

DATED

20 December

2018

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

-and-

DOVER DISTRICT COUNCIL

-and-

THE KENT COUNTY COUNCIL

DEED OF AGREEMENT

pursuant to

SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

RELATING TO

Land at Fernfield Lane, Hawkinge, Kent

Planning Application Ref No: DOV/16/01450

Legal Services
The District Council of Folkestone and Hythe
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY

THIS DEED OF AGREEMENT is dated the 20th day of *December* 2018

BETWEEN

- 1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of The Civic Centre Castle Hill Avenue Folkestone Kent CT20 2QY (the "Owner") and
- 2) **DOVER DISTRICT COUNCIL** of Council Offices, Whitfield (Head Office) - White Cliffs Business Park, Dover CT16 3PJ (the "Council") and
- 3) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (the "County Council")

(jointly the "**Parties**") sets out the terms of understanding between the Parties to secure the delivery of planning obligations pursuant to the Application made by the Owner for Development of its Land

RECITALS

- A. The Council is the local planning authority for the area within which the Land is situated
- B. The Owner is the current freehold owner of the Land
- C. The County Council is the education authority and provider of library services for the area in which the Land is situated.
- D. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the Development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010
- E. The Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate and be conducive to and be incidental to the Council's functions
- F. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

IT IS AGREED as follows

1 DEFINITIONS

1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings

- “1990 Act”** means the Town and Country Planning Act 1990 (as amended)
- “Affordable Housing”** means Affordable Housing as that term is described and/or defined in Annex 2 of the National Planning Policy Framework and affordable in accordance with the Council's housing policies as at the date hereof
- “Application”** means the application for outline planning permission submitted by The District Council of Folkestone and Hythe (Strategic Development Projects) to the Council to carry out the Development and given the reference number DOV/16/01450
- “Commencement of Development”** means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words **“Commence”** and **“Commence Development”** shall be construed accordingly
- “Development”** means the development of the Land and the erection of 19 dwellings with some matters reserved
- “Dwelling”** means any residential unit to be erected on the Land pursuant to the Planning Permission
- “Index”** means the All Items Retail Price Index published by the Office for National Statistics or any successor organisation

“Index 2”	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Index Linked”	means adjusted by reference to the relevant index pursuant to the provisions of Clause 17
“Interest Rate”	means 4% per annum above the base lending rate of The Bank of England from time to time applicable at the actual date of payment
“Land”	means the land to which this Deed refers which is detailed in Schedule 1 against which this Deed may be enforced and shown more particularly edged red on the Plan
“Library Contribution”	means the sum of £912.30 payable as contribution towards the book stock for the mobile library attending at Hawkinge.
“Occupy”	means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and “Occupation” “Occupier” or “Occupied” shall be construed accordingly
“Off Site Public Open Space Contribution”	means the sum of £11,218.00 payable as contribution towards increasing the capacity of Stombers Lane Park play area.
“Open Market Units”	means the units on the Development that are not Affordable Housing Units
“Plan”	Means the plan attached to this Deed

“Planning Permission”	means planning permission for the Development to be granted pursuant to the Application subject to conditions
“Primary Education Contribution”	means the sum of £63,156.00 payable towards the expansion of Martello Primary School
“Thanet Coast and Sandwich Bay Mitigation Strategy”	Means the sum of £1,313.58 payable towards the implementation of the Thanet Coast and Sandwich Bay Mitigation Strategy
“VAT”	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
“Working Day”	means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

INTERPRETATION

- 1.2 A reference to any Clause Plan Paragraph Schedule Appendix or Recital is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in case of plans attached to) this Deed
- 1.3 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 1.4 Words importing the singular include the plural and vice versa
- 1.5 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 1.6 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 1.7 Reference 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 shall include any successor to its statutory functions