

DATED

15 June

2022

DOVER DISTRICT COUNCIL

and

WEST KENT HOUSING ASSOCIATION

**SECOND DEED OF VARIATION RELATING TO THE DEVELOPMENT OF
LAND AT WOODNESBOROUGH LANE, EASTRY, KENT**

PLANNING PERMISSION REF DOV/19/00403

pursuant to

Section 106 Town and Country Planning Act 1990 and

Section 111 Local Government Act 1972 and

Section 1 of the Localism Act 2011

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PARTIES

- 1) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park, Dover, Kent CT16 3PJ (the "Council")
- 2) **WEST KENT HOUSING ASSOCIATION** (Community Benefit Society Registration Number 26278R) of 101 London Road, Sevenoaks, Kent, TN13 1AX (the "Owner")

RECITALS

- A An agreement completed pursuant to Section 106 of the Town and Country Planning Act 1990 dated 6 February 2020 was made between (1) Dover District Council (2) Wesley Ray (3) Melanie Justine Ray and (4) Handelsbanken plc ("the Original Agreement")
- B The Original Agreement was varied by a supplemental agreement dated 3 September 2021 between the Council and the Owner ("the Supplemental Agreement").
- C The Council is the local planning authority for the purposes of this Deed under the Act and for the area in which the Site is situated and by whom the obligations within this Deed are enforceable.
- D The Owner is the owner of the freehold interest in the Site pursuant to a transfer dated 19 August 2020 and registered with the Land Registry under Title Number TT114131
- E The Owner submitted an application dated 7 October 2021 for a non material amendment under section 96A of the 1990 Act to remove the age restriction on the occupation of 10 of the dwellings that are to be constructed pursuant to the application
- F The Council and the Owner have agreed to vary the terms of the Original Agreement as amended by the Supplemental Agreement as set out in this Deed and without prejudice to the terms of the other covenants contained in the Original Agreement, the Council pursuant to its delegated powers decided to agree with the Owner to vary the terms of Original Agreement as set out in this Deed.
- G The Council is satisfied that the obligations in this Deed are in the interests of the proper planning of the Council's administrative area. They meet the tests of planning obligations set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, being necessary to make the Site acceptable in planning terms, directly related to the Site and fairly and reasonably related in scale and kind to the Site.

1. CONSTRUCTION OF THIS DEED

- 1.1 The provisions of the Original Agreement relating to its interpretation apply to this Deed except to the extent that they are expressly varied by this Deed.
- 1.2 References to the Original Agreement in this Deed shall be construed as meaning the Original Agreement as varied by the Supplemental Agreement.
- 1.3 The Original Agreement shall be varied in the manner set out in clause 3 of this Deed.
- 1.4 The definitions, clauses, obligations and provisions of the Original Agreement shall remain in full force and effect except as varied or added to by this Deed and shall continue to be applicable to the Site in respect of the Site as defined in the Original Agreement and remain to be performed to the extent that they have not already been performed.
- 1.5 Save where the context otherwise requires the expressions used in this Deed shall have the same meaning or meanings as those stated in the Original Agreement.
- 1.6 Headings contained in this Deed are for reference purposes only and are not incorporated into the Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate
- 1.7 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

2. LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Agreement as amended by the Supplemental Agreement and is made pursuant to Section 106 and 106A of the Act, Section 111 of the Local Government Act 1972, Section 16 of the Greater London Council (General Powers) Act 1974, Section 1 of the Localism Act 2011 and all other powers so enabling.
- 2.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
 - 2.2.1 are planning obligations for the purposes of section 106 and S106 A of the 1990 Act
 - 2.2.3 relate to the Site
 - 2.2.4 are entered into with intent to bind the Owner's interest in the Site each and every part thereof into whosoever hands the same may come
 - 2.2.5 are enforceable by the Council as local planning authority
 - 2.2.6 are executed by the respective Parties as a deed
- 2.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of 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

2.4 This Deed shall take effect upon the date hereof

3. VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 The Owner and the Council agree that the Original Agreement shall be varied as set out within this clause.

3.2 The definition of "Affordable Housing Scheme" in clause 1.1 shall be varied by deleting the number "8" and replacing it with the number "28"

3.3 The definition of "Secondary School Contribution" in clause 1.1 shall be deleted and replaced with the following:

"Secondary School Contribution" means the sum of £115,200 payable towards the Goodwin Academy expansion or Sir Roger Manwood's School expansion.

3.4 The definition of "Qualifying Person" in clause 1.1 shall be deleted

3.5 The definition of "Restricted-Age Dwelling" in clause 1.1 shall be deleted

3.6 Paragraph 4.3 of Schedule 1 shall be deleted

3.7 Paragraph 4.4 of Schedule 1 shall be deleted

3.8 Paragraph 4.6 of Schedule 1 shall be deleted

4. AGREEMENT

It is agreed that the Original Agreement (as varied by the Supplemental Agreement and this Deed) shall remain in full force and effect.

5. COVENANTS OF THE OWNER

The Owner covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by the Supplemental Agreement and this Deed

6. MISCELLANEOUS

- 6.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants, undertakings, obligations or restrictions contained in this Deed or the Original Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants, undertakings, obligations or restrictions from acting upon any subsequent breach of default in respect thereof by the Owner.
- 6.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Deed.
- 6.3 This Deed shall be registered as a local land charge by the Council.

7. COUNCIL'S COSTS

The Owner shall pay to the Council on or before the date of completion of this deed, the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this deed.

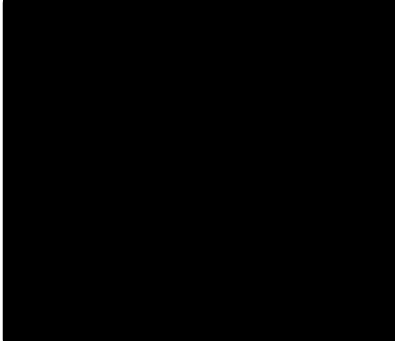
8. JURISDICTION

- 8.1 This Deed including its construction, validity, performance and enforcement and any dispute arising or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and interpreted in accordance with English law.
- 8.2 The Parties irrecoverably agree that the English courts shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes and claims).

IN WITNESS whereof these presents have been executed by the parties hereto as a Deed and delivered on the day and year first before written

EXECUTED AS A DEED by
the Common Seal of the
DOVER DISTRICT COUNCIL
was hereunto affixed in the presence of:

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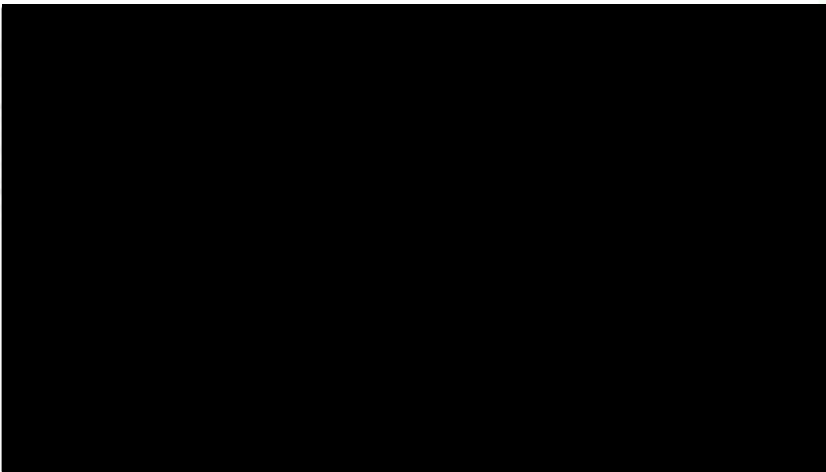


17,211

Authorised Signatory

EXECUTED AS A DEED by
the Common Seal of
WEST KENT HOUSING ASSOCIATION
in the presence of:

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)
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Authorised Signatory

Authorised Signatory



