

DATED

1ST FEBRUARY 2024

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106
OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO LAND LYING TO THE
NORTH OF BLENHEIM ROAD AND ADJOINING 16 CHERRY GARDENS, LITTLESTONE,
KENT TN28 8QR.**

between

NICHOLAS ANGELO CICCONE

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THIS DEED is dated 1ST FEBRUARY 2024

- (1) NICHOLAS ANGELO CICCONE OF Tan Barn, Acrise, Folkestone, Kent CT18 8LA. (**Owner**)

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The Owner has made the Planning Application and is proposing to carry out the Development.
- (C) The Owner intends to develop the Property pursuant to the Planning Permission and which interest is registered at HM Land Registry against Title number K597989.
- (D) The Owner agrees to give this undertaking to perform the obligations set out in this deed.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Base Rate: the higher of 5% and the base rate from time to time of the Bank of England.

Commencement of Development: the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990.

Commenced and Commences shall be construed accordingly.

Commencement Date: the date of Commencement of Development.

Contributions: means the aggregate of the Secondary Education Contribution and the Special Education Needs and Disabilities (SEND) Contribution.

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

Default Interest Rate: 4% per annum above the Base Rate.

Development: the development of the Property consisting of a residential development of 9 Dwellings with all matters reserved except access to the site as described in the Planning Application.

Dwellings: means a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

Index Linked: increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

Occupation: occupation of any of the Dwellings forming part of the Development for the purposes permitted by the Planning Permission but shall not include occupation for the purposes of construction or fitting out or as a 'show-home' for marketing purposes or security operations and 'Occupy' and 'Occupied' shall be construed accordingly.

Plan: the plan attached to this deed.

Property: the freehold land lying to the north of Blenheim Road and adjoining 16 Cherry Gardens, Littlestone, Kent TN28 8QR shown edged red on the Plan being part of the land registered at HM Land Registry with absolute title under title number K597989.

Planning Application: an application for planning permission registered by the Council on 19 May 2023 under reference number 23/0801/FH.

Planning Permission: the planning permission to be granted by the Council in respect of the Planning Application including any Reserved Matters Approval as may from time to time be amended by the approval of a non-material amendment pursuant to section 96A of the TPCA 1990 and section 73 Permission unless the Council requires otherwise.

Reserved Matters Application: means the application for approval of reserved matters in accordance with the Planning Permission.

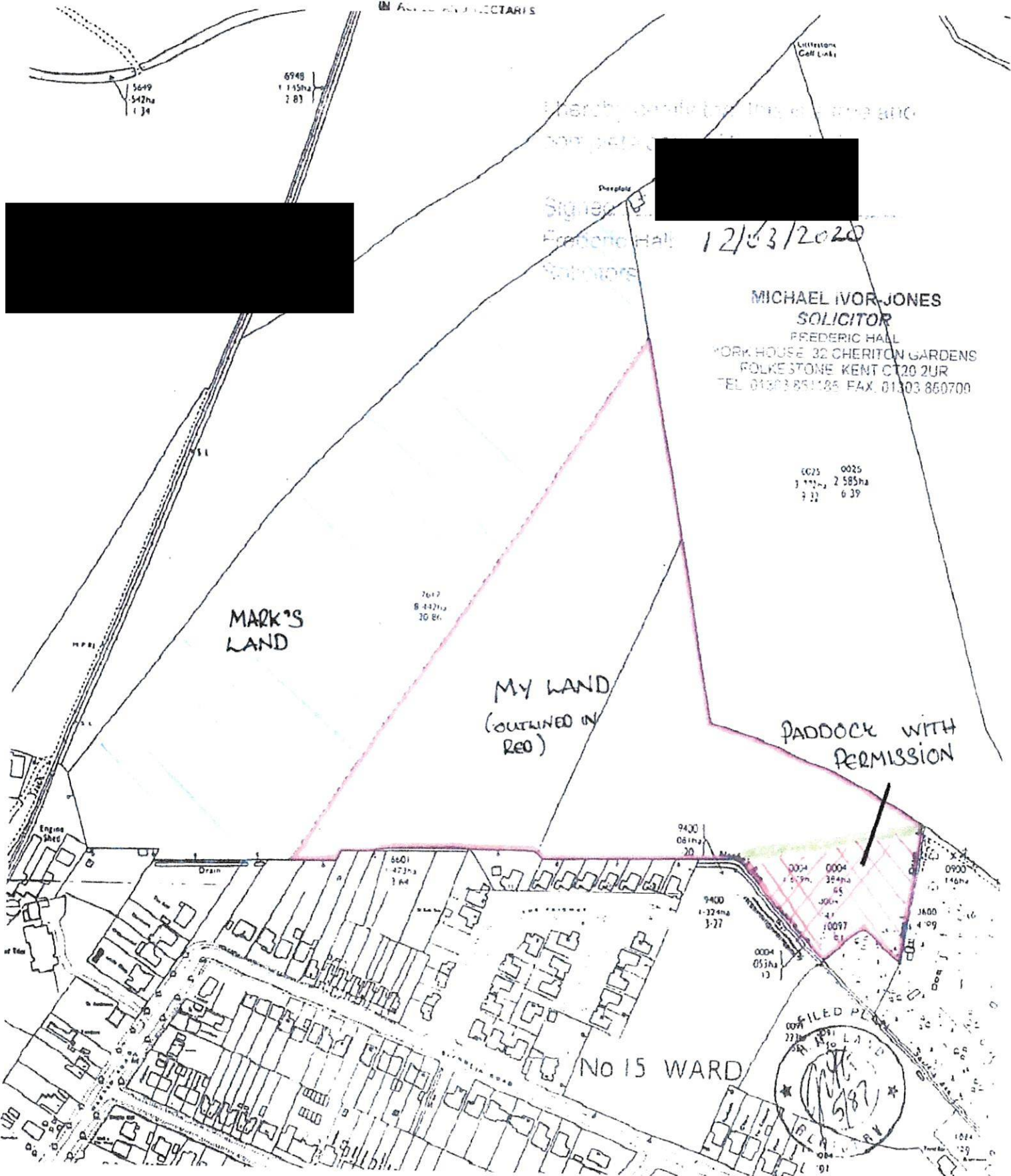
Reserved Matters Approval: means an approval given by the Council of a Reserved Matters Application.

Secondary Education Contribution: the sum of £47,963.43 towards the expansion of selective and non-selective secondary schools in Folkestone and Hythe District and to mitigate the impact of the Development.

Section 73 Permission: a planning permission which may be granted by way of approval of an application under Section 73 of the TPCA 1990 permitting the Development subject to conditions which differ from the conditions of the Planning Permission.

H.M. LAND REGISTRY		TITLE NUMBER	
		K597989	
ORDNANCE SURVEY PLAN REFERENCE	TR 0725	TR 0825	Scale 1/2500
	TR 0724	TR 0824	
COUNTY KENT		DISTRICT SHEPWAY	©Crown Copyright

NOTE: AREAS OF LAND SHOWN IN THIS PLAN ARE NOT TO BE TAKEN INTO ACCOUNT FOR THE PURPOSES OF THE ACT OF 1925



Special Education Needs and Disabilities (SEND) Contribution: the sum of £5,038.47 towards the provision of additional SEND places and/or additional SEND facilities to serve this development within Folkestone and Hythe District and to mitigate the impact of the Development.

TCPA 1990: Town and Country Planning Act 1990.

Working Day: any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to the Council shall include 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 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.11 References to clauses are to the clauses of this deed.
- 1.12 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.

- 1.13 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 PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This deed shall come into effect on the date of grant of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. COVENANTS WITH THE COUNCIL

The Owner covenants with the Council:

- (a) to pay fifty percent (50%) of the Contributions prior to the Occupation of twenty five percent (25%) of the Dwellings
- (b) Not to Occupy or permit Occupation of more than twenty five percent (25%) of the Dwellings until fifty percent (50%) the Contributions have been paid to the Council.
- (c) To pay the full balance of the Contributions prior to Occupation of fifty percent (50%) of the Dwellings
- (d) Not to Occupy more than fifty percent (50%) of the Dwellings until the full balance of the Contributions have been paid to the Council.
- (e) to give at least 14 Working Days written notice to the Council of the Commencement Date.

4. INDEXATION OF CONTRIBUTION

- 4.1 All financial contributions payable to the Council shall be Index Linked.

- 4.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

5. DETERMINATION OF DEED

This deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner; or
- (c) is quashed following a successful legal challenge.

6. GENERAL PROVISIONS

- 6.1 Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.
- 6.2 No waiver (whether express or implied) by a party of any breach or default in performing or observing any of the terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent a party from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof.
- 6.3 No person shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site or the part of the Site to which the breach relates, except in respect of any breach subsisting prior to parting with such interest.
- 6.4 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed and insofar as reasonably practicable the parties shall amend that clause or clauses in such reasonable manner as achieves the intention of the parties without illegality.
- 6.5 No purchaser (or his mortgagee) (or their respective successors in title) of any individual Dwelling nor any statutory authority or service

company acquiring part of the Site for the purposes of undertaking its statutory functions shall be liable for any breach of this Deed.

- 6.6 If the Planning Permission shall expire within the meaning of sections 91, 92 or 93 of the TCPA 1990 or shall at any time be revoked or modified by any statutory procedure without the agreement of the Owner this Deed shall forthwith determine and cease to have further effect (insofar as it has not already been complied with) PROVIDED ALWAYS that the Development has not Commenced.
- 6.7 Nothing in this Deed shall prevent the Owner from developing the Site in accordance with a planning permission other than the Planning Permission.
- 6.8 Any person or body acquiring the benefit of a legal charge over the Site shall have no liability under this deed unless it takes possession of the Site or part thereof or appoints a receiver in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.
- 6.9 In the event that an application made pursuant to section 73 of the TCPA 1990 for an amendment to the Planning Permission is granted this Deed shall (unless the Council determines that revised planning obligations are required as a result of such amendment) apply to development pursuant to the Section 73 Permission as well as to development pursuant to the Planning Permission without the need for a further deed to be entered into pursuant to section 106 of the TCPA 1990 unless the Council requires otherwise.

7. LOCAL LAND CHARGE

This deed is a local land charge and shall be registered as such by the Council.

8. INTEREST ON LATE PAYMENT

If the Contributions are paid late, the Owner shall pay the Council interest on the Contribution at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis from the date payment is due to and including the date of payment.

9. COUNCIL'S COSTS

The Owner shall pay to the Council on the date 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.

10. OWNERSHIP

10.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property.

10.2 Until the obligations in clause 3 have been complied with the Owner will give to the Council within 10 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

11. NOTICES

11.1 A notice to be given under or in connection with this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

11.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at: Civic Centre Castle Hill Avenue Folkestone Kent CT20 2QY marked for the attention of Head of Planning Services;
- (b) to the Owner at: Tan Barn, Acrise, Folkestone, Kent CT18 8LA marked for the attention of Nicholas Angelo Ciccone

or as otherwise specified by the relevant person by notice in writing to each other person.

11.3 Any notice or other communication given in accordance with clause 11.1 and clause 11.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

11.4 A notice or other communication given under this deed shall not be validly given if sent by e-mail.

11.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12. **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.


13. **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.

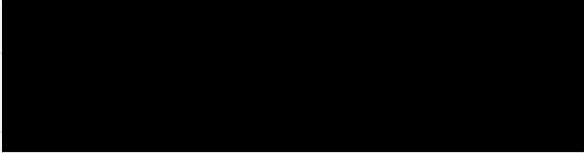
This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SIGNED as a DEED and delivered by
by the said NICHOLAS ANGELO CICCONE
in the presence of:



Witness Signature ... 

Witness Name C SHEPHERD

Witness Address .  .

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