

DATED

20 December

2018

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

-and-

DOVER DISTRICT COUNCIL

-and-

THE KENT COUNTY COUNCIL

DEED OF AGREEMENT

pursuant to

SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

RELATING TO

Land at Fernfield Lane, Hawkinge, Kent

Planning Application Ref No: DOV/16/01450

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

THIS DEED OF AGREEMENT is dated the 20th day of December 2018

BETWEEN

- 1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of The Civic Centre Castle Hill Avenue Folkestone Kent CT20 2QY (the "Owner") and
- 2) **DOVER DISTRICT COUNCIL** of Council Offices, Whitfield (Head Office) - White Cliffs Business Park, Dover CT16 3PJ (the "Council") and
- 3) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (the "County Council")

(jointly the "**Parties**") sets out the terms of understanding between the Parties to secure the delivery of planning obligations pursuant to the Application made by the Owner for Development of its Land

RECITALS

- A. The Council is the local planning authority for the area within which the Land is situated
- B. The Owner is the current freehold owner of the Land
- C. The County Council is the education authority and provider of library services for the area in which the Land is situated.
- D. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the Development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010
- E. The Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate and be conducive to and be incidental to the Council's functions
- F. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of the 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

IT IS AGREED as follows

1 DEFINITIONS

1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings

"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	means Affordable Housing as that term is described and/or defined in Annex 2 of the National Planning Policy Framework and affordable in accordance with the Council's housing policies as at the date hereof
"Application"	means the application for outline planning permission submitted by The District Council of Folkestone and Hythe (Strategic Development Projects) to the Council to carry out the Development and given the reference number DOV/16/01450
"Commencement of Development"	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words " Commence " and " Commence Development " shall be construed accordingly
"Development"	means the development of the Land and the erection of 19 dwellings with some matters reserved
"Dwelling"	means any residential unit to be erected on the Land pursuant to the Planning Permission
"Index"	means the All Items Retail Price Index published by the Office for National Statistics or any successor organisation

"Index 2"	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
"Index Linked"	means adjusted by reference to the relevant index pursuant to the provisions of Clause 17
"Interest Rate"	means 4% per annum above the base lending rate of The Bank of England from time to time applicable at the actual date of payment
"Land"	means the land to which this Deed refers which is detailed in Schedule 1 against which this Deed may be enforced and shown more particularly edged red on the Plan
"Library Contribution"	means the sum of £912.30 payable as contribution towards the book stock for the mobile library attending at Hawkinge.
"Occupy"	means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and "Occupation" "Occupier" or "Occupied" shall be construed accordingly
"Off Site Public Open Space Contribution"	means the sum of £11,218.00 payable as contrition towards increasing the capacity of Stombers Lane Park play area.
"Open Market Units"	means the units on the Development that are not Affordable Housing Units
"Plan"	Means the plan attached to this Deed

"Planning Permission"	means planning permission for the Development to be granted pursuant to the Application subject to conditions
"Primary Education Contribution"	means the sum of £63,156.00 payable towards the expansion of Martello Primary School
"Thanet Coast and Sandwich Bay Mitigation Strategy"	Means the sum of £1,313.58 payable towards the implementation of the Thanet Coast and Sandwich Bay Mitigation Strategy
"VAT"	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
"Working Day"	means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

INTERPRETATION

- 1.2 A reference to any Clause Plan Paragraph Schedule Appendix or Recital is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in case of plans attached to) this Deed
- 1.3 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 1.4 Words importing the singular include the plural and vice versa
- 1.5 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 1.6 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 1.7 Reference 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 shall include any successor to its statutory functions



THE COMMON SEAL OF THE KENT
COUNTY COUNCIL WAS HEREunto
AFFIXED IN THE PRESENCE OF:-
SAFAH WATSON
Authorised Signatory

1260-2018



- SITE APPLICATION BOUNDARY
- LAND UNDER CLIENTS OWNERSHIP
- EXISTING SURROUNDING BUILT CONTENT

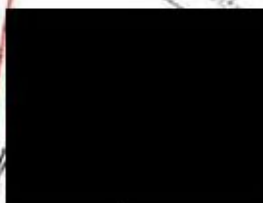
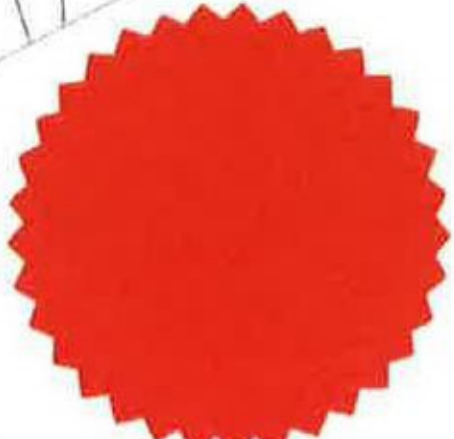
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PROPOSED RESIDENTIAL DEVELOPMENT TO LAND ADJACENT TO FERNFIELD LANE, HAWKINGE, KENT
Site Location Plan
1260-2018
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PROPOSED RESIDENTIAL DEVELOPMENT TO LAND ADJACENT TO FERNFIELD LANE, HAWKINGE, KENT
Site Location Plan

16/4/17



- 1.8 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 1.9 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 1.10 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time
- 1.11 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail
- 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

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
- 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act
- 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
- 3.2.3 relate to the Land
- 3.2.4 are entered into with intent to bind the Owners interests in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come
- 3.2.5 are enforceable by the Council as local planning authority

3.2.6 are executed by the respective Parties as a Deed

- 3.3 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 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling

4 LEGAL EFFECT

This Deed takes effect on the date hereof

5 COVENANTS AND OBLIGATIONS OF THE OWNER

- 5.1 The Owner covenants with the Council to perform and observe the covenants obligations restrictions and requirements contained herein
- 5.2 The Owner shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice
- 5.3 The Owner covenants to pay before completion of this Deed the Council and County Council's proper and reasonable legal costs and disbursements in connection with the negotiation preparation and execution of this Deed whether or not this Deed is delivered in accordance with Clause 23

6 COVENANTS AND OBLIGATIONS OF THE COUNCIL

The Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the Council's covenants as set out herein

7 RELEASE AND EXCLUSIONS

No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Council in relation to any subsisting or any antecedent breach non-

performance or non-observance arising prior to parting with such interest

8 DISPUTES AND EXPERT DETERMINATION

- 8.1 In the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference
- 8.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 8.1 within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body 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 a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference 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 in equal shares
- 8.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference 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
- 8.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material
- 8.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall be reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight

(28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation

- 8.6 Nothing in this Clause 8 shall be taken to fetter or limit the ability of the Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales

9 LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such

10 SUCCESSORS IN TITLE

The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof

11 NOTICES

- 11.1 Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that
- 11.1.1 it shall provide the Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development or permit the Commencement of the Development unless and until this notice has been provided to the Council and
- 11.1.2 it shall notify the Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development and
- 11.1.3 It shall provide the Council with no less than 20 Working Days prior notice of the intended date of Occupation of the Development and the Owner shall not Occupy the Development nor permit any Occupation of the Development unless and until this notice has been provided to the Council
- 11.1.4 it shall notify the Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development
- 11.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this Deed must be in writing

and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Council

Head of Regeneration and Development

Address

Dover District Council
Council Offices
Whitfield (Head Office)
Dover
Kent CT16 3PJ

The Owner

The Head of Strategic Development Projects

Address

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

The County Council

Office of the General Council *COUNCIL* *522*

Address

Kent County Council
County Hall
Maidstone ME14 1XQ

- 11.3 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received

- 11.3.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or
- 11.3.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting
- 11.4 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates
- 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 POWERS OF THE COUNCIL

Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Council under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority

13 SEVERABILITY

If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

14 RIGHTS OF THIRD PARTIES

The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties and in the case of the Council the successor to its statutory functions

15 CHANGE OF OWNERSHIP AND NEW INTEREST

- 15.1 The Owner warrants that
- 15.1.1 they have full authority to enter into this Deed
 - 15.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land
 - 15.1.3 they know of no impediment to the validity of this Deed
 - 15.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed
 - 15.1.5 they shall make good any loss to the Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so
- 15.2 The Owner shall give the Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give
- 15.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and
 - 15.2.2 the nature and extent of the interest disposed of by reference to a plan
- 15.3 In the event that the Owner's existing interest in the Land shall be determined (whether by surrender merger forfeiture or otherwise) and the Owner shall acquire another interest in the Land (written notice of which shall be given to the Council) and the Planning Permission shall have either been Implemented or shall remain capable of Implementation then the Owner as the case may be will within twenty-eight (28) days from a written request from the Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed
- 15.4 The Parties agree that a mortgagee of the Land shall have no liability under this Deed UNLESS it takes possession of the Land or any part of the Land in which case the mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner and the security of its charge over the Land shall take effect subject to this Deed

16 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default or delay in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

17 INDEXATION

17.1 All the financial contributions payable pursuant to this Deed shall be Index Linked

17.2 The Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the Index between the quarterly index figure immediately preceding the date of this Deed and the quarterly index figure for the quarter immediately preceding the date of actual payment

17.3 The County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in Index 2 from the quarterly index figure immediately preceding October 2016 and the quarterly index figure for the quarter immediately preceding the due date for payment of the relevant contribution

18 SECTION 73 APPLICATION

If the Council agrees pursuant to an application by the Owner under Section 73 or 73A of the 1990 Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal by the Owner under Section 78 of the 1990 Act this Deed 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 1990 Act and the covenants or provisions in this Deed shall be deemed to be accordingly modified to correspond to any such varied permission

19 INTEREST

If any sum or amount due under this Deed has not been paid to the Council or the County Council by the date it is due the Owner shall pay the Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

20 VAT

- 20.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT
- 20.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

21 AGREEMENTS AND DECLARATIONS

21.1 The Parties agree that

- 21.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 21.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

22 JURISDICTION

- 22.1 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
- 22.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

23 DELIVERY

This Deed is delivered on the date written at the start and the provisions of this Deed shall be of no effect until this Deed has been dated

SCHEDULE 1: THE LAND

The Owner is the registered proprietor of the Land with title absolute and registered at the Land Registry under title number K93264 subject to the matters in the Charges Registers but otherwise free from encumbrances

SCHEDULE 2 – DEVELOPMENT CONTRIBUTIONS

1 Primary Education Contribution

- 1.1 To pay the Primary Education Contribution to the County Council prior to Occupation of 25% of the Open Market Units
- 1.2 Not to Occupy 25% of the Open Market Units without first paying to the County Council the Primary Education Contribution

2 Library Contribution

- 2.1 To pay the Library Contribution to the County Council prior to Occupation of any of the Open Market Units
- 2.2 Not to Occupy any of the Open Market Units without first paying to the County Council the Library Contribution.

3 Thanet Coast and Sandwich Bay Mitigation Strategy Contribution

- 3.1 To pay the Thanet Coast and Sandwich Bay Mitigation Strategy Contribution to the Council prior to the Commencement of Development
- 3.2 Not to Commence Development without first paying to the Council the Thanet Coast and Sandwich Bay Mitigation Strategy Contribution

4 Off Site Public Open Space Contribution

- 4.1 To pay the Off Site Public Open Space Contribution to the Council prior to the Commencement of Development
- 4.2 Not to Commence Development without first paying to the Off Site Public Open Space Contribution

5. County Council and Council Covenants

- 5.1 The County Council covenants with the Owner that it will only expend the Primary Education Contribution and Library Contribution for the purposes set out in the Definitions Clause 1.
- 5.2 The Council covenants with the Owner that it will only expend the Thanet Coast and Sandwich Bay Mitigation Strategy Contribution and the Off Site Public Open Space Contribution for the purposes set out in the Definitions Clause 1.

5.3 In the event that all or part of the Primary Education Contribution, the Library Contribution, the Thanet Coast and Sandwich Bay Mitigation Strategy Contribution or the Off Site Public Open Space Contribution remains unexpended ten years from the date of the last occupation on site the County Council and the Council covenants to return any such unexpended sums together with any Interest accrued thereon to the company or body that paid such sums to the County Council or Council even if that company or body is not the owner of the Land at the time of such repayment and for the avoidance of doubt if part of the Primary Education Contribution, the Library Contribution, the Thanet Coast and Sandwich Bay Mitigation Strategy Contribution or the Off Site Public Open Space Contribution has been spent during that period the County Council or Council will repay any unexpended part of the Primary Education Contribution, the Library Contribution, the Thanet Coast and Sandwich Bay Mitigation Strategy Contribution or the Off Site Public Open Space Contribution

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

The COMMON SEAL of THE
DISTRICT COUNCIL OF
FOLKESTONE AND HYTHE

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Authorised Signatory

The COMMON SEAL of THE
DOVER DISTRICT COUNCIL in the
presence of

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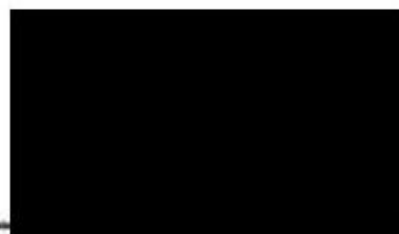


Authorised Signatory

The COMMON SEAL of THE KENT
COUNTY COUNCIL was hereunto
affixed in the presence of:-

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1260-2012



SARAH WATSON

Authorised Signatory

