

200 units of affordable

DATED

1995

AGREEMENT

under

SECTION 106 TOWN & COUNTRY PLANNING ACT 1990

B E T W E E N

GILLINGHAM BOROUGH COUNCIL

and

THE URBAN REGENERATION AGENCY

and

COUNTRYSIDE MARITIME LIMITED

**ST MARY'S ISLAND, GILLINGHAM
(Affordable Housing and Open Space Areas)**

Yvonne Atkinson
Deputy Town Clerk & Solicitor
Gillingham Borough Council
Municipal Buildings
Canterbury Street
Gillingham
Kent ME7 5LA

Tel: 0634 282005 (direct line)
Ref: JB/GF/PO4/7

(cjillf/agreements/jb/country)

THIS AGREEMENT is made the _____ day of
One thousand nine hundred and ninety-five BETWEEN GILLINGHAM BOROUGH
COUNCIL of Municipal Buildings Gillingham in the County of Kent of the one
part and THE URBAN REGENERATION AGENCY of St Georges House Kingsway Team
Valley Gateshead Tyne and Wear NE11 0NA of the second part and COUNTRYSIDE
MARITIME LIMITED whose registered office is situate at Captain's House
Pembroke Chatham Maritime Kent ME4 4UF
of the other part

DEFINITIONS

(1) Wherever the context so permits the following words and phrases
shall have the meanings herein attributed to them:-

"the Council"	The said Gillingham Borough Council and its successors in title
"the Owner"	The said Urban Regeneration Agency and its successors in title
"the Land"	Land situated at St Mary's Island in the County of Kent all of which land is shown edged Red on the Plan appended hereto
"the Developer"	The said Countryside Maritime Limited
"the Development"	The erection of up to 1700 dwellings together with community, educational and commercial areas and associated open spaces highway and service infrastructure on the Land
"Chatham Maritime Development"	Land situate in the administrative Borough of Gillingham shown edged blue on the Plan appended hereto
"the Application"	The planning application seeking outline planning permission for the Development bearing Local Authority Reference Number 93/0730GL

- "the Planning Permission" The permission to be granted by way of approval of the application
- "Affordable Housing" This term means housing targeted at persons who are unable to purchase on the open market on the basis of a conventional mortgage and shall include the provision of dwellings for shared ownership and/or renting
- "Housing Agencies" This term shall include Housing Associations registered with the Housing Corporation Building Societies and their subsidiaries Housing Charities and other similar organisations or associations agreed in writing with the Council (such agreement from the Council not to be unreasonably withheld)

- (2) Where the context so admits:-
- (a) words of the masculine gender shall incorporate the feminine gender and words of the singular shall include the plural and vice versa
- (b) the reference herein to any statute or section of a statute includes any statutory re-enactment or modification thereof

W H E R E A S :-

- (1) The Council is the appropriate Local Planning Authority for the purposes of Part III of The Town and Country Planning Act 1990 (as amended) (hereafter 'The 1990 Act') in respect of the area which includes the Land
- (2) The Owner is the Registered proprietor with Title Absolute of the Land registered at H M Land Registry under Title Number K606638
- (3) The Developer submitted the Application to the Council for approval and subject to an agreement with the Owner will undertake the development of the Land in accordance with the Planning Permission

(4) The Application was submitted to the Council on 10th November 1993

(5) The Council has indicated its willingness to grant the conditional Outline Planning Permission in response to the Application provided that the Owner and the Developer first enter into a binding agreement with the Council pursuant to Section 106 of the 1990 Act for the purposes of permanently restricting or regulating the development of the Land as referred to above

(6) The Owner hereby warrants that it has obtained all necessary permission and consents required from any mortgagee covenantee or other person to them entering into this Agreement

NOW THIS DEED WITNESSETH as follows:-

1. THIS AGREEMENT is made pursuant to the provisions of Section 106 of the 1990 Act and the obligations created by this Agreement are planning obligations for the purposes of the said Section 106 and both the positive and restrictive covenants and undertakings herein on the part of the Owner are entered into with the intent that the same shall be binding on and enforceable jointly and severally without limit of time not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner to the Land or any part thereof as if that person had also been an original covenanting party in respect of the interest for the time being held by him

2. THE Owner covenants and undertakes for itself and its successors in title with the Council pursuant to Section 106 of the 1990 Act to perform the obligations specified in Schedules 1 and 2

3. THE Developer also covenants and undertakes with the Council pursuant to Section 106 of the 1990 Act to perform the obligations specified in paragraphs 2 to 7 (inclusive) of Schedule 1 hereto

4. THE Owner also covenants to pay the Council's costs in connection with the preparation and completion of this Agreement in the sum of £200

5. THE Council hereby covenants that upon the execution of this Agreement it will grant the Planning Permission in the form set out in Schedule 3 hereto

6. WHILST the Council reserves the right where applicable to enforce the obligations and stipulations in this Agreement against either the Owner or the Developer it expressly agrees that it will not seek to enforce the said obligations and stipulations against both the Owner and the Developer at the same time

7.(i) The coming into force of this Agreement is conditional upon both:

(a) the grant of the Planning Permission, and

(b) the beginning of the Development by the carrying out of a material operation in accordance with the provisions of Sections 56 and 91-93 of the 1990 Act

(ii) The Developer hereby undertakes to the Council to serve written notice upon the Council advising it of the date upon which the Development began within one month of the occurrence of the same

8. THIS Agreement is related to a further Agreement under Section 106 of the 1990 Act of even date herewith and made between the Council the Owner the Developer and the Kent County Council which relates to the provision of a school

9. NOTHING in this Agreement shall be construed as restricting the exercise by the Council of any powers exercisable by it under the 1990 Act or under any other Act PROVIDED ALWAYS that this Agreement shall remain in full force and effect notwithstanding the terms and conditions of any

planning permission which may be or has been at any time issued by the Council or any other appropriate person or Authority pursuant to the provisions of the said Act or any statutory amendment or re-enactment thereof

10. THE terms and conditions of this Deed shall be capable of being varied by a supplemental Agreement executed by the parties hereto or by a memorandum in writing executed by or on behalf of the parties hereto (and endorsed hereon)

11. THE Owner the Council and the Developer HEREBY MAKE APPLICATION to the appropriate Registrar of Local Land Charges for registration of this Agreement pursuant to the provisions of the Local Land Charges Act 1975

12. ANY Notice to the parties hereto under this Agreement shall be deemed to be sufficiently served if delivered personally or sent recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:-

In respect of the Council

The Deputy Town Clerk and Solicitor
Gillingham Borough Council
Municipal Buildings
Gillingham
Kent
ME7 5LA

In respect of the Owner and the Developer

English Partnerships and
Countryside Maritime Limited
Captain's House
Pembroke
Chatham Maritime
Kent ME4 4UF

13. NO party shall be liable for the breach of any obligations contained in this Agreement after he has parted with his interest in the Land or that part of the Land in respect of which the breach occurs but this is without prejudice to liability for antecedent breaches

IN WITNESS whereof the Council and the Owner have hereunto affixed their
respective Common Seals the day and year first before written

THE COMMON SEAL of GILLINGHAM)
BOROUGH COUNCIL was hereunto)
affixed:)

Countersigned

Deputy Town Clerk and Solicitor

EXECUTED AS A DEED for and)
on behalf of THE URBAN)
REGENERATION AGENCY (known)
as ENGLISH PARTNERSHIPS) by)
its duly authorised officer:)

Authorised Officer

THE COMMON SEAL of)
COUNTRYSIDE MARITIME LIMITED)
was hereunto affixed in the)
presence of:-)

Director

Secretary

SCHEDULE 1

AFFORDABLE HOUSING

1. As part of the overall Chatham Maritime Development (which for the avoidance of doubt includes the Development on the Land) the Owner agrees that provision shall be made for 200 units of Affordable Housing. It is expressly agreed by the parties to this Agreement that this provision shall be made and satisfied (subject to clauses 2-9 inclusive below) solely on the Land and not elsewhere within the Chatham Maritime Development
2. The Owner shall identify that part of the Land (if any) within each phase of the Development where provision is proposed to be made for Affordable Housing and shall advise the Local Planning Authority and Housing Agencies accordingly by the end of July prior to the financial year in which it is proposed to carry out the building work comprising that phase. Where Affordable Housing is to be included in any phase of the Development the Owner expressly agrees that no more than 20 such units shall be located together and further that where Affordable Housing is provided in any two phases they shall not be located so as to result in groups of more than 20 such units. The Owner expressly agrees that where it is proposed to include Affordable Housing in any of the phases of the Development a reasonable balance between the proposed number of units of Affordable Housing and other residential developments will be maintained.
3. Where in accordance with the provisions of this Agreement the Owner proposes to include Affordable Housing in a phase of the Development the Owner shall enter into negotiations with one or more Housing Agencies to transfer that part of the built development comprising Affordable Housing to the said Housing Agency or Agencies at the open market value for the said Affordable Housing.

4. The Owner shall commence negotiations with Housing Agencies in sufficient time to enable the Housing Agencies to submit a bid as appropriate to the Housing Corporation to fund the proposal for Affordable Housing. Sufficient time for the purposes of this paragraph shall mean a period of at least three months prior to the deadline for receipt of bids from the Housing Agencies by the Housing Corporation.
5. The Owner shall act in good faith and use its best endeavours in its negotiations with Housing Agencies to facilitate the Housing Agency being able to fund the purchase of that part of the built development comprising Affordable Housing from funding made available to the Housing Agency from the Housing Corporation and other sources in accordance with guidelines issued by the Housing Corporation.
6. It is expressly agreed that upon the Council being reasonably satisfied that after genuine negotiations between the Owner and Housing Agencies the Housing Agencies were unable to secure the necessary funding to enable the proposed Affordable Housing to be constructed in any phase the Council shall subject to paragraph 7 hereof release the Owner from its obligations in respect of that phase.
7. Where the Council releases the Owner from its obligations to provide units of Affordable Housing in any phase of the Development the Owner together with the Council shall consider the inclusion of that number of units of Affordable Housing (or some lesser number of units) in any of the remaining phases. The Owner shall not unreasonably refuse to consider making provision for Affordable Housing in future phases of the Development.

8. In this Schedule the expression "best endeavours" shall mean obliging the relevant party to take all those reasonable steps which a prudent and determined person or company acting in his or its own best interests and anxious to achieve the stated objective would take but shall not oblige the relevant party to pay or incur an obligation to pay any money other than professional fees and disbursements (and VAT thereon).
9. For the avoidance of doubt references to the Owner in paragraphs 2 to 7 (inclusive) of this Schedule shall also include references to the Developer

SCHEDULE 2

OPEN SPACE AREAS - PUBLIC ACCESS

1. As part of the overall development proposals for the Land the Owner agrees that provision will be made for open space amenity areas (hereafter "the Open Space Areas").
2. Open space amenity areas for the purposes of this Schedule shall mean land identified for this purpose in the detailed proposals for the development of the Land.
3. The Owner agrees that upon completion of the works in connection with the provision of Open Space Areas the public shall at all times thereafter have unrestricted access to and use of the said Open Space Areas provided that the Open Space Areas can be accessed by highways or footways which are capable of adoption.
4. Where the Open Space Areas are completed in phases the Owner agrees that subject to paragraph 3 above the public shall have unrestricted access to that or those Open Space Areas which have been completed.
5. 