

Dated

30 May

2022

**DOVER DISTRICT COUNCIL**

and

**KENT PROPERTY MANAGEMENT & DEVELOPMENTS LIMITED**

and

**OYSTER PROPERTIES LIMITED**

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**VARIATION OF PLANNING OBLIGATION BY DEED OF AGREEMENT**

**Under Section 106A of the Town and Country Planning Act 1990 (as amended)**

**Relating to the development of land adjacent to allotments, Folkestone Road,**

**Dover**

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THIS AGREEMENT is made on

30 May

2022

## **PARTIES**

- (1) **DOVER DISTRICT COUNCIL** whose address is White Cliffs Business Park Dover, CT16 3PJ ("**Council**");
- (2) **KENT PROPERTY MANAGEMENT AND DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 10461696 whose registered office is at 160 Gravesend Road, Strood, Rochester, ME2 3QT ("**Owner**");
- (3) **OYSTER PROPERTIES LIMITED** incorporated and registered in England and Wales with company number 05689829 whose registered office is at The Pavilion, Fox's Marina, Ipswich, IP2 8NJ ("**Developer**").

## **BACKGROUND**

- A The Council is the local planning authority for the purposes of s 106 and s 106A of the 1990 Act for the area within which the Land is situated and is capable of enforcing the obligations in the Original Agreement.
- B The Owner is the registered proprietor of the Land.
- C The Developer has the benefit of an option agreement over the Land.
- D On 3<sup>rd</sup> January 2017 the Council, Susan Ray and Hillcrown Properties Ltd entered into the Original Agreement.
- E On 29<sup>th</sup> November 2017 the Owner acquired the Land from Susan Ray.
- F The Developer submitted a planning application to the Council on 20<sup>th</sup> August 2021 pursuant to Section 73 of the Town and County Planning Act 1990 which was assigned reference 21/01328.
- G The purpose of the planning application was the variation of Condition 10 (affordable housing) to amend the affordable housing provision of planning permission DOV/15/01032.
- H Following a viability assessment a contribution in lieu of on-site affordable housing provision has been agreed and the purpose of this Deed is to secure such a provision and to ensure that the development carried out pursuant to the New Permission shall be bound by the terms of the Original Agreement (as Varied).

Without prejudice to the covenants in the Original Agreement the parties have agreed to vary the terms of the Original Agreement as set out in this Agreement.

## **AGREED TERMS**

### **1 Interpretation**

1.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

**1990 Act:** means the Town and Country Planning Act 1990 (as amended)

**Expert:** means an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the president (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.

**Land:** means the land which is bound by the obligations contained in the Original Agreement being the land defined as in the Original Agreement.

**New Permission** means the planning permission to be granted pursuant to planning application 21/01328 for the Variation of Condition 10 (affordable housing) to amend the affordable housing provision of planning permission DOV/15/01032 (application under Section 73)

**Original Agreement:** means the agreement made pursuant to s 106 of the 1990 Act dated 3<sup>rd</sup> January 2017

between the Council, Susan Ray and Hillcrown Properties Limited.

**Original Permission**

means the Planning Permission dated 4<sup>th</sup> January 2017 with reference DOV/15/01032 Outline application with all matters reserved for the erection of 29 dwellings, associated access, parking, road/footway provision and landscaping

- 1.2 Unless the context requires otherwise, all words and phrases defined in the Original Agreement shall have the same meaning in this Agreement (except to the extent that they are expressly varied in this Agreement).
- 1.3 References in this Agreement to the 'Owner' shall include their respective successors in title to the Land.
- 1.4 References in this Agreement to the "Council" shall include any successor to its functions as local planning authority .
- 1.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.
- 1.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.
- 1.8 References to the singular shall include the plural and vice versa.

**2 Statutory powers**

This Agreement entered into by Deed is made pursuant to s 106 and 106A of the 1990 Act and pursuant to s 111 of the Local Government Act 1972 and s 1 of the Localism Act 2011 and any other enabling powers and is supplemental to the Original

Agreement and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council as local planning authority against the Owner as owner of the Land and against its successors in title in respect of its interests in each and every part of the Land provided always that no person shall be liable for any breach of any covenant or obligation in this Agreement after it has parted with all of its interest in the Land or the part of the Land in respect of which such breach occurs (save in relation to any antecedent breach which occurs prior to parting with such interest).

### **3 Variations to the Original Agreement**

3.1 Without prejudice to the other covenants in the Original Agreement which shall continue in full force and effect, parties to this Agreement agree that from the date of this Agreement the Original Agreement shall be amended as set out in Schedule 1 to this Agreement.

3.2 The obligations and covenants in the Original Agreement as varied by this Agreement relate to the Land, are planning obligations to which the statutory provisions in clause 2 apply and are for the purposes of regulation 122 of the Community Infrastructure Regulations 2010 necessary, directly related to and fairly and reasonably related in scale and kind to the development of the Land.

### **4 Owner's covenants**

The Owner covenants with the Council and County Council that they will observe and perform the covenants restrictions and obligations on its part contained in the Original Agreement as amended by this Agreement.

### **5 Council's covenants**

The Council covenants with the Owner that it will observe and perform the covenants restrictions and obligations on its part contained in the Original Agreement as amended by this Agreement.

### **6 Local land charge**

6.1 This Agreement is a local land charge and the Council shall register it as such as soon as practicable after the completion of this Agreement.

6.2 Following the performance and satisfaction of all the obligations contained in the Original Agreement as amended by this Agreement the Council shall forthwith cancel all the entries made in the register of local land charges in respect of both the Original Agreement and this Agreement.

**7 No fetter on discretion**

Nothing in this Agreement shall fetter or prejudice the Council's statutory rights powers discretions and responsibilities (save where legally or equitably permitted) under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

**8 Severability**

It is agreed that if any part of this Agreement is declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provision(s) will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

**9 Contracts (Rights of Third Parties) Act 1999**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and the terms of the Agreement may be varied by a deed agreed between the parties without the consent of any third party being required.

**10 New Permission**

10.1 The Owner hereby covenants with the Council for themselves and their respective successors in title and assigns to the Land that:

10.1.1 upon grant of the New Permission any development that is carried out on the Land pursuant to the New Permission shall be bound by and subject to the terms of the Original Agreement (as varied by this Deed); and

10.1.2 Upon the implementation of the New Permission by the carrying out of a Commencement of the Development (as defined in the Original Agreement) then the Development (as defined in the Original Agreement) shall be taken to mean the development permitted by the New Permission.

10.2 This Deed shall come into effect upon the grant of the New Permission.

## **11 Dispute resolution**

11.1 In the event of any dispute or difference arising between the parties arising out of this Agreement such dispute or difference may be referred to the Expert.

11.2 In the absence of agreement between the parties as to the appointment or suitability of the expert to be appointed pursuant to clause 11.1, or as to the appropriate professional body, within ten Working Days after any party has given to the other parties to the dispute a written request to concur in the professional qualifications of the expert to be appointed pursuant to clause 11.1 then that question shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference. Such solicitor shall act as an expert and his decision shall be final and binding on the parties save in the case of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

11.3 The Expert shall act as an expert and not as an arbitrator.

11.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 Working Days from the date of his appointment to act.

11.5 The Expert shall be required to give notice to each of the said parties inviting them to submit to him within ten Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further 15 Working Days in respect of any such submission and material. The Expert's decision shall be given in writing within 20 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 21 Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest material error the expert's decision shall be final and binding on the said parties.



11.6 The Expert may award the costs of the dispute resolution in such proportions as he see fit but in the absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

**12 Waiver**

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

**13 Jurisdiction**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England, and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement

## **Schedule 1 - Amendments to Original Agreement**

### **1 The Original Agreement shall be amended as follows:**

- 1.1 A new clause number 4 shall be inserted into the Original Agreement at the First Schedule as follows:

“To pay the sum of ONE HUNDRED THOUSAND POUNDS (£100,000.00) to the Council prior to the prior to the Occupation of the 5<sup>th</sup> Dwelling on the Development as a contribution towards the Council’s provision of Affordable Housing”

- 1.2 A new definition of “Affordable Housing” should be inserted into the Original Agreement at clause 1 as follows:

“means affordable housing as described in Annex 2 of the NPPF”

- 1.3 A new definition of “Dwelling” should be inserted into the Original Agreement at clause 1 as follows:

“means any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission.”

- 1.4 A new definition of “NPPF” should be inserted into the Original Agreement at clause 1 as follows:

“means the National Planning Policy Framework as updated on 20 July 2021 issued by H M Government and for the avoidance of doubt the meanings of “Affordable Housing”; “Affordable Housing For Rent” and “Other Affordable Routes to Home Ownership” shall have the meanings given to them within the 20 July 2021 version of the NPPF”

**EXECUTED AS A DEED** by DOVER )  
DISTRICT COUNCIL by the affixing of its )  
common seal in the presence of: )



Authorised Signatory



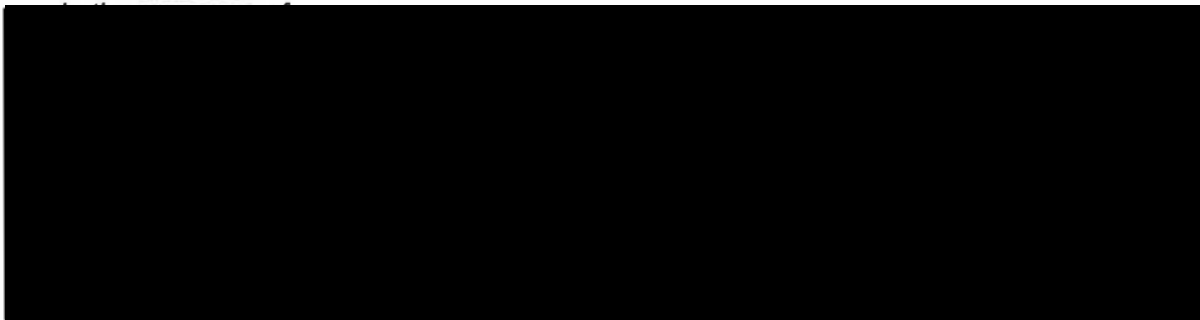
Executed as a deed by

**KENT PROPERTY MANAGEMENT**

**& DEVELOPMENTS LIMITED** acting by

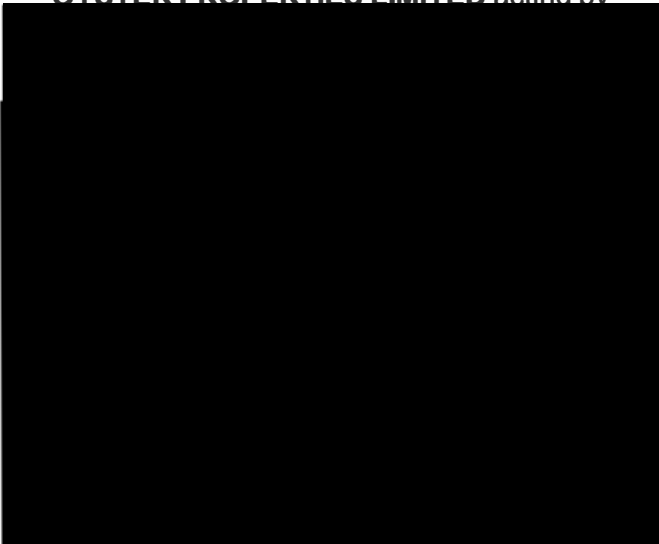


.. a director



Executed as a deed by

**OYSTER PROPERTIES LIMITED** acting by



Occupation: MANASER