

DATE: 21st Jun 2023

2022/11/11

- (1) GRAVESHAM BOROUGH COUNCIL
- (2) JOYNES HOUSE DEVELOPMENT LIMITED
- (3) WESTMEDE PROPERTIES LIMITED
- (4) ROOKEY ESTATES LIMITED

Town and Country Planning Act 1990

Section 106 Agreement

Relating to

Joyes House, New Road, Gravesend, Kent DA11 0AJ

Medway Council and Gravesham Borough Council

Gun Wharf

Dock Road

Chatham

Kent

ME4 4TR

(Ref: RGS/GPL022342)

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THIS DEED is made the 21st day of June, 2023

PARTIES

- (1) GRAVESHAM BOROUGH COUNCIL whose address is Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU ("the Council")
- (2) JOYNES HOUSE DEVELOPMENT LIMITED (Co. Regn. No. 13791851) of 11 St. Marks Road, London W5 3JS ("the Owner")
- (3) WESTMEDE PROPERTIES LIMITED (Co. Regn. No.04454297) of 3rd Floor, 114a Cromwell Road, London SW7 4AG ("the First Mortgagee")
- (4) ROOKEY ESTATES LIMITED (Co. Regn. No.13040979) of Kemp House, 160 City Road, London EC1V 2NX ("the Second Mortgagee")

Agreed terms

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following terms have the following meanings unless inconsistent with the context

"Occupation of the Development" means the point at which the Development is ready for Occupation.

"Council's Costs" means a contribution to the Council's proper and reasonable legal and administrative costs in the negotiation, execution, completion and registration of this Deed.

"Development" means the upward extension of existing commercial building through the construction of 2 additional storeys to provide 24no. flats along with ancillary works at Joynes House, New Road, Gravesend, Kent DA11 0AJ by the Owner in accordance with the Prior Approval Application.

“Disputes Resolution Procedure” means the procedure referred to in clause 7.9 and set out in the Fourth Schedule of this Deed.

“Dwelling” means a building or part of a building designed for residential occupation by a single household constructed pursuant to the Permission.

“Indexation” means the increase of any sum in accordance with the formula set out in clause 9.

“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.

“Monitoring Officer” means a suitably qualified officer experienced in projects similar to the Development appointed by the Council in connection with this Deed.

“Monitoring Officer costs” means the Monitoring Officer’s costs of £500 (five hundred pounds).

“Notice” means a notice in the form which is attached to this Deed at Annexe 1.

“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.

“Plan” means the plan annexed to this Deed.

“Planning Act” means the Town and Country Planning Act 1990 as amended.

“Prior Approval Application” means the application for prior approval under Part 20 Class AA of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 2015 (as amended) and given application no 20221111

“Prior Approval” means the prior approval approved by the Council pursuant to the Prior Approval Application and dated 2nd December 2022

“Secretary of State” means the Secretary of State for Levelling Up, Housing and Communities or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Planning Act.

“Schedule” means any one or all of the Schedules annexed to this Deed.

“Site” means the property known as Joynes House, New Road, Gravesend Kent DA11 0AJ and registered under title no K323165 and K883704 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.

Strategic Access Management and Monitoring Scheme” means a scheme to mitigate the recreational impacts of the development of the Thames Estuary Scheme and Marshes Special Protection Area and the Thames Estuary and Marshes Ramsar Site situated within 6km of the

Development and in ordinance with The Conservation of Habitats and Species Regulations 2017.

“Trigger Date” means each date upon which an event occurs that triggers the payment of any Financial Contribution by the Owner and/or the coming into effect of any other obligation under this Deed.

- 1.2 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
- 1.3 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.
- 1.4 Words importing the masculine gender shall include the feminine gender and the neuter and vice versa.
- 1.5 Words importing persons include companies, partnerships and corporations and vice versa.
- 1.6 Unless the context otherwise requires words importing the singular shall include the plural and vice versa.
- 1.7 Headings are for ease of reference only and shall not be construed as part of this Deed.
- 1.8 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.

- 1.9 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.
- 1.10 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.

2. Recital

- 2.1. The Council is the local planning authority for the purpose of the Planning Act for the area in which the Site is situated and entitled to enforce the obligations of this Deed for which it (the Council) is a beneficiary.
- 2.2. The Owner is the freehold owner of the Site as registered with title absolute at the Land Registry under title number K323165. shown edged red on the Plan.
- 2.3. The First Mortgagee has a charge over the Site dated 31 January 2022
- 2.4. The Second Mortgagee has a charge over the Site dated 31 January 2022
- 2.5. The Owner hereby declares that as at the date hereof no other person other than those stated in this Deed holds a legal interest in the Site.
- 2.6. The Owner has submitted a Prior Approval Application under reference number 20221111 to the Council for Prior Approval for the Development.
- 2.7. Pursuant to Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 an application is required before the Development can commence
- 2.8. An application was submitted under regulations 75 to 78 of the Conservation of Habitats of Regulations 2017 (general development orders) in respect of the Development and approved

- 2.9. It has been agreed that the Owner will pay the SAMMS in order to mitigate any adverse effect on the North Kent Special Protection Areas SPAs) and Ramsar Site

3. Statutory provisions

- 3.1. 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 Owner and their heirs and successors assigns and persons claiming through or under them, except as expressly provided for by this Deed.
- 3.2. 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.
- 3.3. The Council's Costs are payable pursuant to section 106(1)(d) of the Planning Act.
- 3.4. 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, and that they directly relate to the Development and fairly and reasonably relate in scale and kind to the Development and thus satisfy the requirements of section 106 of the Planning Act and Regulation 122 of the Community and Infrastructure Regulations 2010 as amended.

4. Enforceability of Obligations

The provisions contained in the Schedules to this Deed shall not bind nor be enforceable against any Statutory Undertaker which acquires an interest in the Site for the sole purpose of undertaking its statutory functions.

5. The Owner's Covenants

- 5.1. The Owner covenants with the Council to observe the restrictions and perform their obligations set out in the Schedules to this Deed, and the Owner shall be liable for all of the Owner's obligations contained in this Deed.
- 5.2. The Owner covenants to serve a Notice on the Council in relation to and in accordance with each of the following provisions;
 - 5.2.1. at least 14 days before the Commencement Date to serve notice of the proposed occurrence of the same;
 - 5.2.2. within 7 days of the Commencement of Development to serve notice of the actual Commencement Date of the Commencement of Development;
 - 5.2.3. within 7 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; and
 - 5.2.4. to retain such 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 and the conditions attached to the Permission.
- 5.3. The Owner further covenants with the Council as follows:
 - 5.3.1. to pay the Council's Costs on completion of this Deed;
 - 5.3.2. to pay the Monitoring Officer Costs to the Council on completion of this Deed.

6. The Council's Covenants

- 6.1. The Council covenants with the Owner to perform the obligations set out in the Second Schedule.

7. DECLARATIONS AND AGREEMENTS

7.1. Effective Date

The covenants contained in this Deed shall take effect on the date of this Deed or as otherwise stated in the 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

Subject to Clause 12 this Deed shall determine and cease to have any further effect if the Permission is revoked or modified 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 Notice required under clause 5.2 shall be in the form attached to this Deed at Annexe 1 and shall be deemed to be served if sent electronically to the address provided on the 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 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 at "Parties" or such other

address as shall have been notified in writing to the party giving the notice consent or approval provided that in the case of notice or other written communication to the Council the notices must be served, on the Director (Planning and Development) and addressed to the Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU and quoting reference 202121111

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

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

7.8.2. The Council and the Owner acknowledge that all the liabilities and obligations of the Owner in this Deed are that of the Owner and

pursuant to clause 3.1 their successors in title save that the purchasers of an individual Dwelling of the Development are excluded from all liability and obligations set out in this Deed and the Owner indemnifies all owners of the Dwellings within the Development from the provisions of the Deed

7.9. Disputes Resolution

7.9.1. Without prejudice to the rights and powers of the Council to take alternative action to enforce this Deed any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure.

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.

8. Overdue Payment

8.1. 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**").

8.2. 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.

9. Indexation and VAT

9.1. Any sums forming part of the GBC Financial Contributions 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 Officers Costs shall be subject to Indexation.

- 9.2. Where a sum forming part of the GBC Financial Contributions is subject to Indexation the actual sum due to the Council ("the Indexed Sum") shall be calculated in accordance with the formula 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

$$\text{Indexed Sum} = \text{Initial sum} \times \frac{\text{Inflation Index at Due Date}}{\text{Inflation Index at Base Date}}$$

Inflation Index at Base Date

Where:

- (a) "the Initial Sum" is the original sum specified in this Deed; and
- (b) "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 8.2. will have effect in relation to the Indexed Sum.

- 9.3. 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.

10. 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.

11. Variation

No variation or modification of this Deed shall be valid unless made

Deed and executed by the parties or their respective successors.

12. 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 and a person who is not a party to this Deed shall not have any rights to enforce any term against a party who is not referred to in this Deed.

13 Planning Permission

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

14 Change in ownership

The Owner shall give to the Council within seven days of disposing of any part of the Site written notice of such disposal such notice to contain the name and address of the person to whom the Site or any part has been transferred.

15 No Encumbrance

The Owner shall not encumber or otherwise deal with their interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Deed are rendered impossible to carry out

16. 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 law of England.

17. Receipt

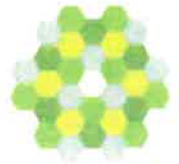
The Council acknowledges receipt of the Council's Costs and the Monitoring Officer Costs

18. Mortgagee Consent

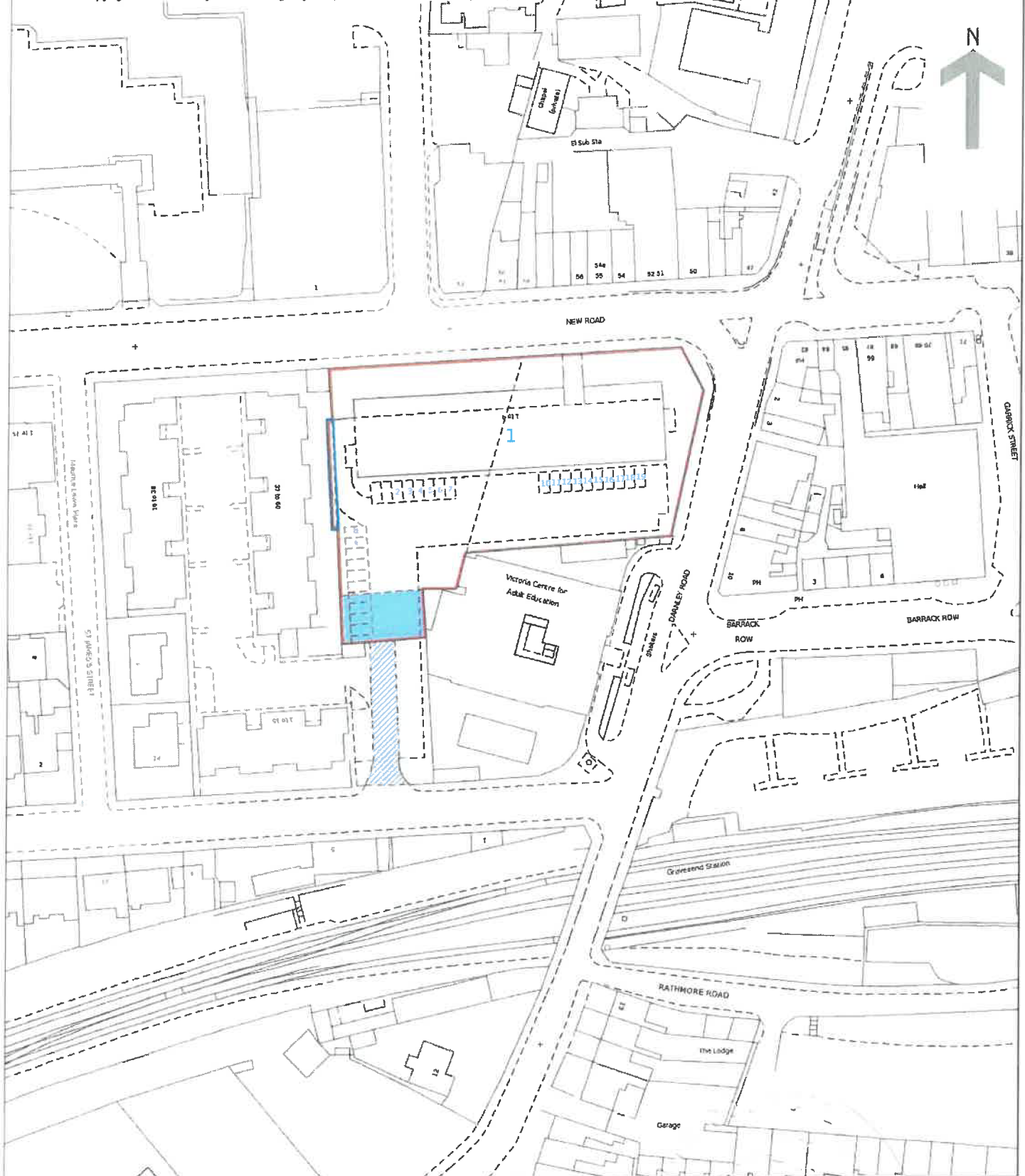
The First Mortgagee and the Second Mortgagee acknowledge and declare that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the First Mortgagee and the Second Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

HM Land Registry

Official copy of title plan

Title number **K323165**Ordnance Survey map reference **TQ6474SW**Scale **1:1250**Administrative area **Kent : Gravesham**

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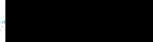


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59EBBC55F0BB413...

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084BDDFF763FC420...



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 GRAVESHAM)

BOROUGH COUNCIL was hereunto)

affixed to this Deed on the authority of)

Authorised Signatory

[REDACTED]



17,528

EXECUTED as a DEED by)

JOYNES HOUSE DEVELOPMENT LIMITED

acting by)

:)

Director

Director/Secretary

DocuSigned by:
[REDACTED]
59EBBC55FDDB413...

EXECUTED as a DEED by)

WESTMEDE PROPERTIES LIMITED)

acting by)

:)

Director

DocuSigned by:
[REDACTED]
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Director/Secretary

EXECUTED as a DEED by)

ROOKEY ESTATES LIMITED)

acting by)

:)

Director

Director/Secretary

DocuSigned by:

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FIRST SCHEDULE

Covenants

Financial Contributions

The Owner covenants with the Council to pay the following sum to the Council for the purposes of the Conservation and Habitats Regulations 2017

1. the sum calculated to the formula of £275.88 (two hundred and seventy five pounds eighty eight pence) per Dwelling the total of which is £6621.12 (six thousand six hundred and twenty one pounds twelve pence) and which shall be used towards a scheme to mitigate the recreational impacts of the development of the Thames Estuary Scheme and Marshes Special Protection Area and the Thames Estuary and Marshes Ramsar Site situated within 6km of the Development (SAMMS) such contribution to be paid prior to Occupation of Development.

2 The Owner covenants not to allow the Occupation of the Development until the Council has received in full the Financial Contributions payable under paragraph one of this Schedule.

SECOND SCHEDULE

The Council's Covenants

The Council covenants with the Owner as follows:-

1. At the Owner's written request, to repay (together with all interest accrued) to the original party who made the payment any sums not expended or committed from the Contributions payable to the Council at the date five (5) years after the date of the last occupation of any part of the Development 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 request.
2. The Council will release the SAMMS Contribution to the identified co-ordinator of the Strategic Access Management and Monitoring Scheme for the relevant area within six months of receipt of payment and that before it does so the Council will obtain confirmation from the identified co-ordinator that the monies will only be used in connection with the Strategic Access Management and Monitoring Scheme.

THIRD 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.

ANNEX 1

NOTICE

To : Gravesham Borough Council, Planning & Regeneration Services, Civic Centre, Windmill Street, Gravesend, Kent, DA12 1AU

Planning application number : / [to be completed in full]

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*)

PRIOR TO OCCUPATION THE DEVELOPMENT ON SITE

A TRIGGER DATE HAS OCCURRED

Obligation type: *SAMM Contribution*

Trigger Date:

(3) this notification should be sent within 7 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: [officer contact] [@gravesham.gov.uk](mailto:)(preferred option)

By post:

The Planning Service,

Gravesham Borough Council,

Civic Centre, Windmill Street,

Gravesend,

Kent,

DA12 1AU

)

✓

From: Polly Reynolds

Sent: Tuesday, June 20, 2023 9:35 AM

To: spearing, rosemary <rosemary.spearing@medway.gov.uk>

Subject: FW: Joynes House - Prior approval Ref Temple Bright LLP:MA:JOY001/0002

Hi Rosemary

Payment is on its way today.

The names of the signatories are as follows:

Greg Kuzdenyi Director of Joynes House Development Ltd.

Martin John Lynch Director of Westmede Properties Limited and

Irene O Lee Director of Rookey Property

Kind regards,

Polly