

DATE:

2021

(1) MEDWAY COUNCIL

and

(2) JEAN JONES, ANN SAWTELL, ANDREW SAMUEL BALLARD and LYNN BALLARD

and

(3) C.C. TRADING LIMITED

AGREEMENT

Town and Country Planning Act 1990
Section 106

Land at Upnor Road, Upper Upnor, Medway

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

Ref: MC/20/1478
Appeal Ref: APP/A2280/W/21/3276221

- (ii) The expected location of the Affordable Housing Units
- (iii) The expected size (number of bedrooms) of each Affordable Housing Unit
- (iv) Indicative floor plans and a schedule of floor areas for the Affordable Housing Units
- (v) parking spaces gardens and balconies available for the Affordable Housing Units

“the Affordable Housing Price”

means the sum payable to the Owner by the Registered Provider in the following circumstances as follows:

- a) The transfer or lease of the Affordable Housing Land at nil cost; or
- b) The Owner having:
 - i. remediated the Affordable Housing Land in accordance with all necessary consents and statutory requirements so that the land is suitable for its intended use
 - ii. cleared and levelled the Affordable Housing Land
 - iii. provided to the Registered Provider the Affordable Housing Land with all necessary service media for gas telecommunications water foul and surface water drainage highways and electricity to render the said land for use (once developed) for residential purposes and without requiring plant or equipment to provide services at nil cost; or
- c) the construction and all associated costs of any Affordable Housing Units constructed prior to the transfer or lease of the Affordable Housing Units and/or Affordable Housing Land to the Registered Provider ; or
- d) any other reasonable sum as agreed by the Owner and the Registered Provider

“Affordable Housing Units”

means 18 of the Housing Units to be constructed on the Affordable Housing Land as Affordable Housing which

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| | shall be more particularly detailed in the Approved Affordable Housing Plan |
| “Affordable Rented Housing” | means rented housing provided by the Registered Provider to households who are eligible for Affordable Housing which shall be subject to rent control of no more than 80% of the local market rent |
| “Appeal” | appeal reference: APP/A2280/W/21/3276221 |
| “the Approved Affordable Housing Plan” | means the Affordable Housing Plan for the Development approved pursuant to paragraph 1 of the Second Schedule subject to any amendments which may subsequently be approved by the Council subject to paragraph 3 of the Second Schedule |
| “Additional Bus Service” | means the increased service of the [] bus service provided pursuant to the Bus Service Contribution |
| “Bus Service Contribution” | means the sum of £150,000 payable in five equal instalments of £30,000 LESS the Bus Service Revenue Figure applicable for each instalment such instalment to be paid on an annual basis and upon proof that the Additional Bus Service is being provided as shown pursuant to, inter alia, the Council’s monitoring of the provision of the Additional Bus Service and receipt of Bus Service Revenue Figures |
| “Bus Service Contribution First Instalment” | means the sum of £30,000 payable in accordance with the First Schedule |
| “Bus Service Contribution Second Instalment” | means the sum of £30,000 less the Bus Service Revenue Figure attributable to the period between payment of the Bus Service Contribution First Instalment and the first anniversary of such instalment |
| “Bus Service Contribution Third Instalment” | means the sum of £30,000 less the Bus Service Revenue Figure attributable to the period between payment of the Bus Service Contribution Second Instalment and the first anniversary of such instalment |

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| “Bus Service Contribution Fourth Instalment” | means the sum of £30,000 less the Bus Service Revenue Figure attributable to the period between payment of the Bus Service Contribution Third Instalment and the first anniversary of such instalment |
| “Bus Service Contribution Fifth Instalment” | means the sum of £30,000 less the Bus Service Revenue Figure attributable to the period between payment of the Bus Service Contribution Fourth Instalment and the first anniversary of such instalment |
| “Bus Service Revenue Figure” | means the revenue generated from receipts of payment from the public for the use of the Additional Bus Service as calculated and confirmed to the Council by Arriva |
| “Second Instalment Notice” | means the notice served on the Owner by the Council setting out the Bus Service Contribution Second Instalment |
| “Third Instalment Notice” | means the notice served on the Owner by the Council setting out the Bus Service Contribution Third Instalment |
| “Fourth Instalment Notice” | means the notice served on the Owner by the Council setting out the Bus Service Contribution Fourth Instalment |
| “Fifth Instalment Notice” | means the notice served on the Owner by the Council setting out the Bus Service Contribution Fifth Instalment |
| “Final Revenue Figure” | means the Bus Service Revenue Figure for the period between payment of the Bus Service Contribution Fifth Instalment and the first anniversary of such instalment |
| "Commencement Date" | means the date on which the Commencement of Development occurs |
| “Commencement of the Development” | means commencement of the Development on the Site by the carrying out of a material |

operation within the meaning of S56 (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 and the temporary display of site notices or advertisements shall not be deemed to be the carrying out of a material operation.

“Commencement Notice”

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

“the Contributions”

means the financial contributions set out in the First Schedule and the term “Contribution” shall mean any one of them

“the Council’s Costs”

means the sum of £1500 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

“the Development”

means the development of the Site by the construction of seventy-two residential dwellings comprising of four 1-bedroomed, thirteen 2-bedroomed, forty two 3-bedroomed, ten 4-bedroomed and three 5-bedroomed dwellings (Class C3), provision of 185sqm of employment floorspace to include a nursery (Class E(f)) with associated car parking and infrastructure, new landscaping and public open spaces including new public rights of way and new bus stop, sustainable urban drainage system and associated earthworks and a new vehicular access from Upnor Road

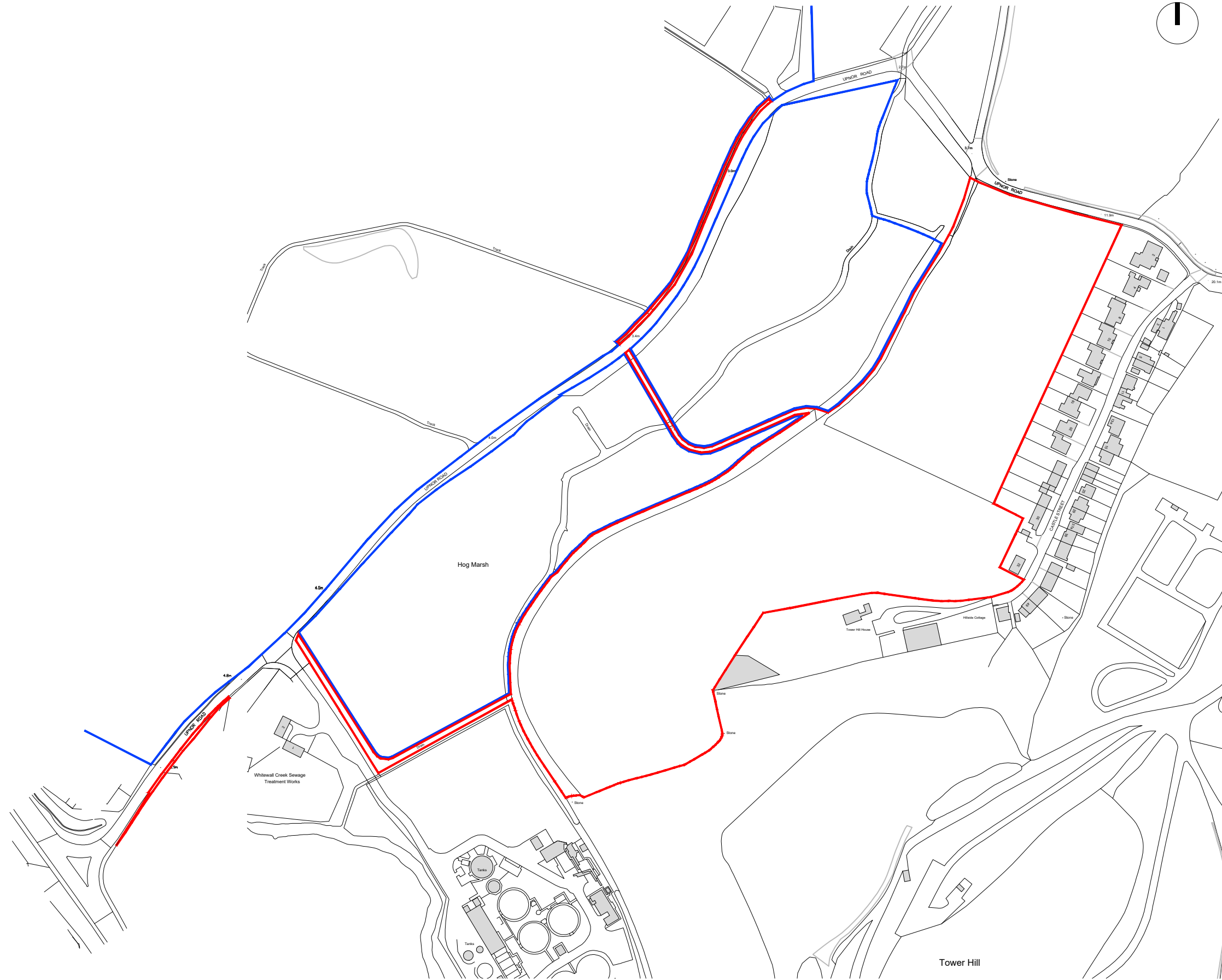
“the Disputes Resolution Procedure”

means the procedure referred to in clause 7.9 and set out in the Fourth Schedule hereto

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| “Great Lines Heritage Park Contribution” | means the sum of £5,491.40 (Five Thousand, Four Hundred and Ninety One Pounds and Forty Pence payable in accordance with the First Schedule |
| “Highway Works Contribution” | means the sum of £75,000 (seventy five thousand pounds) and payable in accordance with the First Schedule |
| “Housing Unit” | means a residential dwelling (including any flat) erected on the Site pursuant to the Permission and shall include an Affordable Housing Unit; and "Housing Units" shall be construed accordingly |
| “HRA 2008” | means the Housing and Regeneration Act 2008 |
| “Indexation” | means the increase of any sum in accordance with the formula set out in clause 7.11 |
| “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 |
| “Inspector” | means a planning inspector appointed by the Planning Inspectorate (the executive agency sponsored by the Ministry of Housing, Communities and Local Government entitled to exercise the powers conferred by the Planning Act) to hear / determine the Appeal on behalf of the Secretary of State |
| “Library Contribution” | means the sum of £12,124.80 (twelve thousand one hundred and twenty four pounds eighty pence) and payable in accordance with the First Schedule |
| “Monitoring Officer Costs” | means the sum of £11,250 being the agreed contribution on 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 6.1.5 |

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| “Nominations Agreement” | means the agreement between the Council and the Registered Provider by which the occupation of the Affordable Housing Units is approved by the Council which shall be in a form approved by the Council such approval not to be unreasonably withheld or delayed |
| “the Nursery” | means the children’s nursery to be constructed pursuant to the Planning Permission |
| “Nursery School Contribution” | means the sum of £95,613.44 (ninety five thousand six hundred and thirteen pounds and forty four pence) payable in accordance with the First Schedule |
| “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 and “Occupy” “Occupier” “Occupiers” and “Occupied” shall be construed accordingly |
| “Odour Mitigation Contribution” | means the sum of £561,227.00 (five hundred and sixty one thousand two hundred and twenty seven pounds payable in accordance with the First Schedule |
| “Open Space Contribution” | means the sum of £104,336.57 (one hundred and Four thousand three hundred and thirty six pounds and fifty seven pence) payable in accordance with the First Schedule |
| “the Owner” | means the First Owner and the Second Owner |
| “the Permission” | means the full planning permission granted pursuant to the Planning Application and the Appeal as may from time to time be amended by approval of a non-material |

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| | amendment pursuant to Section 96A of the Planning Act |
| “the Plan” | means the plan annexed to this Deed showing the Site |
| “the Planning Act” | means the Town and Country Planning Act 1990 as amended |
| “the Planning Application” | means the application for full planning permission to carry out the Development on the Site and given reference MC/20/1478 |
| “Peninsula locality Primary Care Network Contribution” | means the sum of £46,424.88 (forty six thousand four hundred and twenty four pounds and eighty eight pence) payable in accordance with the First Schedule |
| “Primary School Contribution” | means the sum of £234,686.36 (two hundred and thirty four thousand six hundred and eighty six pounds and thirty six pence) payable in accordance with the First Schedule |
| “Private Housing Units” | means the Housing Units forming part of the Development but excluding the Affordable Housing Units |
| “PROW Contribution” | means the sum of £3,960 (three thousand nine hundred and sixty pounds) payable in accordance with the First Schedule |
| “PROW” | means the public rights of way numbered RS125 and or RS126 |
| “Registered Provider” | means any body or company accredited by Homes England; or any person or body or entity which is registered as a provider of social housing in accordance with section 80(2) and chapter 3 of the HRA 2008 |
| “Secondary School Contribution” | means the sum of £127,508.63 (one hundred and twenty seven thousand five hundred and eight pounds and sixty three pence) payable in accordance with the First Schedule |
| “Section 73 Consent” | means a planning permission granted pursuant to an application made under section 73 of the Planning Act |



NOTES:

Report all discrepancies, errors and omissions.

Verify all dimensions on site before commencing any work on site or preparing shop drawings.

All materials, components and workmanship are to comply with the relevant British Standards, Codes of Practice, and appropriate manufacturers recommendations that from time to time shall apply.

For all specialist work, see relevant drawings.

This drawing and design are copyright of Clague LLP
Registration number OC335948.

| Rev | Date | Description |
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Project Title

Proposed Residential Development at Land at Upnor Road Upnor

Drawing Description

Site Location Plan

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| Scale | Drawn by |
| 1:1250 @ A3 | JS |
| Date | Checked by |
| April 2020 | TWM |

CLAGUE ARCHITECTS

62 Burgate, Canterbury
Kent CT1 2BH 01227 762060

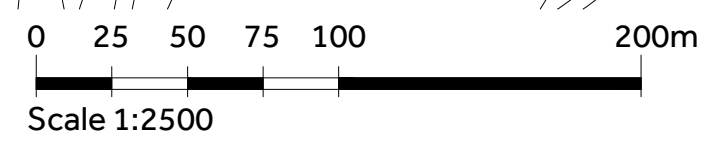
1 Kinsbourne Court, Luton Road,
Harpenden, Hertfordshire AL5 3BL 01582 765102

8, Disney Street
London SE1 1JF 0203 597 6112

CANTERBURY LONDON HARPENDEN

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| Drawing Number | Revision |
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| “the 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. |
| “Shared Ownership Housing” | means the Affordable Housing Units which are occupied by persons under shared ownership arrangements as defined by Section 70 (4) of the HRA 2008 where those persons have the opportunity to purchase all or substantially all the equity in the Affordable Housing Units at a later date or such other equity sharing or retention terms from time to time approved by the Council |
| “the Site” | means the land at Upnor Road, Upper Upnor, Medway 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 |
| “Designated Habitats Mitigation Contribution” | means the sum of £18,028.08 (eighteen thousand and twenty eight pounds and eight pence) payable in accordance with the First Schedule |
| “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 |
| “Visitor Centre Contribution” | means the sum of £20,900.16 (twenty thousand nine hundred pounds and sixteen pence) and payable in accordance with the First Schedule |
| “Waste and Recycling Contribution” | means the sum of £12,704.40 (twelve thousand seven hundred and four |

pounds and forty pence) payable in accordance with the First Schedule

“Youth Contribution”

means the sum of £5,430.48 (five thousand four hundred and thirty pounds and forty eight pence) payable in accordance with the First Schedule

- 2.2 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
- 2.3 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
- 2.4 Words importing the masculine gender shall include the feminine gender and the neuter and visa versa
- 2.5 Words importing persons include companies, partnerships and corporations and vice versa
- 2.6 Unless the context otherwise requires words importing the singular shall include the plural and vice versa
- 2.7 Headings are for ease of reference only and shall not be construed as part of this Deed
- 2.8 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
- 2.9 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
- 2.10 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 purpose of the Planning Act for the area in which the Site is situated
- 3.2 The First Owner is the freehold owner of that part of the Site registered at the Land Registry under title number K59177. The Second Owner is the freehold owner of that part of the Site registered at the Land Registry under title numbers K785122 and K965842

- 3.3 The First Owner and Second Owner hereby declare that as at the date hereof no other person holds a legal interest in the Site.
- 3.4 The Council refused to grant planning permission pursuant to the Planning Application and the Appeal has been submitted against that refusal.

4 STATUTORY PROVISIONS

- 4.1 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
- 4.2 The covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of Section 106 of the Planning Act and are enforceable by the Council as Local Planning Authority against the Owner
- 4.3 The Council's Costs are payable pursuant to Section 106 (1) (d) of the Planning Act
- 4.4 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.
- 4.5 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.

5 ENFORCEABILITY OF OBLIGATIONS

- 5.1 The provisions contained in the First Schedule and the Second Schedule shall not bind nor be enforceable against the following:
- 5.1.1 any Statutory Undertaker which acquires an interest in the Site for the purpose of undertaking its statutory functions;
- 5.1.2 any individual owners, occupiers or tenants and their mortgagees or chargees of the Private Housing Units and/or the Nursery and their successors in title;
- 5.1.3 any individual owners, occupiers or tenants of the Affordable Housing Units and their successors in title or their mortgagee or chargee
- 5.1.4 any future mortgagee or chargee of the Site (unless and until they become a mortgagee or chargee in possession of the Site);
- 5.1.5 any owner or tenant of Affordable Rented Housing who has exercised a statutory or equivalent right to acquire or right to buy or preserved right to buy; and

- 5.1.6 a leaseholder of Shared Ownership Housing who has acquired one hundred percent (100%) of the shares in the relevant Shared Ownership Housing
- 5.1.7 any successor in title of any persons detailed in sub-paragraphs 5.1.5 and 5.1.6 or their mortgagee or chargee
- 5.2 None of the provisions (including the Affordable Housing provisions) in this Deed shall be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver")) of the whole or any part of the Affordable Housing Land or Affordable Housing Unit(s) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
 - (a) Such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Land and/or Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Land and/or Affordable Housing Unit(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principle monies, interest, costs and expenses; and
 - (b) If such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Land and/or Affordable Housing Unit(s) free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely in relation to that Affordable Housing Land and/or Affordable Housing Unit(s).

6 COVENANTS

6.1 The Owner's Covenants

The Owner covenants with the Council:

- 6.1.1 To observe the restrictions and perform the obligations set out in the First Schedule and the Second Schedule
- 6.1.2 To serve a separate Commencement Notice on the Council in relation to and in accordance with each of the following provisions:
 - 6.1.2.1 At least 28 days before the intended Commencement Date to serve notice of the proposed occurrence of the same
 - 6.1.2.2 Within 14 days of the Commencement of Development to serve notice of the actual Commencement Date
 - 6.1.2.3 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
- 6.1.3 To retain such reasonable 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

6.1.4 To pay the Council's Costs on completion of this Deed

6.1.5 To pay the Monitoring Officers Costs within 28 Working Days following the grant of the Permission

6.2 The Council's Covenants

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

7 DECLARATIONS AND AGREEMENTS

7.1 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 and 4 inclusive of the Second Schedule and the Third Schedule which shall take effect on the Commencement of Development or as otherwise stated in the aforementioned Schedules

7.2 Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after that person has 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

7.3 Revocation Modification or Expiry of the Permission

This Deed shall determine and cease to have any further effect if the Permission is quashed revoked modified or otherwise withdrawn 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

7.4 Notices

7.4.1 Any Commencement Notice required under clause 6.1.2 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 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

7.4.2 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 quoting ref: MC/20/1478 and in the case of a notice to be served on the Second Owner addressed to the Head of Strategic Land.

7.5 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

7.6 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

7.7 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

7.8 Registration as a Local Land Charge

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

7.9 Disputes Resolution

7.9.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure as set out at the Fourth Schedule

7.9.2 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

7.10 Overdue Payment

7.10.1 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 such payment shall fall due 21 days after the occurrence of the relevant Trigger Date (in either case the "**Due Date**")

7.10.2 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

7.11 Indexation and VAT

7.11.1 Any sums which become payable under this Deed on a date more than twelve months after the date of this Deed by the Owner to the Council other than the Council's Costs and the Monitoring Officer Costs shall be subject to Indexation

7.11.2 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:

7.11.2.1 “the Initial Sum” is the original sum specified in this Deed

7.11.2.2 And “the 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 7.10.2 will have effect in relation to the Indexed Sum 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

7.11.3 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 other than the Council’s Costs which shall remain exclusive of VAT

7.12 Nothing in this Deed shall prevent the Owner from developing the Site in accordance with a planning permission other than the Permission or a Section 73 Consent

7.13 No Fettering of Discretion

Except in so far as is legally or equitably permitted nothing in this Deed shall fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council

7.14 Variation

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

7.15 Section 73 Consents

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

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

7.15.1.2 the definitions of Planning Application, the 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

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

7.15.3 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

7.15.4 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.

- 7.16 Receipt
The Council acknowledges receipt of the Council's Costs
- 7.17 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
- 7.18 Planning Permission
Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.
- 7.19 In the event that the Secretary of State (or the Inspector appointed to determine the Appeal on behalf of the Secretary of State) states in his decision letter either:
- 7.19.1 that a planning obligation contained in this Deed (or relevant part of a planning obligation) is not a material consideration in the granting of a planning permission pursuant to the Appeal; or
 - 7.19.2 that a planning obligation contained in this Agreement (or relevant part of a planning obligation) is incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and accordingly attaches no weight to that obligation in determining the Appeal
- then that planning obligation (or part of the planning obligation as appropriate) shall cease to have effect and the Owner shall not be required to comply with that obligation
- 7.20 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 laws of England

FIRST SCHEDULE

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

CONTRIBUTIONS

1. To pay the Nursery Contribution to the Council towards nursery school provision at one or more of Chattendeau, Hundred of Hoo, St Nicholas Infants or Strood Academy Schools as follows:
 - 1.1 50% of the contribution to be paid prior to the first Occupation of no more than 25% of the Housing Units within the Development
 - 1.2 50% of the contribution to be paid prior to the first Occupation of no more than 75% of the Housing Units within the Development
2. To pay the Primary School Contribution to the Council towards the provision of new primary school facilities at one or more of Chattendeau, Hundred of Hoo, St Nicholas Infants or Strood Academy Schools as follows:
 - 2.1 25% of the contribution to be paid prior to the first Occupation of no more than 25% of the Housing Units within the Development
 - 2.2 50% of the contribution to be paid prior to the first Occupation of no more than 50% of the Housing Units within the Development
 - 2.3 25% of the contribution to be paid prior to the first Occupation of no more than 75% of the Housing Units within the Development
3. To pay the Secondary School Contribution to the Council towards the provision of new secondary school facilities at Hundred of Hoo Academy and/or Strood Academy as follows:
 - 3.1 25% of the contribution to be paid prior to the first Occupation of no more than 25% of the Housing Units within the Development
 - 3.2 50% of the contribution to be paid prior to the first Occupation of no more than 50% of the Housing Units within the Development
 - 3.3 25% of the contribution to be paid prior to the first Occupation of no more than 75% of the Housing Units within the Development
4. To pay the Bus Service Contribution to the Council as follows:
 - 4.1 The Bus Service Contribution First Instalment shall be paid prior to Occupation of the first Housing Unit to be Occupied or first Occupation of the Nursery whichever shall occur sooner
 - 4.2 Within 30 days of receipt of the Second Instalment Notice to pay the Bus Service Contribution Second Instalment
 - 4.3 Within 30 days of receipt of the Third Instalment Notice to pay the Bus Service Contribution Third Instalment
 - 4.4 Within 30 days of receipt of the Fourth Instalment Notice to pay the Bus Service Contribution Fourth Instalment
 - 4.5 Within 30 days of receipt of the Fifth Instalment Notice to pay the Bus Service Contribution Fifth Instalment
5. To pay the Highway Works Contribution to the Council towards highway improvements prior to first Occupation of the Development
6. To pay the Library Contribution to the Council towards improvements to facilities and equipment to libraries within the vicinity prior to Occupation of no more than 50% of the Housing Units within the Development

7. To pay the Odour Mitigation Contribution to the Council prior to first Occupation of the Development
8. To pay the Great Lines Heritage Park Contribution to the Council prior to first Occupation of the Development
9. To pay the Open Space Contribution to the Council towards the enhancement of open space facilities as follows:
 - 8.1 25% of the contribution to be paid prior to the first Occupation of no more than 25% of the Housing Units within the Development
 - 8.2 50% of the contribution to be paid prior to the first Occupation of no more than 50% of the Housing Units within the Development
 - 8.3 25% of the contribution to be paid prior to the first Occupation of no more than 75% of the Housing Units within the Development
10. To pay the Peninsula locality Primary Care Network Contribution to the Council towards the foundation and development of the Peninsula locality Primary Care Network including the supporting infrastructure, IT, training and equipment prior to Occupation of no more than 50% of the Housing Units within the Development
11. To pay the Youth Contribution to the Council towards supporting youth provision and programme delivery in the Strood and Peninsula area prior to first Occupation of the Development
12. To pay the Waste and Recycling Contribution to the Council towards the provision, improvement and promotion of waste and recycling including: waste containment for the development (waste and street litter bins); maintenance and improvement of local bring centres (HWRC's and bring sites) to cover the development's impact; waste education and promotion (the development, local schools and events) prior to the first Occupation of the Development
13. To pay the PROW Contribution to the Council towards the improvements to the PROW at Saxon Shore Way and other public rights of way in the immediate vicinity prior to the first Occupation of the Development
14. To pay the Designated Habitats Mitigation Contribution to the Council towards the provision of migrating bird disturbance mitigation measures within the Thames and Medway Estuary and Marshes SPA/Ramsar prior to the Commencement of Development
15. To pay the Visitor Centre Contribution to the Council towards enhancements to the visitor centre at Upnor Castle prior to Occupation of no more than 50% of the Housing Units within the Development
16. Not to cause or allow the Occupation of any further Housing Units or the Nursery (as the case may be) within the Development exceeding the abovementioned triggers until the relevant instalment is paid in full to the Council

SECOND SCHEDULE
Affordable Housing

The Owner covenants with the Council as follows:

1. Not to cause or allow the Commencement of Development until the Affordable Housing Plan has been submitted to and agreed in writing by the Council
2. To provide the Affordable Housing in accordance with the Approved Affordable Housing Plan
3. The Owner may from time to time submit to the Council for its prior written approval revisions to the Approved Affordable Housing Plan provided that such provisions are in accordance with paragraph 1 above and paragraphs 12-15 below.
4. Not to use the Affordable Housing Land except for the provision of the Affordable Housing except that prior to the transfer of the Affordable Housing Land to a Registered Provider in accordance with the terms of this Schedule the Affordable Housing Land may be used as a temporary compound or landscaping reserve land
5. Not cause or permit the Occupation of any part of the Development until either:
 - a. The Council approves in writing a Registered Provider to undertake the management of the Affordable Housing Units such approval to not be unreasonably withheld or delayed; or
 - b. the Owner informs the Council in writing that it will be developing the Affordable Housing Units in accordance with the relevant Homes England requirements
6. Where paragraph 5a applies, to use reasonable endeavours to enter into a contract with a Registered Provider for the transfer of the Affordable Housing Land at a price equivalent to the Affordable Housing Price
7. To ensure that of the total number of Affordable Housing Units to be constructed on the Affordable Housing Land the tenure shall be:
 - a. 60% shall be provided as Affordable Rented Housing (and if this does not result in a whole number then the number shall be rounded up)
 - b. 40% shall be provided as Shared Ownership Housing
8. Any transfer of the Affordable Housing Land shall contain such provisions as set out in paragraph 11, 16 and 17 of this Second Schedule
9. Not to cause or permit the Occupation of more than 50% of the Private Housing Units until the Affordable Housing Land has been transferred to the approved Registered Provider in accordance with this Schedule
10. Not to transfer the Affordable Housing Land to a Registered Provider without first procuring that such Registered Provider shall enter into a Nominations Agreement with the Council
11. Any transfer of the Affordable Housing Land to a Registered Provider shall be with full title guarantee and vacant possession

12. To use reasonable endeavours to procure that of the total number of Affordable Housing Units the size shall be:
- 4 x 1 bedroomed units
 - 6 x 2 bedroomed units
 - 6 x 3 bedroomed units
 - 2 x 4 bedroomed units
13. Subject to clause 5 any transfer of the Affordable Housing Land and/or Affordable Housing Units shall ensure that the Affordable Housing Land and/or Affordable Housing Units shall only be used for the purposes of Affordable Housing in perpetuity and shall contain the following provisions (unless evidence is produced to the Council, to its reasonable satisfaction, that the Registered Provider has agreed otherwise and the Council agrees in writing to the omission):
- a. a grant to and may reserve from the Registered Provider reasonable pedestrian and vehicle access for ingress to and egress from the Affordable Housing Land together with rights for all necessary services
 - b. an agreement that all parties shall bear their own costs in relation to the transfer
 - c. the disposal shall be free of all financial charges and of any restrictive covenants or other third party rights which would prevent the use of the Affordable Housing Land and/or the Affordable Housing Units for the purpose for which it is transferred
 - d. the disposal shall be subject to the Standard Conditions of Sale (Fifth Edition) or the Standard Commercial Property Conditions (Second Edition) except insofar as they are incompatible with the provisions of this clause or any other express provision of this Deed
 - e. subject to clause 5 the transfer shall contain a covenant by the Registered Provider not to use the Affordable Housing Land otherwise than for the purposes of Affordable Housing

PROVIDED THAT for the avoidance of doubt the Owner may transfer the Affordable Housing to more than one Registered Provider

14. For the purposes of this Second Schedule "transfer" shall include the grant of a long lease for a term of not less than 125 years and in the case of such a leasehold grant to a Registered Provider:
- a. no ground rent shall therein be reserved other than at the rate of one peppercorn per annum
 - b. any service charge payable under the lease shall be no more than a fair and reasonable proportion of the following costs:
 - i. repair maintenance and decoration of the structure the exterior or the internal common parts of the building in which the Affordable Housing Units are situate (including any equipment in the common parts such as fire and safety equipment)
 - ii. insurance of the building in which the Affordable Housing Units are situate
 - iii. maintenance of any garden roads access ways footpaths car parks bins stores fences gates and other boundary structures serving the relevant Affordable Housing Units in common with other properties in the vicinity of the relevant Affordable Housing Units

- iv. other services to be provided by the landlord of the building in which the Affordable Housing Units are situate and which are agreed in writing by the Registered Provider

THIRD SCHEDULE
The Council's Covenants

1. To co-operate insofar as is reasonable with the Owner in the performance of the Owner's obligations under this Deed

BUS SERVICE CONTRIBUTION

2. Within 14 days of the first anniversary of receipt of the Bus Service Contribution Fifth Instalment to pay to the Owner the Final Revenue Figure

CONTRIBUTIONS

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 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 Owner's request

CONFIRMATION OF DISCHARGE

5. 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) been satisfied.
6. On the written request of the Owner the Council shall provide its written confirmation that an obligation has been discharged only in the event the Council is satisfied that such obligation has been discharged.

FOURTH 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
 - 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 or any person in an equivalent subsequent role.
 - 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 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

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 **JEAN JONES**) _____
in the presence of)

Witness Signature
Print Name
Address

EXECUTED as a **DEED** by **ANN SAWTELL**) _____
in the presence of)

Witness Signature
Print Name
Address

EXECUTED as a **DEED** by **ANDREW SAMUEL**) _____
BALLARD
in the presence of)

Witness Signature
Print Name
Address

EXECUTED as a **DEED** by **LYNN BALLARD**) _____
in the presence of)

Witness Signature
Print Name
Address

**EXECUTED as a DEED by
C.C. TRADING LIMITED**

Acting by a Director

Name

Signature

And Director/ Secretary

Name

Signature

ANNEX 1
Commencement Notice

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

Planning application number : MC/20/1478

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)
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 :

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