

DATE:

20

(1)

in favour of

(2) MEDWAY COUNCIL

Unilateral Undertaking
Town and Country Planning Act 1990
Section 106
Land at

Perry Holmes
Assistant Director Corporate Services
Gun Wharf
Dock Road
Chatham
ME4 4TR

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

THIS DEED is made the _____ day of _____

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- 1.1 _____ (“the Developer”) (Company Registration number _____) whose registered office is at / of _____
- 1.2 _____ (“the Owner”) (Company Registration Number _____) whose registered office is at / of _____
- 1.3 _____ (“the Mortgagee”) (Company Registration Number _____) whose registered office is at / of _____

TO:

- 1.4 MEDWAY COUNCIL (“the Council”) whose address is Gun Wharf, Dock Road, Chatham, Kent ME4 4TR

2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Deed the following words and phrases shall have the following meanings:

“the Council’s Costs” means the sum of £ XXX.XX being the agreed contribution to the Council’s proper and reasonable costs in the preparation execution and registration of this Deed

“Commencement of the Development” means commencement of the Development on the Site by the carrying out of a material operation within the meaning of section 56(4) of the Planning Act

“Commencement Notice”	means the notice served pursuant to clause 5.1.2 a copy of which is attached to this Deed in Annex 1 and for the avoidance of doubt a separate Commencement Notice shall be served on the occurrence on each event listed in clause 5.1.2
“the Contributions”	means any or all of the sums set out in the First Schedule
“the Development”	The development of the Site by the Owner for the use in the manner set out in the Planning Application
“Indexation”	means the increase of any sum in accordance with the formula set out in clause 6.10
“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 £XXX.XX being the 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 5.1.5
“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 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

“the Site”

means the land known as land fronting 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 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

- 3.2 The Owner is the freehold owner of the Site and is registered as registered proprietor with title absolute of the Site at the Land Registry under title number
- 3.3 The Site is charged to the Mortgagee by a legal charge datedmade 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 subject to completion of this Deed without which planning permission would not be granted.

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 Owner's Covenants

- The Owner covenants with the Council
 - 5.1.1 To observe the restrictions and perform the obligations set out in the First Schedule
 - 5.1.2 To serve a Commencement Notice on the Council on each of the following events:-
 - 5.1.2.1 at least 28 days before the Commencement of the Development to notify the Head of Planning of the date on which it is intended to commence work on the Site

- 5.1.2.2 within 14 days after Commencement of the Development to notify the Head of Planning of the date of the Commencement of the Development
- 5.1.2.3 within 14 days after any Trigger Date to notify the Head of Planning of the date and event that occurred on a Trigger Date
- 5.1.3 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 Owner is complying with all its obligations under this Deed and the conditions to be attached to the Permission.
- 5.1.4 To pay the Council's Costs on the completion of this Deed
- 5.1.5 To pay the Monitoring Officer's Costs on completion of this Deed

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 which shall take effect on the Commencement of Development or as otherwise stated in the aforementioned Schedule.

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 Owner or if the Permission expires before the Commencement of Development

6.4 Notices

- 6.4.1 Any Commencement Notice required under clause 5.1.2 shall be in the form attached to this Deed at Annexe 1 and shall be deemed to be served if sent

electronically to the address provided on the Commencement Notice or if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the Council provided on the Commencement Notice

6.4.2 Any other 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 Head of Planning

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 Overdue Payment

- 6.9.1 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.
- 6.9.2 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 two 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.

6.10 Indexation and VAT

- 6.10.1 Any sums which become payable under this Deed on a date more than twelve months after the date of this Deed by the Owner to the Council other than the Council's Costs shall be subject to Indexation
- 6.10.2 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:

- 6.10.2.1 "the Initial Sum" is the original sum specified in this Deed
- 6.10.2.2 "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
- 6.10.2.3 "the Base Date" is the date of this Deed

PROVIDED THAT where payment is not made on the Due Date the provisions of clause 6.9.2 will have effect in relation to Indexed Sum AND where the inflation index at the due date is less than the inflation index at the base date the sum in question shall not be subject to indexation

- 6.10.3 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
- 6.11 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.

6.12 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.

6.13 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

6.14 Planning Permission

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

7. MORTGAGEE'S CONSENT *(as appropriate)*

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:

1. To pay to the Council on the Commencement of the Development the sum of (£XXXXXX.XX) towards
2. To pay to the Council on the Commencement of the Development the sum of (£XXXXXX.XX) towards
3. To pay to the Council on the Commencement of the Development the sum of (£XXXXXX.XX) towards

EXECUTED AS A DEED)
BY)
acting on behalf of the company)

Director:

Director/Secretary:

(1)

In favour of

(2) MEDWAY COUNCIL

Unilateral Undertaking
pursuant to Section 106
Town and Country Planning Act 1990

Land at

Legal Services
Gun Wharf
Dock Road
Chatham
Kent ME4 4TR

Annex 1

Commencement Notice

To : Medway Council, Section 106/CIL Officer, The Planning Service, Dock Road, Chatham, ME4 4TR

Planning application number : MC/ / [to be completed in full]

Section 106 dated: [to be completed in full]

Development Site Address : [to be completed in full]

In accordance with the terms of the above section 106 Agreement, **I GIVE YOU NOTICE** that the following event has been reached (*please complete as appropriate*)

EITHER:

PRIOR TO COMMENCEMENT OF WORKS ON THE DEVELOPMENT ON SITE (1)

Work is expected to commence on the Development Site on _____ [insert date]

(1) this notification should be sent at least 28 days prior to commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement

OR

WORKS HAVE COMMENCED ON SITE (2)

Work commenced on the Development Site on _____ [insert date]

(2) this notification should be sent within 14 days after commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement

OR

A TRIGGER DATE(S) HAS OCCURRED (3)

Obligation type: (insert each obligation) <i>e.g. Education Contribution</i>	Trigger Date: (insert the date that each obligation was due to be paid or was due to come into effect) <i>1 March 2013</i>
<i>(3) this notification should be sent within 14 days after trigger date occurred as required under Clause 5.1.2 of the Section 106 Agreement</i>	

From :

Company :

Address (*required for invoicing*) :

Email address :

Please send this notification to :

By email : S106@medway.gov.uk (preferred option)

By post : Section 106/CIL Officer
The Planning Service
Medway Council
Dock Road
Chatham
ME4 4TR