and act accordingly
- (16) The Developer shall be responsible for the proper execution and maintenance of the Works and shall indemnify and keep indemnified the County Council against:-
- (a) all losses and claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the execution and maintenance of the Works and
 - (b) all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto PROVIDED ALWAYS that the liability under (a) and (b) shall be reduced proportionately to the extent that the said loss injury or damage is proved to be contributed to by the act omission or neglect of the County Council or its servants employees or representatives)

I N W I T N E S S whereof the parties hereto have executed and delivered this
Deed the day and year first before written

THE COMMON SEAL of
THE NORFOLK COUNTY COUNCIL
was hereunto affixed
in the presence of:-

HEAD OF LAW

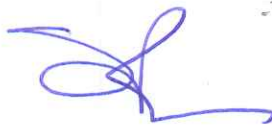

authorised to sign
on behalf of: HEAD OF LAW



40321

EXECUTED as a Deed by
~~THE COMMON SEAL of~~
KIER LIVING LIMITED
acting by ~~was hereunto affixed~~
a Director in the presence of:-

Director



Secretary



**Kier Living Limited
Tempsford Hall
Sandy, Beds
SG19 2BD**