

Date

29 June

2022

DOVER DISTRICT COUNCIL

and

ROGATE PROPERTIES (ST THOMAS'S) LIMITED

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 at Tonkers, Hawksdown Road, Walmer, Kent
CT14 7PW**

**furley
page**

39 St Margaret's Street
Canterbury
Kent
CT1 2TX

Tel: 01227 763939
Ref: JL/RO2469/0018

THIS DEED is made the 29th day of June 2022

PARTIES

- (1) DOVER DISTRICT COUNCIL of White Cliffs Business Park Dover Kent CT16 3PJ (“**the District Council**”)
- (2) ROGATE PROPERTIES (ST THOMAS’) LIMITED (Co. Registration No. 09797143) of Chantry Yard 33b King Street Canterbury Kent CT1 2AJ (“**the Owner**”)

RECITALS

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
2. The Owner is the freehold owner of the Land.
3. On 28 September 2020 the District Council and the Owner entered into the Original Agreement which was subsequently varied by agreement on 21 February 2022.
4. On 1 June 2021 the Owner submitted an application under section 73 of the Act to vary a condition imposed on the Planning Permission.
5. Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.
6. This deed is made under section 106A of the Act and is supplemental to the Original Agreement.

NOW this Deed Witnesseth as follows:

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions

“Original Agreement” the agreement made under section 106 of the Act dated 28 September 2020 as varied by an Agreement dated 21 February 2022 both between the District Council and the Owner.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the District Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

- 3.1 The addition of a new clause 7.3 as follows:

"If the District Council agrees pursuant to an application by the Owner under Section 73 or 73A of the Planning Act to any variation or release of condition or any condition is varied or released following an appeal by the Owner under Section 78 of the Planning Act this Agreement shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to Section 73 or 73A or 78 of the Planning Act and the covenants or provisions of this Agreement shall be deemed to be accordingly modified to correspond to any such varied permission."

3.2 The First Schedule shall be deleted and replaced with the following:

FIRST SCHEDULE

The Viability Review and Payment of Contributions

1. In this First Schedule the following additional definitions shall apply:

Actual Build Costs: means the build costs of the Development incurred at the Review Date supported by evidence of these costs to the Council's reasonable satisfaction including but not limited to :

- (a) details of payments made or agreed to be paid in the relevant building contract;
- (b) receipted invoices;
- (c) costs certified by the Owner's quantity surveyor, costs consultant or agent;
- (d) professional, finance, legal and marketing costs;
- (e) such internal costs of the Owner as relate solely and directly to completion of the Development (but not including other internal costs of the Owner including general overheads and administration expenses)
- (f) all other costs directly attributable to completion of the Development including costs payments or liabilities to third parties such as neighbouring land owners or utility providers

but for the avoidance of doubt build costs exclude any costs arising from Fraudulent Transactions

Actual Development Value: **Gross** means the value of all gross receipts from any Sale of a Component of the Development prior to the Review Date;

Component:	<p>means any part of the Development including but not limited to:</p> <ul style="list-style-type: none"> (a) Dwellings; (b) any property within the site of the Development (c) land within the site of the Development <p>except the Sale of infrastructure to a utility provider.</p>
Contribution Purposes:	<p>means:</p> <ul style="list-style-type: none"> (a) the expansion of Deal Parochial Primary School (b) the expansion of the Goodwin Academy and/or Sir Roger Manwood's School (c) the provision of community learning services at Deal Adult Education Centre (d) the provision of social care services within the district of Dover (e) the provision of book stock at Deal Library (f) an enhanced maintenance regime at Deal and Betteshanger Rugby Club (g) the enhancement of strategic play space at Marke Wood Recreation Ground, Walmer (h) the provision of Affordable Housing within the district of Dover (i) monitoring the cost of the compliance of the Development with the terms of this deed.
Development Profits:	<p>means all Profits from the Development above the Profit Level and subject to the Contribution Cap.</p>
Fraudulent Transaction:	<p>means a transaction the purpose or effect of which is to artificially reduce the Actual Gross Development Value and/or artificially increase the Actual Build Costs.</p>
Practical Completion:	<p>means the issue of a certificate of practical completion by the Owner's architect, civil engineer or chartered surveyor as appropriate (or if constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect, civil engineer or chartered surveyor).</p>
Profit	<p>means the profit arising from the Development which is calculated by subtracting the Actual Build Costs from the Actual Gross Development Value.</p>
Profit Level:	<p>means a Profit of greater than 18%.</p>

Review Stage Contribution: means the Development Profits paid as a financial contribution towards the Contribution Purposes.

Review Date: means the date of legal completion of the Sale of the Last Dwelling,

Sale: means:
(a) the sale of the freehold Component; or
(b) the grant of a lease of a Component with a term of 125 years or more and subject to nominal rent

Viability Information: and "Sold" shall be construed accordingly means such details of Actual Build Costs and Actual Gross Development Value as the District Council shall reasonably require in order to verify the Actual Build Costs and the Actual Gross Development Value

Working Day: means any day excluding Saturdays, Sundays and bank holidays in England and "Working Days" shall be construed accordingly.

2. THE DEVELOPMENT

The Owner shall commence and thereafter use all reasonable endeavours to progress and complete the Development to Practical Completion as soon as is reasonably practicable.

3. SUBMISSION AND ASSESSMENT OF THE VIABILITY REVIEW INFORMATION

3.1 The Owner shall notify the Council in writing of the Review Date within 5 Working Days of the Review Date.

3.2 The Owner shall submit the Viability Information to the Council within 40 Working Days of the Review Date.

3.3 The Council shall assess the Viability Information submitted pursuant to paragraph 2 of the schedule and assess whether in its view and acting reasonably a Review Stage Contribution is payable by the Owner.

4. PAYMENT OF THE REVIEW STAGE CONTRIBUTION

4.1 Should the Council acting reasonably determine that a Review Stage Contribution is payable it shall notify the Owner of its decision and of the quantum of the Review Stage Contribution to be paid.

4.2 The Owner shall pay the Review Stage Contribution to the Council within 20 Working Days of the Council having notified it of the requirement to pay the

Review Stage Contribution in accordance with paragraph 5 of this schedule above.

5. COVENANTS TO THE COUNCIL

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

6. LOCAL LAND CHARGE

This deed shall be registered as a local land charge.

7. COUNCIL'S COSTS

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

8. THIRD PARTY RIGHTS

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

9. GOVERNING LAW

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 and Wales.

In WITNESS whereof this Deed has been duly executed by the Parties on the day and year first before written.

Executed as a Deed by affixing the Common Seal of Dover District Council in the presence of:



19, 2020



ed Signatory

Executed as a Deed by Rogate Properties (St. Thomas's) Limited acting by a Director in the presence of:



Witness Signature:

Witness Name:

Witness Address:



