

DATE:

2007

(1) MEDWAY COUNCIL

and

(2)

and

(3)

AGREEMENT

Town and Country Planning Act 1990

Section 106

Land Kent

Deborah Upton
Assistant Director Legal and Contract Services
Medway Council
Civic Centre
Strood
Kent ME2 4AU

Ref : .../PL02.....

“the Disputes Resolution Procedure”	means the procedure referred to in clause 6.9 and set out in the Third Schedule hereto
“the Draft Conditions”	means the draft conditions to be attached to the Permission set out in the Fourth Schedule to this Deed.
“Indexation”	means the increase of any sum in accordance with the formula set out in clause 6.11
“the Inflation Index”	means the “all Items” index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered
“Monitoring Officer Costs”	means the sum of £..... being the agreed contribution to the Council’s proper and reasonable costs in monitoring compliance with the obligations and requirements contained in this Deed to be paid in accordance with clause 5.1.7
“Occupation”	means physical occupation for any purpose but does not include occupation by personnel engaged in the construction fitting-out or decoration or management of any part of the Development and for the avoidance of doubt in the case of a

sale of a freehold or long leasehold interest to a third party Occupation commences the date of legal completion of the sale rather than exchange of contracts and "Occupy" "Occupier" "Occupiers" and "Occupied" shall be construed accordingly

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

“the Plan” means the plan annexed to this Deed

“the Planning Act” means the Town and Country Planning Act 1990 as amended

“the Planning Application” means the application for planning permission to carry out the Development on the Site and given the Council's reference number MC.....

“the Site” means the land known as and more particularly delineated edged red on the attached Plan

“Trigger Date” means each date upon which an event occurs that triggers a payment of any sum by the Owner [or the Developer] and/or the coming into effect of any other obligation under this Agreement

- 2.1 References to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that party and in the case of the Council to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council
- 2.2 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory instrument direction order regulation or byelaw made or issued under the statute or deriving validity from it
- 2.3 Words importing the masculine gender shall include the feminine gender and vice versa
- 2.4 Words importing persons include companies and corporations and vice versa
- 2.5 Unless the context otherwise requires words importing the singular shall include the plural and vice versa
- 2.6 Headings are for ease of reference only and shall not be construed as part of this Deed
- 2.7 Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Deed
- 2.8 Wherever there is more than one person named as a Party or where more than one Party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually
- 2.9 Any covenant by a Party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person

3 RECITALS

- 3.1 The Council is the Local Planning Authority for the purposes of the Planning Act for the area in which the Site is situated [and is also the Highway Authority for the purposes of the Highways Act 1980]

- 3.2 The Developer/Owner is the freehold owner of the Site and is registered as registered proprietor with title absolute of the Site at HM Land Registry under title number K **OR**
- 3.2 The Developer/Owner is seised in possession of the freehold interest in the Site
- 3.3 The Site is charged to the Mortgagee by a legal charge dated made between the Owner and the Mortgagee
- 3.4 The Planning Application has been submitted to the Council seeking permission to undertake the Development
- 3.5 The Council resolved on to grant planning permission for the Development subject to the completion of this Deed without which the Planning Application would have been refused

4 STATUTORY PROVISIONS

- 4.1 This Deed is made pursuant to Section 106 of the Planning Act and to all other enabling powers to the intent that this Deed shall bind the Parties and their heirs and successors assigns and persons claiming under or through them
- 4.2 The restrictions and obligations contained in the First Schedule to this Deed are all planning obligations for the purposes of Section 106 of the Planning Act and are enforceable by the Council
- 4.3 The Council's Costs are payable pursuant to Section 106(1)(d) of the Planning Act

5 COVENANTS

5.1 The Developer/Owner's Covenants

- The Developer and the Owner covenant with the Council
- 5.1.1 To observe the restrictions and perform the obligations set out in the First Schedule
- 5.1.2 At least 28 days before the Commencement of Development to notify the Council's Development Control Manager in writing of the date on which it is intended to commence work on the Site

- 5.1.3 Within 14 days after the Commencement of Development to notify the Council's Development Control Manager in writing of the date of the Commencement of Development
- 5.1.4 Within 14 days after any Trigger Date to notify the Council's Development Control Manager of the date and the event that occurred on the Trigger Date
- 5.1.5 To retain such records and information and within 14 days of a written request by the Council to provide the Council with such records and information as the Council request to enable the Council to satisfy itself that the Developer/Owner is complying with all its obligations under this Deed and the conditions to be attached to the Permission.
- 5.1.6 To pay the Council's Costs on the completion of this Deed
- 5.1.7 To pay the Monitoring Officer's Costs as follows:
 - 5.1.7.1 the sum of £ (pounds) on completion of this Deed
 - 5.1.7.2 the sum of £ (pounds) within fourteen days of Commencement of the Development
- 5.2 The Council's Covenants
The Council covenants with the Developer/Owner to perform the obligations set out in the Schedule

6. DECLARATIONS AND AGREEMENTS

6.1 Effective Date

The covenants contained in this Deed shall take effect on the date of this Deed other than those contained in the First Schedule and paragraphs 3 to 5 (inclusive) of the Second Schedule which shall take effect on the Commencement of Development or as otherwise stated in the aforementioned Schedules

6.2 Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after they have irrevocably parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs pursuant to a disposal at open market value to an unconnected third party but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

6.3 Revocation Modification or Expiry of the Permission

This Deed shall determine and cease to have any further effect if the Permission is revoked or modified by the Council pursuant to the Planning Act without the written consent of the Developer/Owner or if the Permission expires before the Commencement of Development

6.4 Notices

Any notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in Clause 1 or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on the Council addressed to the Development Control Manager

6.5 Approvals

Where any approval consent directions action or authority is required to be given by any of the Parties hereto such approval consent directions action or authority shall (unless otherwise stated) not be unreasonably delayed or withheld and shall only be effective if given in writing signed by or on behalf of the relevant party and given for the purposes of this Deed

6.6 Severance

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.

6.7 Waiver by the Council

No waiver (whether express or implied) by the Council of any breach or default by another Party in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that Party.

6.8 Registration as a Local Land Charge

This Deed is a Local Land Charge and shall be registered as such by the Council.

6.9 Disputes Resolution

6.9.1 Any dispute between the Parties under the terms of this Deed may be referred to an expert under the Dispute Resolution Procedure set out in the Third Schedule

6.9.2 The decision of an expert appointed under the Dispute Resolution Procedure shall be final and binding on all of the parties to the dispute.

6.10 Overdue Payment

6.10.1 Payments required to be made under the terms of this Deed shall for the purposes of this clause be deemed to fall due and to be payable on the date specified for payment in the relevant clause or if no date is specified in the relevant clause then within 21 days after the occurrence of the Trigger Date.

6.10.2 In the event of any delay in making payment required under this Deed interest shall be payable on the amount payable at the rate of four per cent above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment.

6.11 Indexation and VAT

6.11.1 Any sums which become payable under this Deed on a date more than twelve months after the date of this Deed by the [Developer or the Owner] to the Council other than the Council's Costs shall be subject to Indexation

6.11.2 Where a sum is subject to Indexation the actual sum due to the Council ("the Indexed Sum") shall be calculated in accordance with the formula:

$$\text{Indexed Sum} = \text{Initial Sum} \times \frac{\text{Inflation Index at Due Date}}{\text{Inflation Index at Base Date}}$$

Where:

6.11.2.1 "the Initial Sum" is the original sum specified in this Deed

6.11.2.2 "the Due Date" is the date specified for payment in the relevant clause or if no date is specified in the relevant clause then 21 days after the occurrence of the event triggering the relevant payment and

6.11.2.3 "the Base Date" is the date of this Deed

PROVIDED THAT where payment is not made on the Due Date the provisions of clause 6.10.2 will have effect in relation to Indexed Sum

6.11.3 All sums due under this Deed are exclusive of VAT and the Owner shall pay to the Council in addition to such sums any VAT properly payable in respect thereof

6.12 No Fettering of Discretion

This Deed shall not fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council.

6.13 Variation

No variation or modification of this Deed shall be valid unless made by Deed and executed by all the Parties or their respective successors.

6.14 Receipt

The Council acknowledges receipt of the Council's Costs

6.15 Contracts (Rights of Third Parties) Act 1999

This Deed does not nor is intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999

6.16 Planning Permission

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval

7. MORTGAGEE'S CONSENT

The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided its land shall be bound by the restrictions and obligations in this Deed and hereby agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession and that such liability will cease once it has parted with its interest in the Site

IN WITNESS whereof this Deed has been duly executed as a Deed by the Parties the day and year first before written

FIRST SCHEDULE

The Owner for himself and his successors in title covenants with the Council as follows:

..... **SCHEDULE**

The Council's Covenants

1. To issue the Permission within fourteen days of the date of this Deed incorporating the conditions set out in the Draft Conditions
2. To co-operate insofar as is reasonable with the Developer/Owner in the performance of its obligations under this Deed
3. Not to use any Contribution other than for the purpose specified in this Deed in relation to that Contribution without the prior written consent of the Owner
4. At the Owner's request to return any part of the sums aforesaid which shall not have been used for the purposes set out above within a period of 5 years from the date of the payment of the last Contribution together with simple interest at the base rate prevailing from time to time of National Westminster Bank calculated from the date of receipt of the relevant sum by the Council as evidenced by the Council's official receipt provided that the Council shall not be obliged to return any part of any Contribution which has been spent or contractually committed prior to the date of the Owner's request
5. Upon receipt of any of the sums in the First Schedule hereto the Council shall if requested to do so supply its written receipt for the aforesaid contributions

THIRD SCHEDULE
Dispute Resolution Procedure

1. General

All differences and questions that arise between the Parties arising out of or connected with this Deed may be referred to an expert

2. Choice of Expert

2.1 If the difference or question relates to the construction of rights and liabilities of any party or to the terms or conditions to be embodied in any deed or document appertaining thereto it shall be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the Chairman from time to time of the Bar

2.2 If the difference or question relates to the occupancy of any dwelling it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors

3. No Further Submissions

After delivery of counter submissions or (if none) after submission of written submissions no party shall be entitled to make any further submissions and the expert shall forthwith deliberate and deliver to every party to the dispute their decision in writing within a reasonable time of closing submissions or counter submissions

4. Restriction on Terms of Decision

The expert shall be restricted in settling the dispute to choosing between one of the proposals submitted by the parties or elements compatible with one another from the submissions of different parties to the dispute

FOURTH SCHEDULE

**The Draft Conditions to be attached to the
Permission**

The imposition of the following conditions:-

As set out in the draft Planning Decision, reference MC....., attached to this Deed

THE COMMON SEAL of MEDWAY)
COUNCIL was hereunto affixed to this)
Deed in the presence of:)

Authorised Signatory

Date _____ 2007

(1) MEDWAY COUNCIL

(2)

AGREEMENT

pursuant to Section 106
Town and Country Planning Act 1990

Land at

Legal and Contract Services
Civic Centre
Strood
Rochester
Kent
ME2 4AU

.../PL02....