DATE: 2021

1. MEDWAY COUNCIL

and

1. LTD

Town and Country Planning Act 1990

Section 106 Agreement

Land at ………………………

Bhupinder Gill

Assistant Director Legal and Governance

Medway Council

Gun Wharf

Dock Road

Chatham

ME4 4TR

Ref:

MC/……..

**THIS DEED** is made the day of 2021

# PARTIES

* 1. **MEDWAY COUNCIL** (“the Council”) whose address is Gun Wharf Dock Road Chatham ME4 4TR
  2. (Company Registration No……….) (“the Owner”) whose registered address is …………………….
  3. (Company Registration No: ………………) (“the Mortgagee”) whose registered address is

together (“the Parties”)

## DEFINITIONS AND INTERPRETATION

* 1. In this Deed the following words and phrases shall have the following meanings:

“the Council’s Costs” means the sum of £1,500 (with no VAT) being payable being the agreed contribution to the Council’s proper and reasonable costs in the preparation execution and registration of this Deed

"Commencement Date" means the date on which the Commencement of Development occurs

“Commencement of means commencement of the

Development” Development on the Site by the

carrying out of a material operation within the meaning of s.56(4) of the Planning Act but for the purpose of this definition the carrying out of any works of demolition, works of site clearance, ground investigation and site survey works, construction of boundary fencing or hoardings, construction of temporary accesses and/or highway works, archaeological investigation, site decontamination or remediation works landscaping works, laying of sewers and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation.

“Contributions” means the financial contributions set out in the First Schedule

“Development” means the development of the Site by …………… in accordance with the Planning Application

“Disputes Resolution means the procedure referred to

Procedure” in clause 6.9 and set out in the Third Schedule hereto

“Draft Conditions” means the draft conditions to be attached to the Permission set out in the Fourth Schedule to this Deed

“Housing Unit” means a residential dwelling (including any flat) erected on the Site pursuant to the Permission

“Indexation” means the increase of any sum in accordance with the formula set out in clause 6.11

“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 5.1.5

“Notice” means a notice in the form which is attached to this Deed at Annex 1

“Occupation” means physical occupation for the intended beneficial purpose but does not include occupation for the purposes of construction fitting- out decoration landscaping marketing sales security or management of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or a long leasehold interest to a third party Occupation commences on the date of legal completion of the sale rather than exchange of contracts

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

“Plan” means the plan annexed to this Deed

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

“Planning Application” means the application for planning permission to carry out the Development on the Site and given reference MC/……

“Section 73 Consent” means a planning permission issued pursuant to an application to vary the Permission made under section 73 of the Planning Act

“Secretary of State” means the Secretary of State for Housing, Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Housing, Communities and Local Government by the Planning Act.

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

“Statutory Undertaker” has the meaning given such term in the Planning Act and for the avoidance of doubt, shall include any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator

“Trigger Date” means each date upon which an event occurs that triggers the payment of any Contribution by the Owner and/or the coming into effect of any other obligation under this Deed

* 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. 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
  3. Words importing the masculine gender shall include the feminine gender and the neuter and visa versa
  4. Words importing persons include companies, partnerships and corporations and vice versa
  5. Unless the context otherwise requires words importing the singular shall include the plural and vice versa
  6. Headings are for ease of reference only and shall not be construed as part of this Deed
  7. Reference to any recital clause schedule or paragraph or any part thereof shall unless the context otherwise requires be reference to any recital clause schedule or paragraph or any part thereof in this Deed
  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
  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
  10. The provisions contained in the First Schedule shall not bind nor be enforceable against any Statutory Undertaker which acquires an interest in the Site for the purpose of undertaking its statutory functions

### RECITALS

* 1. The Council is the Local Planning Authority for the purpose of the Planning Act for the area in which the Site is situated
  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(s) …………..
  3. The Mortgagee has a legal charge over the Site dated ………… and registered at the Land Registry
  4. The Owner hereby declares that as at the date hereof no other person other than those stated in this Deed holds a legal interest in the Site
  5. The Planning Application has been submitted to the Council in relation to the Development
  6. The Council resolved [on the ………../by way of Officer Delegated Authority] to grant planning permission for the Development subject to the completion of this Deed without which the Planning Application would have been refused

### STATUTORY PROVISIONS

* 1. This Deed is made pursuant to Section 106 of the Planning Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 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 through or under them, except as expressly provided for by this Deed
  2. The covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of s.106 of the Planning Act and are enforceable by the Council as Local Planning Authority against the Owner
  3. The Council’s Costs are payable pursuant to Section 106(1)(d) of the Planning Act
  4. The Owner and the Council agree the need for the planning obligations contained in this Deed both for the benefit of the Development and in the interest of proper planning of the area, and that they directly relate to the Development and fairly and reasonably relate in scale and kind to the Development and thus satisfy the requirements of s.106 of the Planning Act and Regulation 122 of the Community and Infrastructure Regulations 2010 as amended.
  5. Subject to clause 7 nothing in this Deed shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the Council or the Secretary of State after the date of this Deed and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement of Development under the terms of this Deed.

### COVENANTS

* 1. The Owner’s Covenants

The Owner covenants with the Council:

* + 1. To observe the restrictions and perform the obligations set out in the First Schedule
    2. To serve a separate Notice on the Council in relation to and in accordance with each of the following provisions in respect of each phase of the Development:
       1. At least 28 days before the Commencement Date to serve notice of the proposed occurrence of the same
       2. Within 14 days of the Commencement of Development to serve notice of the actual Commencement Date
       3. Within 14 days of the occurrence of a Trigger Date to serve notice of the date of the relevant Trigger Date and details of the relevant event
    3. To retain such records and information and within 14 days of receipt of a written request by the Council to provide the Council with such records and information as the Council may reasonably request to enable the Council to satisfy itself (acting reasonably) that the Owner is complying with all of its obligations under this Deed and the conditions attached to the Permission
    4. To pay the Council’s Costs on completion of this Deed
    5. To pay the Monitoring Officers Costs on completion of this Deed
  1. The Council’s Covenants

The Council covenants with the Owner to perform the obligations set out in the Second Schedule

#### DECLARATIONS AND AGREEMENTS

* 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 2 to 4 inclusive of the Second Schedule which shall take effect on the Commencement of Development or as otherwise stated in the aforementioned Schedules

* 1. Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after that person has irrevocably parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to any subsisting breach of covenant prior to parting with such interest

* 1. Revocation Modification or Expiry of the Permission

Subject to clause 7 herein 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 or by any Court without the written consent of the Owner or if the Permission expires before the Commencement of Development

* 1. Notices
     1. Any Notice required under clause 5.1.2 shall be in the form attached to this Deed at Annex 1 and shall be deemed to be served if sent electronically to the address provided on the 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 Notice
     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 Chief Planning Officer quoting reference MC/………………
  2. Approvals

Where any approval consent direction action or authority is required to be given by any of the parties hereto such approval consent direction action or authority shall not be unreasonably delayed or withheld and shall only be effective if given for the purposes of this Deed

* 1. 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

* 1. 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

* 1. Registration as a Local Land Charge

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

* 1. Disputes Resolution
     1. Any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure
     2. The decision of any expert appointed under the Disputes Resolution Procedure shall be final and binding on all of the parties to the dispute except in the case of manifest error
  2. Overdue Payment
     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 such payment shall fall due 21 days after the occurrence of the relevant Trigger Date (in either case the "**Due Date**")
     2. In the event of any delay in making the payment required under this Deed interest shall be payable on the amount payable at the rate of four percent 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
  3. Indexation and VAT
     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 and the Monitoring Officer Costs shall be subject to Indexation
     2. Where a sum is subject to Indexation the actual sum due to the Council (“**Indexed Sum**”) shall be calculated in accordance with the formula except where the Inflation Index at the Due Date is less than the Inflation Index at the Base Date when the sum in question shall not be subject to Indexation:

*Indexed Sum = Initial sum x Inflation Index at Due Date*

*Inflation Index at Base Date*

Where:

* + - 1. “**Initial Sum**” is the original sum specified in this Deed; and
      2. “**Base Date**” is the date twelve months after 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 the 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 any such sums any VAT properly payable in respect thereof

* 1. No Fettering of Discretion

Except in so far as is legally or equitably permitted nothing in this Deed shall not fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council

* 1. Variation

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

* 1. Receipt

The Council acknowledges receipt of the Council’s Costs and the Monitoring Officer Costs

* 1. Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999

* 1. Planning Permission

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

6.17 Jurisdiction

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

7 section 73 consent

In the event any Section 73 Consent is granted after the date of this Agreement:

7.1 the obligations in this Agreement shall relate to and bind such Section 73 Consent; and

7.2 the definitions of Planning Application, Permission and Development shall be construed to include reference to the planning application for the Section 73 Consent, the Section 73 Consent itself and the development permitted by the Section 73 Consent respectively

PROVIDED THAT

7.3 nothing in this clause shall fetter the discretion of the Council in determining the planning application for the Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

7.4 to the extent that any of the obligations in this Agreement have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

7.5 the Parties acknowledge that the Council has the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so

### 8 MORTGAGEE’S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

**FIRST SCHEDULE**

The Owner for themselves and their successors in title covenants with the Council as follows:

**Financial Contributions:**

1. To pay the sum of TWENTY THOUSAND POUNDS (£20,000) to the Council towards the provision of enhancements/upgrading the existing zebra crossing on Bloors Lane, in the vicinity of Thames View Primary School to facilitate “Halo” type LED Belishas. Such contribution to be paid prior to the Commencement of Development.
2. To pay the sum of ONE THOUSAND AND FIFTY POUNDS (£1,050) to the Council towards the provision of improvements to signage/information and any relevant surface improvements to the public right of way GB5/6A and other associated paths in the vicinity of Bloors Community woodland. Such contribution to be paid prior to the first Occupation of the 15th Housing Unit to be so Occupied within the Development.
3. To pay the sum of TWENTY EIGHT THOUSAND AND ONE HUNDRED AND TWENTY ONE POUNDS AND SIXTY PENCE (£28,121.60) to the Council towards the provision of enhancements to/expansion of the nursery school provision at Thamesview Primary School and/or St Thomas of Canterbury School and/or Mierscourt Primary School. Such contribution to be paid prior to the first Occupation of the 10th Housing Unit to be so Occupied within the Development.
4. To pay the sum of TWENTY ONE THOUSAND AND SIX HUNDRED AND NINETY THREE POUNDS AND SEVENTY PENCE (£21,693.70) to the Council towards the provision of enhancements to/expansion of the primary school provision at Thamesview Primary School and/or St Thomas of Canterbury School and/or Mierscourt Primary School. Such contribution to be paid prior to the first Occupation of the 10th Housing Unit to be so Occupied within the Development.
5. To pay the sum of FIFTY THREE THOUSAND AND ONE HUNDRED AND TWENTY EIGHT POUNDS AND FIFTY NINE PENCE (£53,128.59) to the Council towards the provision of enhancements to/expansion of the secondary school provision at The Howard School and/or Rainham Girls School and/or Rainham Mark School and/or the Robert Napier School. Such contribution to be paid prior to the first Occupation of the 10th Housing Unit to be so Occupied within the Development.
6. To pay the sum of THREE THOUSAND AND EIGHTY FOUR POUNDS AND NINETY NINE PENCE (£3,084.99) to the Council towards the provision of enhancements to/expansion of the sixth form provision at The Howard School and/or Rainham Girls School and/or Rainham Mark School and/or the Robert Napier School. Such contribution to be paid prior to the first Occupation of the 10th Housing Unit to be so Occupied within the Development.
7. To pay the sum of THREE THOUSAND THREE HUNDRED AND SIXTY EIGHT POUNDS (£3,368) to the Council towards the provision of improvements to the facilities and equipment at Rainham Library. Such contribution to be paid prior to the first Occupation of the 15th Housing Unit to be so Occupied within the Development.
8. To pay the sum of FOUR THOUSAND NINE HUNDRED POUNDS (£4,900) to the Council towards the development of a new square/civic space in Rainham Precinct Shopping Centre and/or improvements to the gateway to the shopping centre from the car park and Rainham High Street. Such contribution to be paid prior to the first Occupation of the 15th Housing Unit to be so Occupied within the Development.
9. To pay the sum of ONE THOUSAND FIVE HUNDRED AND NINETY SEVEN POUNDS AND TWENTY PENCE (£1,597.20) to the Council towards the provision of youth facilities by the Medway Youth Services Team in the Rainham area including the provision of access, supplies, equipment, programme delivery and/or instructors for young persons (ages 8-19 years and up to 25 for persons with disabilities). Such contribution to be paid prior to the first Occupation of the 15th Housing Unit to be so Occupied within the Development.
10. To pay the sum of THREE THOUSAND FIVE HUNDRED AND TWENTY NINE POUNDS (£3,529) to the Council towards the provision, improvement and promotion of waste and recycling services in the vicinity of the Site and within the Development. Such contribution to be paid prior to the first Occupation of the 5th Housing Unit to be so Occupied within the Development.
11. To pay the sum of FORTY NINE THOUSAND FOUR HUNDRED AND THIRTY POUNDS AND NINETY SEVEN PENCE (£49,430.97) to the Council towards the provision of enhancements of open space facilities within the vicinity of the Site including but not limited to Cozenton Park and/or nearby allotment facilities. Such contribution to be paid prior to the first Occupation of the 5th Housing Unit to be so Occupied within the Development
12. To pay the sum of TWO THOUSAND SIX HUNDRED AND ONE POUNDS AND SIXTY THREE PENCE (£2,601.63) to the Council towards the provision of enhancements of open space facilities within Medway’s Metropolitan park – Great Lines Heritage Park. Such contribution to be paid prior to the first Occupation of the 5th Housing Unit to be so Occupied within the Development
13. To pay the sum of TWELVE THOUSAND EIGHT HUNDRED AND NINETY FIVE POUNDS AND EIGHTY PENCE (£12,895.80) to the Council towards the support the foundation and development of the Primary Care Network within the locality of Rainham. Such contribution to be paid prior to the first Occupation of the 15th Housing Unit to be so Occupied within the Development.
14. To pay the sum of ……………… (£……………) to the Council towards the provision of migrating bird disturbance mitigation measures within the Strategic Access Management and Monitoring Strategy (SAMMS) prior to the Commencement of Development.
15. Not to cause or allow the [Commencement of Development/Occupation of any further Housing Units] within the Development exceeding the abovementioned triggers until the relevant instalment as set out in this First Schedule has been paid in full to the Council

**SECOND SCHEDULE**

**The Council’s Covenants**

1. To co-operate insofar as is reasonable with the Owner in the performance of the Owners obligations under this Deed
2. 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
3. At the Owner’s request to return any part of the Contributions aforesaid which shall not have been used for the purposes set out above within a period of five (5) years from the date of the payment of the relevant Contribution together with interest at the base rate prevailing from time to time of the National Westminster Bank plc 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 request
4. Upon receipt of any Contributions in the First Schedule hereto the Council shall if requested to do so supply (a) its written receipt for the aforesaid Contributions and (b) written confirmation that the relevant obligation(s) for a particular phase of the Development has been satisfied.

**THIRD SCHEDULE**

**Dispute Resolution Procedure**

1. General

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

2. Choice of Expert

* 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 or any person in an equivalent subsequent role.
  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 or any person in an equivalent subsequent role.

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

5. Costs

Each Party shall bear their own costs except in so far as directed by the Expert

##### FOURTH SCHEDULE

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

The imposition of the conditions as set out in the draft Planning Decision Reference MC/………… attached to this Deed

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

**THE COMMON SEAL** of **MEDWAY** )

**COUNCIL** was hereunto affixed to )

This Deed in the presence of )

Authorised Signatory

**EXECUTED** as a **DEED** by )

………………………acting by )

Director

Director/Secretary

**SIGNED** as a **DEED** by ……. )

………………………….. in the )

presence of: )

Witness signature:

Witness Name:

Witness address:

###### ANNEX 1

###### 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 Agreement 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)*

*e.g*. *Education Contribution*

Trigger Date: *(insert the date that each obligation was due to be paid or was due to come into effect)*

*e.g. 1 March 2013*

*(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*

FROM:

Company/Owner/Payee:

Address *(required for invoicing):*

Email address:

*Please send this notification to:*

By email: [S106@medway.gov.uk](mailto:S106@medway.gov.uk) *(preferred option)*

By post: Section 106/CIL Officer, The Planning Service

Medway Council, Dock Road, Chatham, ME4 4TR