

Dated: 31<sup>st</sup> October 2024

**Deed under section 106 of the  
Town and Country Planning Act 1990**

between

(1) Hodson Developments (CG Four) Limited

(2) Together Commercial Finance Limited

(3) Zorin Avenue Lend Co 1 Designated Activity  
Company

(4) Ashford Borough Council

(5) The Kent County Council

relating to land

north of Possingham Farmhouse Ashford Road Great Chart Kent TN26 1JR

Planning Application Number: 22/00571/AS (Outline)

Appeal reference number APP/E2205/W/24/3345454

DS54-0914 CJW/CAP

T W Mortimer, LL.B., Solicitor

Solicitor to the Council and Monitoring Officer

Ashford Borough Council

Civic Centre

Tannery Lane

Ashford

TN23 1PL

**I hereby certify this to be a  
true copy of the original**

*Simon Tretjanic*  
**SIMON TRETJANIC**

.....  
**Legal and Democratic Services  
Ashford Borough Council**

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## **INDEX**

### **INTRODUCTION - RECITALS**

**Clause 1 – Definitions and Interpretation**

**Clause 2 – Legal Basis and Enforceability**

**Clause 3 – Third Parties**

**Clause 4 – Owner's covenants**

**Clause 5 – Confirmation of interests**

**Clause 6 – Conditions precedent**

**Clause 7 – Duration**

**Clause 8 – Change of Ownership**

**Clause 9 – Notices**

**Clause 10 – Approvals**

**Clause 11 – Jurisdiction and legal effect**

**Clause 12 – Interest and VAT**

**Clause 13 – Legal Fees**

**Clause 14 – Position of the Mortgagee**

**Clause 15 – Forward Funding**

**Clause 16 – Dispute Resolution**

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## **Schedules**

**Schedule 1 - Notices and Monitoring**

**Schedule 2 - Adult Social Care Contribution**

**Schedule 3 - Affordable and Adaptable Housing**

**Schedule 4 - Allotments Contribution**

**Schedule 5 – Amenity Open Space Land**

**Schedule 6 - Art and Creative and Creative Industries Contribution**

**Schedule 7 - Children's and Young People's Play Space**

**Schedule 8 – Community Building Contribution**

**Schedule 9 - Community Learning Contribution**

**Schedule 10 - Health Care Contribution**

**Schedule 11 - Informal Natural Green Space**

**Schedule 12 – Indoor Sport Contribution**

**Schedule 13 - Libraries Contribution**

**Schedule 14 - Outdoor Sports Contribution**

**Schedule 15 - SEND Contribution**

**Schedule 16 – Secondary School Contribution**

**Schedule 17 – Public Rights of Way Contribution**

**Schedule 18 – Self Build and Custom Build Housing**

**Schedule 19 – Provision of Bus Services**

**Schedule 20 – Management Company**

**Schedule 21 – Stodmarsh Mitigation**

**Schedule 22 – Strategic Parks Contribution**

**Schedule 23 – Strategic Highways Contribution and 278 Highway Works/A28 Dualling  
Contribution**

**Schedule 24 - Travel Plan Monitoring Contribution**

**Schedule 25 - Integrated Children's Services Contribution**

**Schedule 26 – Waste Disposal Contribution**



**THIS DEED IS DATED THE 31<sup>st</sup> DAY OF October 2024**

**AND IS MADE BETWEEN:**

- (1) **HODSON DEVELOPMENTS (CG FOUR) LIMITED** (Co Reg. No.-11680007) of Office 9 55 Park Lane London W1K 1NA ("the Owner"); and
- (2) **TOGETHER COMMERCIAL FINANCE LIMITED** (Co Reg. No. 2058813) whose registered office is at Lake View Lakeside Cheadle SK8 3GW ("the First Mortgagee") and
- (3) **ZORIN AVENUE LEND CO 1 DESIGNATED ACTIVITY COMPANY** (Incorporated in Ireland with Co Reg. No. 669458) whose registered office is at 2<sup>nd</sup> Floor Palmerston House Fenian Street Dublin 2 DO2 WD37 Ireland ("the Second Mortgagee") and
- (4) **ASHFORD BOROUGH COUNCIL** of Civic Centre, Tannery Lane, Ashford, TN23 1PL ("the Council"); and
- (8) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone ME14 1XQ ("the County Council")

**INTRODUCTION**

- (A) The Owner is registered at the Land Registry under title TT104257 as proprietor of the freehold title of the Site subject to Mortgages in favour of the First Mortgagee and the Second Mortgagee but otherwise free from incumbrances
- (B) By a Mortgage the Site being in title TT104257 was charged by way of legal mortgage dated 30 August 2019 to the First Mortgagee to secure the principal and other monies mentioned in it and this Mortgage has priority over any other Mortgage on title TT104257
- (C) By a Mortgage the Site being in title TT104257 was further charged by way of legal mortgage dated 9 February 2021 to the Second Mortgagee to secure the principal and other monies mentioned in it
- (D) The Council is a local planning authority for the purposes of section 106 of the Act for the area within which the Site is situated
- (E) The County Council is a local planning authority the local highway authority the education authority the library authority the waste disposal authority and the

authority responsible for the provision of social services children's and youth services and is a partner with the national health service to deliver the Government White Paper pilot: *"Our health, our care, our say; a new direction for community services"* for the area within which the Site is situated

- (F) The ICB is the national health service authority responsible for health services for the area within which the Site is situated
- (G) The Owner submitted the Planning Application for the Development to the Council
- (H) The Council by its Planning Committee held on 13 December 2023 resolved to refuse the Planning Application and a decision notice refusing the Planning Application was issued on 14 December 2023 and which is now the subject of the Appeal

**NOW THIS DEED WITNESSES** as follows:

**1. Definitions and Interpretation**

- 1.1. In this deed the following words and expressions shall unless the context otherwise requires have the following meanings:

<b>the Act</b>	the Town and Country Planning Act 1990 (as amended)
<b>Appeal</b>	the appeal against a refusal of planning permission lodged with the Planning Inspectorate by the Owner and given the reference number APP/E2205/W/24/3345454
<b>Chilmington Green Site</b>	The land encompassing all land identified in the adopted Chilmington Green Area Action Plan adopted by the Council and which has the benefit of outline planning permission with reference 12/00400/AS and as amended by permissions under s73 of the Act as well as detailed permissions in respect of parts of the site

<b>Commencement of Development</b>	the carrying out of a material operation as defined in section 56(4) of the Act pursuant to the Planning Permission (irrespective of non-compliance with any condition of the Planning Permission) but excluding any works of demolition site clearance (including removal of existing landscaping), archaeological investigations, ground investigations for the purpose of assessing ground conditions, remedial action in respect of any contamination or other adverse ground conditions, site survey works, temporary access construction works, the temporary display of site notices or advertisements or the erection of any temporary means of enclosure, hoardings or fences (and phrases such as <b>"Commence the Development"</b> and <b>"the Development having been Commenced"</b> shall be construed accordingly)
<b>Developer Contributions Monitoring Officer</b>	the Council's Developer Contributions Monitoring Officer for the time being of the holder or any successor post including any appointed agent
<b>Development</b>	the development of up to 655 residential dwellings (including 30% affordable dwellings) and access (excluding internal circulation routes) with all other matters reserved in accordance with the Planning Permission
<b>Development Managers</b>	any of the persons who from time to time hold (or act in ) the posts of the Assistant Director of Planning and Development Strategic Development and Delivery Manager or Planning Applications and Building Control Manager with the Council or any replacement for those posts or such other person to whom the Council or its planning committee may delegate powers from time to time in connection with the Planning Application or Planning Permission

<b>Dwelling</b>	each and every dwelling to be constructed on the Site pursuant to the Planning Permission (irrespective of any non-compliance with any condition)
<b>Flat</b>	a Dwelling which is a flat maisonette or apartment to be constructed pursuant to the Planning Permission (irrespective of any non-compliance with a condition) and excludes a Small Dwelling and "Flats" shall be construed accordingly
<b>House</b>	a Dwelling to be constructed pursuant to the Planning Permission which is not a Flat (irrespective of any non-compliance with a condition) and excludes a Small Dwelling and "Houses" shall be construed accordingly
<b>Inspector</b>	the planning inspector appointed by the Planning Inspectorate who has responsibility for determining the Appeal
<b>Interest</b>	interest at a rate equal to 6% (six percentage points) above the Bank of England base rate from time to time
<b>ICB</b>	NHS Kent and Medway ICB of 2 <sup>nd</sup> Floor Gail House Lower Stone Street Maidstone Kent ME15 6NB (or such other successor organisation in force at the time the Health Care Contribution is passed to the Council)
<b>Occupy</b>	to first occupy or permit the first occupation of a Dwelling or building forming part of the Development for any purpose but not including occupation by personnel engaged in construction fitting out finishing or decoration of that Dwelling or building nor occupation for marketing purposes nor occupation in relation to site and building security operations and "Occupation" "Occupier" and "Occupied" shall be construed accordingly

<b>Mortgage</b>	any mortgage or legal charge made between the Owner and any one of the First Mortgagee or the Second Mortgagee
<b>Mortgagee</b>	The First Mortgagee and the Second Mortgagee
<b>Phase</b>	A phase of the Development as illustrated on the Phasing Plan and approved by the Council on a part of the Site and which is subject to a Reserved Matters application for the approval of Dwellings.
<b>Phasing Plan</b>	the plan to be submitted to the Council prior to the submission of the first Reserved Matters application for approval by the Council and which illustrates the individual Phases of Development and the order in which they will be delivered
<b>Planning Application</b>	the application for planning permission for the Development submitted to the Council by the Owner and given reference number 22/00571/AS and shall include any planning application relating to the Site which the Head of Planning and Development (or her successor in function) agrees in writing is substantially similar to application for planning permission given reference number 22/00571/AS
<b>Planning Inspectorate</b>	the Secretary of State's planning inspectorate of Room 3J Kite Wing Temple Quay House 2 The Square Bristol BS1 6PN who have responsibility for the determining of valid planning appeals in England
<b>Planning Permission</b>	the outline planning permission to be granted for the Planning Application pursuant to the Appeal and any planning permission granted pursuant to an application under section 73 of the Act relating to permission 22/00571/AS (a "Subsequent Permission") and any planning permission granted pursuant to an application

	under section 73 relating to a Subsequent Permission (also a "Subsequent Permission")
<b>Queen's Platinum Jubilee Park</b>	means the land at the Queen's Platinum Jubilee Park as shown marked DP1 DP2 DP3 and S3 on Drawing ref: 00122_OPA_06R2 appended to this deed
<b>Reserved Matters</b>	the matters reserved for the approval of the Council under the Planning Permission and "Reserved Matter" shall be construed accordingly
<b>Secretary of State</b>	the Secretary of State for Housing, Communities and Local Government or any other minister of authority for the time being entitled to exercise the powers given for the Appeal and the Inspector as the context dictates
<b>Site</b>	the land known as land north of Possingham Farmhouse Ashford Road Great Chart Kent TN26 1JR and shown edged red on the Site Plan
<b>Site Plan</b>	the plan showing the Site in drawing number 29892A_10 Revision G1 and named 'Site Location Plan' prepared by Clague Architects and dated September 2024 appended to this deed (or such replacement drawing as shall be agreed in writing by the Council)
<b>Small Dwelling</b>	any one-bed Dwelling of less than 56 square metres gross internal area
<b>Substantial Implementation</b>	the point at which construction of the Development reaches above foundation level - the 'Golden Brick' stage and the phrase "Substantially Implement" shall be construed accordingly

<b>Working Day</b>	any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday or any day falling between Christmas Day and New Year's Day
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- 1.2 Reference in this deed to any recital clause paragraph or schedule is unless the context otherwise requires a reference to the recital clause paragraph or schedule in this deed so numbered
- 1.3 Headings where they are included are for convenience only and are not intended to influence the interpretation of this deed
- 1.4 Words importing the singular meaning include the plural meaning and vice versa where the context so admits
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 1.6 Wherever 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 unless there is an express provision otherwise
- 1.7 Save as is otherwise provided references to any party shall include the successors in title to that party and any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions
- 1.8 Words undertakings and covenants requiring a person not to do any act matter or thing ('negative requirement') or otherwise imposing a restriction or prohibition on the development use or occupation of land include an obligation not to assist facilitate encourage cause permit or suffer any infringement of the negative requirement restriction or prohibition

- 1.9 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act of Parliament for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act of Parliament or deriving validity from it

## **2 Legal Basis and Enforceability**

- 2.1 This deed will be registered as a local land charge and is entered into pursuant to section 106 of the Act and all other statutory and other enabling powers
- 2.2 The terms of this deed create planning obligations binding on the Owner and (subject to the provisions of clause 14) the Mortgagee for the purpose of section 106 of the Act and are enforceable by the Council in full and in part by the County Council (as appropriate) as local planning authorities
- 2.3 To the extent that any of the obligations contained in this deed are not planning obligations within the meaning of the Act they are entered into pursuant to powers contained in section 111 of the Local Government Act 1972 and Sections 1 to 8 of the Localism Act 2011 and all other enabling powers
- 2.4 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission or their mortgagee except as otherwise may be provided in the schedules to this deed
- 2.5 No person who is a Registered Provider of Social Housing (or any mortgagee or chargee of the Registered Provider of Social Housing or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the Affordable Housing Land (or part thereof)) and who has acquired a legal interest in the Site which comprises the Affordable Housing Land pursuant to the provisions in schedule 3 of this deed shall be bound by any positive planning obligation to pay a financial contribution BUT FOR THE AVOIDANCE OF DOUBT such a person shall be



bound by all other restrictions covenants and obligations in accordance with the terms of this deed

- 2.6 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person in respect of any part of the Site or any interest in it acquired for the sole purpose of the supply of electricity gas water drainage telecommunications services or public transport services
- 2.7 The Secretary of State shall have the right to expressly state in his decision letter whether any covenant or obligation in this deed is not taken into account by him as a reason for granting Planning Permission by virtue of being unnecessary or otherwise failing to meet all of the statutory tests set out in regulation 122 of the Community Infrastructure Regulations 2010. This shall be referred to as the "Strike Out Clause". Any such covenant or obligation identified in the decision letter of the Secretary of State shall not be enforceable by the Council or the County Council but this Strike Out Clause shall not affect the lawfulness of all other covenants and obligations in this deed which shall continue to be enforceable by the Council or the County Council
- 2.8 Pursuant to the Strike Out Clause the Secretary of State is requested to state expressly in his decision letter
- 2.8.1 if he has not taken into account as a reason for granting Planning Permission the obligations contained in any of the following Schedules or parts of Schedules : Schedules 1 (paragraphs 2.9-2.14 only - Quality Monitoring Fee) 6 (Art and Creative Industries Contribution) 8 (Community Building Contribution) 10 (Health Care Contribution) 12 (Indoor Sport Contribution) 13 (Libraries Contribution) 14 (Outdoor Sports Contribution) 16 (Secondary School Contribution) 22 (Strategic Parks Contribution) and Schedule 26 (Waste Disposal Contribution)
- 2.8.2 which of the alternative obligations he has taken into account ( or that he has taken neither of the alternative obligations into account) within Schedule 19 (Provision of Bus Services) namely the Bus Service as defined under Option A or under Option B

2.8.3 which of the alternative obligations he has taken into account ( or that he has taken neither of the alternative obligations into account) within Schedule 23, Part 1 (Regional Infrastructure Fund Recovery) namely Options A or B

2.8.4 which of the alternative obligations he has taken into account ( or that he has taken none of the alternative obligations into account) within Schedule 23, Part 2 (A28) namely Options A, B or C and if he taken into account either Option A or Option B whether he has done so on the basis that the Section 278 Highway Works Contribution referred to in Option A and Option B is the Owner's Section 278 Amount or the County Council's Section 278 Amount

### **3 Third Parties**

Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999

### **4 Owner's covenants**

The Owner covenants with the Council and the County Council as set out in the schedules to this deed subject to the Strike Out Clause.

### **5. Confirmation of interests**

The Owner confirms and warrants to the Council and the County Council that apart from the parties to this deed there are no other persons with any interest (legal or equitable) in the Site or any part thereof including any leasehold interest

### **6 Conditions precedent**

#### **6.1 This deed is conditional upon**

6.1.1 the grant of the Planning Permission and

6.1.2 the Commencement of Development

save in respect of any obligations in this deed expressly requiring compliance prior to the Commencement of Development which shall come into effect immediately upon completion of this deed

## **7 Duration**

7.1 This deed shall cease to have effect in so far only as it has not already been complied with if the Appeal is dismissed by the Secretary of State or the Planning Permission is quashed revoked or otherwise withdrawn without the consent of the Owner or expires before the carrying out of a material operation as defined in section 56(4) of the Act pursuant to the Planning Permission (irrespective of non-compliance with any conditions of the Planning Permission)

7.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Site or his interest in that part of the Site on which the breach occurs but without prejudice to liability for any subsisting breach arising before parting with that interest

## **8 Change of Ownership**

The Owner agrees with the Council and the County Council to give the Council and the County Council prompt written notice pursuant to clause 9 of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan the date of the transfer and the nature of the interest transferred provided that this shall not apply in respect of the sale of individual Dwellings.

## **9 Notices**

9.1 Any notice or other written communication or information to be submitted for approval to be served upon a party or given by one party to any other under the terms of this deed shall be deemed to have been validly served or given if

delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing

**9.2 A notice or communication shall be served or given**

9.2.1 on the Owner at the address shown on the top of this deed or such other address as shall be notified in writing to the Council and the County Council from time to time and

9.2.2 on the Mortgagee at its registered office from time to time or such other address as shall be notified in writing to the Council and the County Council from time to time and

9.2.3 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the Developer Contributions Monitoring Officer and/ or by email to S106@ashford.gov.uk and

9.2.4 on the County Council at the address set out above or such other address as shall be notified in writing to the parties from time to time, marked for the attention of the Office of the General Counsel quoting reference 22/00571/AS and/or by email to developer.contributions@kent.gov.uk

**10 Approvals**

10.1 Any approval in writing given by the Council or the County Council under this deed or for the purposes of this deed shall not be or deemed to be approval for any other purposes whatsoever (nor shall approval by one constitute approval by the other)

10.2 For the avoidance of doubt any decision given by the Council in or by way of a decision notice shall not be an approval under this deed

**11 Jurisdiction and legal effect**

11.1 This deed and its validity shall be governed by and interpreted in accordance with the law of England and the parties exclusively submit to the jurisdiction of the courts of England in respect of this deed

- 11.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid illegal or unenforceable that invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed
- 11.3 The parties to this deed agree that no waiver (whether expressed or implied) by the Council or the County Council of any breach or default 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 or the County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default
- 11.4 Nothing contained or implied in this deed shall prejudice or affect the rights powers duties and obligations of the Council or the County Council both as local planning authority and in the exercise of its functions rights powers duties and obligations under all public and private statutes bylaws orders and regulations which may be fully and effectually exercised as if the Council and the County Council were not party to this deed
- 11.5 The parties to this deed expressly consent to the electronic execution (and witnessing) of this deed, to the provision of any information in connection with this document by electronic means, and to the retention and use of the executed deed as an electronic original. Each party also confirms that any electronic signature inserted on this deed by (or on behalf of) such party was inserted by the relevant signatory for the purpose of signing and authenticating this deed

## **12 Interest and VAT**

If any payment due under this deed is paid late Interest shall be payable from the date payment is due to the actual date of payment and the sum of the Interest shall be paid on the actual date of payment

## **13 Legal Fees**

On completion of this deed the Owner will pay to the Council and the County Council their reasonable legal costs incurred in relation to this deed

#### **14 Position of the Mortgagee**

The Mortgagee acknowledges and declares that this deed is entered into by the Owner with its consent and that the Site or part thereof is bound by the obligations contained in this deed and that the security of the relevant Mortgage takes effect subject to this deed provided that the Mortgagee and any subsequent person or body with the benefit of a legal charge over the Site shall in that capacity have no liability under this deed unless it takes possession of the Site or part thereof in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

#### **15. Forward Funding**

If the Council or the County Council forward-funds any project facility infrastructure or other expenditure from its own resources in anticipation of receipt of any relevant contribution or payment under the provisions of this deed then on such receipt the Council or the County Council may credit such contribution or payment (including any indexation element and/or interest received thereon) to its own resources and treat it as being immediately expended for the purpose for which the forward-funding was expended

#### **16. Dispute Resolution**

- 16.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed including in the event of any refusal of an approval or certificate required pursuant to this Deed or in the event of a delay of more than 20 Working Days in providing such approval following written submission of a request for such approval such dispute or difference or refusal or delay may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error ("the Expert")

- 16.2 In the absence of agreement as to the appointment or suitability of the Expert or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error
- 16.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision is 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 working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation
- 16.4 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten 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 working days.

## Schedule 1 Notices and Monitoring

### 1. Definitions

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Commencement Notice</b>	a notice of the Owner's intention to Commence Development on a specified date no earlier than 4 weeks and no later than 6 weeks after the date of service of the notice
<b>County Council Monitoring Fee</b>	the sum of £7,200 (Seven thousand and two hundred pounds) towards the County Council's costs of monitoring compliance with the provision of this deed
<b>Index (County Council Monitoring Fee)</b>	the All-in Tender Price Index as published by the Office for National Statistics or any other successor organisation
<b>Index (Monitoring Fee)</b>	the Retail Price Index as published by the Office for National Statistics or any other successor organisation
<b>Index (Quality Monitoring Fee)</b>	the All-in Tender Price Index as published by the Office for National Statistics or any other successor organisation
<b>Index-Linked</b>	index-linked in accordance with paragraphs 2.7, 2.13 and 2.17 of this schedule
<b>Monitoring Fee</b>	the sum of £500.00 (Five hundred pounds) per annum towards monitoring compliance with the



	provision of this deed and the Planning Permission
<b>Quality Monitoring Fee</b>	the sum of £90.00 (Ninety pounds) per house and £45.00 (Forty five pounds) per flat towards monitoring of the Development to ensure that the approach to design quality is delivered in accordance with details approved pursuant to the Planning Permission any Reserved Matters and pursuant to discharge of any conditions attached to the Planning Permission

## 2. Owner's covenants

The Owner covenants with the Council and the County Council as follows

### Progress of the Development

- 2.1. To serve the Commencement Notice on the Council and the County Council prior to the Commencement of Development
- 2.2. Not to Commence Development before the Commencement Notice is served on the Council and the County Council and the date specified in the Commencement Notice has arrived unless otherwise agreed in writing by the Council
- 2.3. To give the Council and the County Council notice in writing of
  - 2.3.1. the date of first Occupation of any Dwelling
  - 2.3.2. the date of Occupation of 20% of the Dwellings
  - 2.3.3. the date of Occupation of 25% of the Dwellings
  - 2.3.4. the date of Occupation of 40% of the Dwellings
  - 2.3.5. the date of Occupation of 50% of the Dwellings

2.3.6. the date of Occupation of 60% of the Dwellings

2.3.7. the date of Occupation of 75% of the Dwellings

2.3.8. the date of Occupation of 80% of the Dwellings

2.3.9. the date of Occupation of 100% of the Development

2.3.10. the date of Occupation of 75% of the Open Market Dwellings

- 2.4. To give the Council and the County the notices specified in 2.3.1 to 2.3.10 no later than within 10 Working Days of the date of Occupation specified in 2.3.1 to 2.3.10

#### **Monitoring Fee**

- 2.5. To pay the Monitoring Fee Index-Linked to the Council prior to the Commencement of Development and on each anniversary of the date of the Commencement of the Development until the Development is completed
- 2.6. Not to Commence the Development until the Owner has paid the Monitoring Fee to the Council pursuant to paragraph 2.5 above
- 2.7. The Monitoring Fee due and payable in paragraph 2.5 shall be increased using the following formula

$$\left( \begin{array}{l} \text{most recently published} \\ \text{index figure for the Index} \\ \text{(Monitoring Fee) when the} \\ \text{payment is due} \end{array} \right) \div \left( \begin{array}{l} \text{Quarterly index figure} \\ \text{last published before} \\ \text{the date of the Planning} \\ \text{Permission} \end{array} \right) \times \text{Monitoring Fee (or} \\ \text{portion if appropriate)}$$

- 2.8. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such the cessation of such Index and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the Council considers a comparable index

### **Quality Monitoring Fee**

- 2.9. To pay 25% (Twenty five percent) of the Quality Monitoring Fee Index-Linked to the Council prior to the Commencement of Development
- 2.10. Not to Commence the Development until the Owner has paid 25% (Twenty five percent) of the Quality Monitoring Fee to the Council
- 2.11. To pay the remaining 75% (Seventy five percent) of the Quality Monitoring Fee Index-Linked to the Council prior to the Occupation of 50% (Fifty percent) of all Dwellings approved by the Reserved Matters for the Development
- 2.12. Not to Occupy more than 50% (Fifty percent) of Dwellings approved by the Reserved Matters for the Development until the Owner has paid the remaining 75% (Seventy five percent) of the Quality Monitoring Fee to the Council
- 2.13. The Quality Monitoring Fee payment due and payable in paragraphs 2.9 and 2.11 shall be increased using the following formula

$$\begin{array}{l} \text{most recently published} \\ \text{index figure for the Index} \\ \text{(Quality Monitoring Fee)} \\ \text{when the payment is due} \end{array} \div \begin{array}{l} \text{Quarterly index figure} \\ \text{last published before} \\ \text{the date of the Planning} \\ \text{Permission} \end{array} \times \begin{array}{l} \text{Quality Monitoring} \\ \text{Fee (or portion if} \\ \text{appropriate)} \end{array}$$

- 2.14 In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such the cessation of such Index and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the Council considers a comparable index

### **County Council Monitoring Fee**

- 2.15. To pay the County Council Monitoring Fee Index-Linked to the County Council prior to the Commencement of Development

2.16. Not to Commence the Development until the Owner has paid the County Council Monitoring Fee Index-Linked to the County Council pursuant to paragraph 2.15 above

2.17. The County Council Monitoring Fee due and payable in paragraph 2.15 shall be Index-Linked using the following formula

$$\begin{array}{l} \text{most recently published} \\ \text{index figure for the Index} \\ \text{(County Council Monitoring Fee) when the payment is} \\ \text{due} \end{array} \div \begin{array}{l} \text{Quarterly index figure} \\ \text{published for Q1 2022} \end{array} \times \begin{array}{l} \text{County Council} \\ \text{Monitoring Fee (or} \\ \text{portion if appropriate)} \end{array}$$

2.18. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such the cessation of such Index and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the County Council considers a comparable index

## Schedule 2 Adult Social Care Contribution

### 1. Definitions

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Adult Social Care</b>	towards the provision of specialist housing provision in the Council's area which may include the adaption of community facilities, provision of technology and equipment to promote independence in the home, provision of multi-sensory facilities and changing places facilities in the Council's administrative area
<b>Adult Social Care Contribution</b>	the sum of £180.88 (One hundred and eighty pounds and eighty eight pence) multiplied by the number of Dwellings in the Development towards the capital costs of Adult Social Care
<b>Index</b>	the All-in Tender Price Index as published by the Office for National Statistics or any other successor organisation
<b>Index-Linked</b>	Index-linked in accordance with paragraph 2.4 of this schedule

### 2. Owner's Covenants

The Owner covenants with the Council and County Council as follows

- 2.1. To pay to the Council the Adult Social Care Contribution Index-Linked in the following instalments
  - 2.1.1. 50% of the Adult Social Care Contribution prior to the Occupation of 25% of the Dwellings and
  - 2.1.2. the balance of the Adult Social Care Contribution prior to the Occupation of 50% of the Dwellings
- 2.2. Not to Occupy more than 25% of the Dwellings until the payment referred to in paragraph 2.1.1 has been made
- 2.3. Not to Occupy more than 50% of the Dwellings until the payment referred to in paragraph 2.1.2 has been made
- 2.4. The Adult Social Care Contribution (or portion of such contribution as appropriate) which is payable in accordance with paragraph 2.1 shall be Index-Linked using the following formula

$$\left( \begin{array}{l} \text{The figure for the Index last} \\ \text{published before the date on} \\ \text{which the payment specified in} \\ \text{this deed is made} \end{array} \div \begin{array}{l} \text{The Index figure for} \\ \text{Q1 2022} \end{array} \right) \times \begin{array}{l} \text{Adult Social} \\ \text{Care} \\ \text{Contribution} \\ \text{(or portion as} \\ \text{appropriate)} \end{array}$$

- 2.5. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such the cessation of such Index and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the County Council considers a comparable index

### **3. The Council's covenants**

- 3.1. The Council agrees with the Owner that in the event that

3.1.1. the Adult Social Care Contribution has been paid in full to the Council and

3.1.2. the Adult Social Care Contribution is not spent or committed to be spent in full by the County Council within 10 years of the date of Occupation of 100% of the Development

3.1.3. following the expiry of that 10 year period the Council have received a written request for the return of any unspent or uncommitted Adult Social Care Contribution from the person who made the final instalment of the Adult Social Care Contribution

3.1.4. the Council have received written notification from the Owner of the date of Occupation of 100% of the Development

the Council will pay the balance of the Adult Social Care Contribution which is not committed to be spent to the person who paid the final instalment of the Adult Social Care Contribution

### **Schedule 3 Affordable Housing and Wheelchair Use Dwellings**

#### **1. Definitions**

In this schedule the following words shall unless have the following meaning in addition to the definitions provided in clause 1 of this deed:

<b>Affordable Dwellings</b>	<p>30% (Thirty percent) of the total number of Dwellings (rounded up to the nearest whole number) together with all associated vehicle and cycle parking and bin storage to be provided on the Affordable Housing Land of which:</p> <p>i) 10% (Ten percent) of the total number of Dwellings shall be provided as Affordable Rented Units and</p> <p>ii) 20% (Twenty percent) of the total number of Dwellings shall be provided as affordable home ownership products agreed with the Council with at least 10% (Ten percent) of the total number of Dwellings being provided as Shared Ownership Units</p> <p>and which are to be transferred to a Registered Provider of Social Housing in accordance with the provisions of this schedule</p>
<b>Affordable Housing Land</b>	<p>those parts of the Site identified and shown edged red on the Affordable Housing Plan which shall set be set aside for the Affordable Dwellings together with such rights and easements over Site to provide access to the Affordable Dwellings and such entrance ways corridors parking and storage areas and other</p>



	ancillary areas as are necessary for their enjoyment
<b>Affordable Housing Plan</b>	the affordable housing plan for the relevant Reserved Matters application as part of the Affordable Housing Scheme submitted pursuant to paragraphs 2.1 and 2.2 of this schedule
<b>Affordable Housing Scheme</b>	the scheme detailing the plot numbers the tenure the type the number of bedrooms the number of bedspaces the size of the bedrooms and the floorspace of the Affordable Dwellings and Wheelchair Use Dwellings for the relevant Reserved Matters application to be submitted and approved pursuant to paragraphs 2.1 and 2.2 of this schedule
<b>Affordable Rent</b>	chargeable rent at a level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location or the applicable local housing allowance rate for the Council's area (whichever is the lower)
<b>Affordable Rented Units</b>	those Affordable Dwellings identified as affordable rented units in the Affordable Housing Scheme and on the Affordable Housing Plan
<b>Designated Protected Area</b>	any area identified in and designated by The Housing (Right to Enfranchise) (Designated Protected Areas) (England) Order 2009
<b>Homes England</b>	the body known as The Homes and Communities Agency constituted pursuant to the Housing and Regeneration Act 2008 or any

	successor body performing a similar function carrying on substantially the same grant and regulatory making functions
<b>Homes England's East and South East Operating Area</b>	consists of the counties of Buckinghamshire Cambridgeshire East Sussex Essex Hertfordshire Kent Norfolk Suffolk Surrey and West Sussex and the unitary authorities of Brighton & Hove and Medway
<b>Long Lease</b>	a lease for a term of a minimum of 990 (Nine hundred and ninety) years at a service charge which (save as provided for in Schedule 20) relates only to the building within which the Affordable Rented Units and/or Shared Ownership Units are located and any curtilage and common parts (other than those which exclusively serve any other part of the Site) and which is unencumbered.
<b>Nominations Agreement</b>	a written agreement between the Council and the RPSH which deals with procedures for nominations into affordable housing and which prioritises eligible persons in housing need who are nominated by the Council
<b>Open Market Dwellings</b>	those Dwellings permitted under the Planning Permission which are not Affordable Dwellings
<b>Practical Completion</b>	the issue of a certificate of practical completion by the Owner's architect or in the event that the Affordable Dwellings are constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect

<b>Registered Provider of Social Housing (or RPSH)</b>	the Council in its capacity as housing authority or another provider of social housing registered with the Regulator of Social Housing who has signed a Nominations Agreement with the Council in its capacity as housing authority or any other provider of social housing otherwise approved by the Council
<b>Regulator of Social Housing (or RSH)</b>	the body known as the Regulator of Social Housing (or any successor to its functions) being the executive non-departmental public body that regulates registered providers of social housing
<b>Shared Ownership Lease</b>	a lease which accords with Homes England's model form of lease issued from time to time and contains a prohibition on staircasing beyond 80% where the Shared Ownership Unit is located in a Designated Protected Area
<b>Shared Ownership Units</b>	those Affordable Dwellings identified as shared ownership units in the Affordable Housing Scheme and on the Affordable Housing Plan
<b>Wheelchair Use Dwelling</b>	a Dwelling designed to meet the requirements of a category 3 – wheelchair user dwelling 'M4(3b)' as described in Approved Document M of the Building Regulations 2010 – 'Access to and use of buildings' to allow simple adaptation of the Dwelling to meet the needs of occupants who use wheelchairs or meet the needs of occupants who use wheelchairs

## **2. Owner's Covenants**

The Owner covenants with the Council as follows:

### **Provision of Affordable Housing and Wheelchair Use Dwellings**

- 2.1. to submit to the Council drafts of the Affordable Housing Scheme and the Affordable Housing Plan prior to the approval of each Reserved Matters
- 2.2. to obtain the joint Development Managers approval in writing for the Affordable Housing Scheme and the Affordable Housing Plan alongside the submission of each Reserved Matters
- 2.3. to provide 30% (Thirty percent) of the Dwellings (rounded up) as affordable housing with one third being Affordable Rented Units and two thirds being affordable home ownership products (with one third being Shared Ownership Units) in accordance with the Affordable Housing Scheme and the Affordable Housing Plan
- 2.4. to deliver a maximum of 7.5% (Seven and a half percent) of all Affordable Rented Units provided pursuant to the Planning Permission and Reserved Matters approval as Wheelchair Use Dwellings
- 2.5. to provide the Wheelchair Use Dwellings in accordance with the Affordable Housing Plan
- 2.6. to ensure that the Affordable Dwellings are not visually distinguishable from the Open Market Dwellings based on their external appearance unless expressly agreed otherwise in writing by the Development Managers
- 2.7. not to Occupy more than 75% (Seventy five percent) of the Open Market Dwellings in any Phase until
  - 2.7.1. all of the Affordable Dwellings in that Phase have achieved Practical Completion and have been made ready for residential Occupation and
  - 2.7.2. the freehold of the Affordable Housing Land in that Phase has been transferred to the Registered Provider of Social Housing (in the case of

flats a Long Lease at peppercorn ground rent may be granted instead if the Registered Provider of Social Housing agrees) and evidence of the transfer has been provided to the Council

### **3. Affordable Rented Units**

#### **3.1. not to Occupy the Affordable Rented Units other than**

3.1.1. by a tenant of a Registered Provider of Social Housing and

3.1.2. at an Affordable Rent

#### **3.2 not to let the Affordable Rented Units other than in accordance with the Nominations Agreement**

### **4. Shared Ownership Units**

#### **4.1. not to Occupy the Shared Ownership Units other than**

4.1.1. by a leaseholder of a Registered Provider of Social Housing and

4.1.2. under a Shared Ownership Lease which includes the following terms

4.1.2.1. an initial purchase share in the range of 10% - 75% equity dependent upon the ability of the purchasers to obtain finance

4.1.2.2. rent for the outstanding equity at an average over all the Shared Ownership Units taken together of 2.75% (but with a maximum for any individual Shared Ownership Unit of 3%) of the value of the outstanding equity and thereafter increasing in accordance with Homes England's guidance for rental increases on shared ownership homes

4.1.2.3. the ability but no obligation to purchase additional shares of equity of 1% increments for 15 (Fifteen) years and 5 or more at any one time at a valuation to be independently determined up to 100% or such other lower percentage as may be set out in the Shared Ownership Lease where the Shared Ownership Unit is located in a Designated Protected Area

- 4.2. not to lease the Shared Ownership Units unless they have first been marketed for a minimum period of three months in accordance with the latest published government guidance and eligibility criteria for potential leaseholders issued to RPSH's

## **5. General Provisions**

- 5.1. unless otherwise agreed by the Development Managers or directed by Homes England any proceeds derived from the sale of a Shared Ownership Unit or the proceeds from the right to buy or right to acquire an Affordable Rented Unit shall be used by the Registered Provider of Social Housing to re-invest in affordable housing within (in order of priority)

5.1.1. the local authority district of Ashford

5.1.2. then neighbouring councils sharing an administrative boundary with Ashford or comprising the same housing market area as Ashford borough

5.1.3. then elsewhere in the County of Kent and

5.1.4. then Homes England's East and South East Operating Area (but excluding the county of Kent and Rother District Council)

with priority given to the provision of new dwellings for Affordable Rent

## **6. Exclusions**

The obligations in this schedule are subject to the following

- 6.1. In the event that the Registered Provider of Social Housing is unable to lease an Affordable Rented Unit for not less than 6 (six) months and has not been able to identify a purchaser the Registered Provider of Social Housing shall be able to let that Affordable Rented Unit as an Shared Ownership Unit instead subject to the provisions of paragraph 3 of this schedule
- 6.2. Where the provisions of paragraph 6.1 above apply the Registered Provider of Social Housing shall notify the Council's Assistant Director Housing in writing

within 28 (Twenty Eight) days of any such unit being let as an Affordable Rented Unit

6.3. The Council shall not enforce the obligations in this schedule against

- (a) Any mortgagee or chargee of the Registered Provider of Social Housing or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the Affordable Housing Land (or part thereof) ("**Freehold Chargee**")
- (b) Any person (other than a Registered Provider of Social Housing) deriving title from a Freehold Chargee

PROVIDED THAT any such Freehold Chargee

- (i) shall prior to seeking to dispose of the Affordable Housing Land (or part thereof) serve a notice on the Council advising that a power of sale has become exercisable and of its intention to dispose of the Affordable Housing Land (or part thereof) and
- (ii) shall have used reasonable endeavours over a period of 12 weeks from the date the Council received written notice to complete the transfer of the Affordable Housing Land (or part thereof) to a Registered Provider of Social Housing or to the Council

6.4 For the avoidance of doubt if the transfer to the Registered Provider of Social Housing or the Council has not been completed within 12 weeks from the date the Council received the written notice set out in paragraph 6.3(b)(i) the Freehold Chargee (and any person deriving title from them except for a Registered Provider of Social Housing) shall be entitled to dispose of that part of the Affordable Housing Land free from the

obligations in this schedule which shall cease to apply to that part of the Affordable Housing Land (or part thereof)

6.5 Nothing in this paragraph requires the Freehold Chargee to act contrary to its legal duties or to sell that land for less than the amount due and outstanding in relation to the Affordable Housing Land (or part thereof) under the terms of the relevant security documentation up to the date the Freehold Chargee disposes of that land (including all accrued principal monies, interest, costs and expenses)

6.6 In the event that a mortgagee or chargee of a leaseholder of a Shared Ownership Unit or any receiver (including an administrative receiver) appointed by such mortgagee or chargee ("**the Leasehold Chargee**") seeks to enforce its security in relation to the Shared Ownership Unit it shall EITHER

(a) (i) give written notice to the Development Managers that a power of sale has become exercisable in respect of the lease of that Shared Ownership Unit and that the Leasehold Chargee shall be exercising the right to staircase to 100% ownership under the lease of that Shared Ownership Unit and

(iii) then exercise the right to staircase to 100% ownership under the lease of that Shared Ownership Unit and sell it free from the obligations in this Schedule which shall cease to apply to that Shared Ownership Unit

OR

(b) (i) give written notice to the Development Managers that the power of sale of the lease of a Shared Ownership Unit has become exercisable and

(ii) use reasonable endeavours to complete the disposal of the lease of that Shared Ownership Unit to a person who qualifies for occupation of a Shared Ownership Unit under the Council's current eligibility



criteria for the leaseholder of such a unit ("**Qualifying Occupant**") within a period of 12 weeks from the date the Development Managers received the written notice under paragraph (b) (i) and

- (iii) If the Leasehold Chargee has not completed the transfer of the lease of the Shared Ownership Unit to a Qualifying Occupant within 12 weeks from the date the Development Managers received the written notice in paragraph (b) (i) the Leasehold Chargee (and any person deriving title from them except a Qualifying Occupant who has exchanged contracts with the Leasehold Chargee within the 12 week period referred to) shall be entitled to dispose of the lease of that Shared Ownership Unit free from the obligations in this schedule which shall cease to bind the proprietor of the lease to that Shared Ownership Unit

Nothing in this paragraph 6.6 requires the Leasehold Chargee to act contrary to its legal duties

**6.7 The covenants in this schedule shall cease to apply to**

- 6.7.1** a tenant of an Affordable Rented Unit where that unit has been purchased by a tenant under the right to buy or the right to acquire or under the voluntary rights to purchase pursuant to the terms of the Housing and Planning Act 2016
- 6.7.2** the leaseholder of a Shared Ownership Unit where the leaseholder (or the Leasehold Chargee enforcing its security) has staircased to 100% ownership under their lease

## Schedule 4 Allotments Contribution

### 1. Definitions

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Allotments</b>	towards qualitative improvements to existing and/or proposed allotments and/or community gardens within the Chilmington Green Site and/or provision of new additional and/or improved allotments at Cryol Road and/or Beaver Field to a value of £168,990.00 (One hundred and sixty eight thousand nine hundred and ninety pounds)
<b>Allotments Contribution</b>	the sum calculated by multiplying the number of Dwellings in the Development by  (1) £258.00 (Two hundred and fifty eight pounds) towards the capital costs of the Allotments and  (2) £66.00 (Sixty six pounds) towards the maintenance of the Allotments
<b>Allotments Scheme</b>	a scheme:  i. showing by way of a scale plan at not less than 1:1250 the proposed areas and locations of the Allotments across the Site and/or the Chilmington Green Site  ii. detailing how the Allotments shall be laid out constructed and delivered and thereafter maintained and managed
<b>Index</b>	the General Building Cost Index as published by the Building Cost Information Service on behalf of

	the Royal Institution of Chartered Surveyors or any successor organisation
<b>Index-Linked</b>	index-linked in accordance with this paragraph 2.3 of this schedule
<b>Final Certificate</b>	a certificate issued by the Council when it is satisfied that the Allotments have been provided laid out and landscaped in accordance with the approved Allotments Scheme

## **2. Owner's Covenants**

### **2.1 The Owner covenants as follows**

- 2.1.1.** to submit to the Council for approval the Allotments Scheme prior to the Occupation of 50% of the Dwellings and not to Occupy more than 50% of the Dwellings until the Allotments Scheme has been submitted to the Council
- 2.1.2.** to provide the Allotments in accordance with the approved Allotments Scheme prior to the Occupation of more than 75% of the Dwellings and not to Occupy more than 75% of the Dwellings until the Allotments have been provided in accordance with the approved Allotments Scheme

### **2.2. Or**

- 2.2.1.** to notify the Council in writing prior to the Occupation of 50% of the Dwellings of its intention to pay to the Council the Allotments Contribution; and
- 2.2.2.** to pay to the Council the Allotments Contribution Index-Linked prior to the Occupation of 75% of the Dwellings and not to Occupy more than 75% of the Dwellings until the payment has been made

### **2.3. The Allotments Contribution (or portion of such contribution as appropriate) which may be payable in accordance with paragraph 2.2 shall be Index-Linked using the following formula**

$$\left( \begin{array}{l} \text{The figure for the Index last} \\ \text{published before the date on} \\ \text{which the payment specified in} \\ \text{this deed is made} \end{array} \div \begin{array}{l} \text{Index figure for} \\ \text{quarter 3 of 2012} \\ \text{(namely 309.8)} \end{array} \right) \times \begin{array}{l} \text{Allotments} \\ \text{Contribution} \\ \text{(or portion as} \\ \text{appropriate)} \end{array}$$

- 2.4. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such cessation and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the Council considers to be comparable replacement index.
- 2.5. In the event that the Developer chooses to provide the Allotments in accordance with paragraph 2.1.2 of this Schedule:
- 2.5.1. Unless otherwise agreed in writing with the Council not to cause or permit the Occupation of more than 75% of the Dwellings until the Allotments have been laid out provided and landscaped in accordance with the approved Allotments Scheme and a Final Certificate for the Allotments has been issued by the Council.
- 2.5.2. After the Allotments have been provided laid out and/or landscaped in accordance with the approved Allotments Scheme to apply to the Council in writing requesting issue of the Final Certificate in respect of the Allotments
- 2.5.3. On receipt of the written request referred to in paragraph 2.5.2 of this schedule the Council may carry out an inspection of the Allotments within twenty (20) Working Days of receipt and if after inspection of the Allotments and the Council considers that the Allotments have been satisfactorily provided laid out and landscaped in accordance with the approved Allotments Scheme the Council may issue the Final Certificate in respect of the Allotments within twenty (20) Working Days of carrying out the inspection

2.5.4. If after inspection of the Allotments the Council considers that the Allotments have not been provided laid out and landscaped satisfactorily in accordance with the approved Allotments Scheme the Council may notify the Owner of the outcome of the inspection within twenty (20) Working Days of carrying out the inspection and the Owner shall at its own expense rectify any deficiencies and carry out such works or operations as may reasonably be required by the Council to bring the Allotments up to the standard required by the approved Allotments Scheme and the procedures referred to in paragraphs 2.5.2 to 2.5.4 of this Schedule may be repeated until a Final Certificate has been issued in respect of the Allotments

2.5.5. From the date of issue of a Final Certificate for the Allotments the Owner shall make the Allotments available for use by the public in accordance with the approved Allotments Scheme for the lifetime of the Development

### **3. Council's covenants**

3.1. The Council agrees with the Owner that in the event that

3.1.1. the Allotments Contribution has been paid in full to the Council and

3.1.2. that the Allotments Contribution is not expended or committed to be expended in full by the Council within 10 years of the date of 100% Occupation of the Development and

3.1.3. following the expiry of that 10 year period the Council has received a written request from the person who made the final instalment of the Allotments Contribution and

3.1.4. the Council has received a written notification from the Owner of the date of Occupation of 100% of the Dwellings

the Council will pay the balance of the Allotments Contribution which is not committed to be expended within 10 years of the date of 100% Occupation of

the Development to the person who paid the final instalment of Allotments  
Contribution

## Schedule 5 Amenity Open Space Land

### 1. Definitions

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Amenity Open Space Land</b>	all those residual parts of the Site or Phase (as may be applicable) comprising verges and all areas not privately owned in and around Dwellings but excluding any public open space/play space provided and laid out in accordance with any Reserved Matters approval
<b>Amenity Open Space Land Scheme</b>	<p>a scheme:</p> <ul style="list-style-type: none"> <li>i. showing by way of a scale plan at not less than 1:1250 the proposed areas and locations of the Amenity Open Space Land across the Site or Phase (as may be applicable) and</li> <li>ii. detailing how the Amenity Open Space Land shall be laid out constructed and delivered and thereafter maintained managed and renewed including provision and timing for grass cutting, pruning of trees and shrubs and hedges, removal of weeds and dead plant material, removal of rubbish graffiti debris and litter, maintenance of any walls and fences and footpaths and boundaries in good condition, replacement of any plants that may have died or are otherwise removed and all other activities and</li> <li>iii. which sets out the detailed technical specification of all the works to be carried out on</li> </ul>

	<p>the Amenity Open Space Land (including a soft landscaping plan and levels)</p> <p>iv. which sets out the estimated maintenance management and renewal costs of the Amenity Open Space Land and details of the ongoing funding of the Management Body to ensure such maintenance/management / renewal and</p> <p>v. setting out a mechanism for the review by the Council periodically if necessary in consultation with the Management Body and where necessary the amendment of the Approved Amenity Open Space Land Scheme if it is deemed necessary to ensure that the Amenity Open Space Land is fit to use for its intended purpose and</p> <p>which scheme is to be approved in writing by the Council pursuant to paragraph 2.1 of this schedule and may be amended as agreed in writing between the Owner and the Council from time to time</p>
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1.2 The requirements and obligations in this schedule should be read with and construed fully in accordance with all those detailed obligations in schedule 20 of this deed

## 2. Owner's Covenants

The Owner covenants with the Council as follows

- 2.1. To submit the Amenity Open Space Land Scheme to the Council for approval prior to Substantial Implementation and not to allow Substantial Implementation to take place until the Council have approved the Amenity Open Space Scheme (the '**Approved Amenity Open Space Land Scheme**')



- 2.2. To provide the relevant Amenity Open Space Land for the relevant Phase in accordance with the Approved Amenity Open Space Land Scheme prior to Occupation of 50% of the Dwellings in the relevant Phase and not to Occupy more than 50% of the Dwellings in the relevant Phase until the Amenity Open Space Land has been provided

## **Schedule 6 Art and Creative Industries Contribution**

### **1. Definitions**

- 1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Art and Creative Industries Contribution</b>	the sum calculated by multiplying the number of Dwellings by £338.40 (three hundred and thirty eight pounds and forty pence) to be applied in the event of receipt towards an Art and Creative Industries Purpose
<b>Art and Creative Industries Purpose</b>	the provision of public art or the delivery / enhancement of a facility proposed by the Management Company as approved by the Council in accordance with the Creative Chilmington Strategy 2019 agreed by the Chilmington Management Organisation
<b>Index</b>	the General Building Cost Index as published by the Building Cost Information Service on behalf of the Royal Institution of Chartered Surveyors or any successor organisation
<b>Index-Linked</b>	index-linked in accordance with this paragraph 2.3 of this schedule

### **2. Owner's Covenants**

The Owner undertakes in favour of the Council as follows

- 2.1. To pay the Art and Creative Industries Contribution in full to the Council prior to the Occupation of 75% (Seventy five percent) of the Dwellings

- 2.2. Not to Occupy or permit the Occupation of more than 75% (Seventy five percent) of the Dwellings until the payment referred to in paragraph 2.1 has been paid in full to the Council
- 2.3. To pay the Art and Creative Industries Contribution payable in accordance with paragraph 2.1 Index-Linked using the following formula

The figure for the Index last published before the date on which the payment specified in this deed is made

$$\div \text{Index figure for quarter 1 of 2019 (namely 355.6)} \times \text{Art and Creative Industries Contribution}$$

- 2.4 In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such cessation and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the Council considers to be comparable replacement index

### 3. Council's covenants

- 3.1 The Council agrees with the Owner that in the event that

3.1.1 the Art and Creative Industries Contribution has been paid in full to the Council and

3.1.2 the Art and Creative Industries Contribution paid has not been committed in full towards the Art and Creative Industries Purpose within 10 years of the date of 100% Occupation of the Development and

3.1.3 following the expiry of that 10 year period the Council has received a written request from the person who paid the Art and Creative Industries Contribution and

3.1.3 the Council has received written notification from the Owner of the

**date of Occupation of 100% of the Dwellings**

**the Council will repay the balance of the Art and Creative Industries Contribution not committed to be applied towards the Art and Creative Industries Purpose within 10 years of the date of 100% Occupation of the Development to the person who paid the Art and Creative Industries Contribution**

## Schedule 7 Children's and Young People's Play Space

### 1. Definitions

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Children's and Young People's Play Space</b>	a minimum of 0.79 hectares (including buffer land) comprising play equipment and facilities to be delivered on Site or Phase (as may be applicable) pursuant to the Reserved Matters approvals and in accordance with the approved Children's and Young People's Play Space Scheme. The maximum capital cost ('Children's and Young People's Play Space Cap') of providing the Children's and Young People's Play Space is £354,355 Index Linked.
<b>Children's and Young People's Play Space Scheme</b>	<p>a scheme:</p> <ul style="list-style-type: none"> <li>i. showing by way of a scale plan at not less than 1:1250 the proposed areas and locations of the Children's and Young People's Play Space on the Site or Phase (as may be applicable) and</li> <li>ii. detailing how the Children's and Young People's Play Space shall be laid out constructed and delivered and thereafter maintained managed and renewed including provision and timing for removal of rubbish graffiti debris and litter, maintenance of any walls and fences and footpaths and boundaries in good condition, are otherwise removed and all other activities, and</li> </ul>

	<p>iii. which sets out the detailed technical specification of all the works to be carried out on the Children's and Young People's Play Space</p> <p>iv. which sets out the estimated maintenance management and renewal costs of the Children's and Young People's Play Space and details of the ongoing funding of the Management Body to ensure such maintenance/management/renewal and</p> <p>v. setting out a mechanism for the review by the Council in consultation with the Management Body and where necessary the amendment of the Approved Children's and Young People's Play Space Scheme if it is deemed necessary to ensure that the Children's and Young People's Play Space is fit to use for its intended purpose</p>
<b>Index</b>	the General Building Cost Index as published by the Building Cost Information Service on behalf of the Royal Institution of Chartered Surveyors or any successor organisation or
<b>Index-Linked</b>	index-linked in accordance with this paragraph 3 of this schedule

1.2 The requirements and obligations in this schedule should be read with and construed fully in accordance with all those detailed obligations in schedule 20 of this deed

## 2. Owner's Covenants

The Owner covenants with the Council as follows

- 2.1. To submit the Children's and Young People's Play Space Scheme to the Council for approval prior to Substantial Implementation
- 2.2. not to allow Substantial Implementation to take place beyond Substantial Implementation until the Council have approved the Children's and Young People's Play Space Scheme (the "**Approved Children's and Young People's Play Space Scheme**")
- 2.3 To provide the Children's and Young People's Play Space for the relevant Phase in accordance with the Approved Children's and Young People's Play Space Scheme prior to Occupation of 50% of the Dwellings in the relevant Phase and not to Occupy more than 50% of the Dwellings in the relevant Phase until the Children's and Young People's Play Space has been provided
- 2.4 The Children's and Young People's Play Space Cap shall be index-linked using the following formula:

$$\left( \begin{array}{l} \text{The figure for the Index last} \\ \text{published before the date on} \\ \text{which the Children's and} \\ \text{Young People's Play Space} \\ \text{Scheme is approved} \end{array} + \begin{array}{l} \text{Index figure for the} \\ \text{date of this deed} \end{array} \right) \times \begin{array}{l} \text{Children's and} \\ \text{Young People's} \\ \text{Play Space Cap} \end{array}$$

## **Schedule 8 Community Building Contribution**

### **1. Definitions**

1.1 In this schedule the following words shall unless have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Community Building</b>	towards enhancement of an existing / proposed facility or towards the construction of an additional facility within the Chilmington Green Site
<b>Community Building Contribution</b>	the sum calculated by multiplying the number of Dwellings in the Development by  (1) £1,870.83 (One thousand eight hundred and seventy pounds eighty three pence) towards the capital costs of the Community Building and  (2) £528.33 (Five hundred and twenty eight pounds thirty three pence) towards the maintenance thereof
<b>Index</b>	the General Building Cost Index as published by the Building Cost Information Service on behalf of the Royal Institution of Chartered Surveyors or any successor organisation
<b>Index-Linked</b>	index-linked in accordance with this paragraph 2.4 of this schedule

### **2. Owner's Covenants**

The Owner covenants as follows

2.1. To pay to the Council the Community Building Contribution Index-Linked in the following instalments



- 2.1.1. 50% of the Community Building Contribution prior to the Occupation of 50% of the Dwellings and
- 2.1.2. the balance of the Community Building Contribution prior to the Occupation of 75% of the Dwellings
- 2.2. Not to Occupy more than 50% of the Dwellings until the payment referred to in paragraph 2.1.1 has been made
- 2.3. Not to Occupy more than 75% of the Dwellings until the payment referred to in paragraph 2.1.2 has been made
- 2.4. The Community Building Contribution (or portion of such contribution as appropriate) which is payable in accordance with paragraph 2.1 shall be Index-Linked using the following formula

The figure for the Index last ( published before the date on which the payment specified in this deed is made	+ Index figure for quarter 1 of 2019 (namely 355.6)	Community Building × Contribution (or portion as appropriate)
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- 2.5. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such cessation and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the Council considers to be comparable replacement index

### **3. Council's covenants**

- 3.1. The Council agrees with the Owner that in the event that
  - 3.1.1. the Community Building Contribution has been paid in full to the Council and
  - 3.1.2. that the Community Building Contribution is not expended or committed to be expended in full by the Council within 10 years of the date of 100% Occupation of the Development and

3.1.3. following the expiry of that 10 year period the Council has received a written request from the person who made the final instalment of the Community Building Contribution and

3.1.4. the Council has received a written notification from the Owner of the date of Occupation of 100% of the Dwellings

the Council will pay the balance of the Community Building Contribution which is not committed to be expended within 10 years of the date of 100% Occupation of the Development to the person who paid the final instalment of Community Building Contribution

## **Schedule 9 Community Learning Contribution**

### **1. Definitions**

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Community Learning</b>	the provision of additional equipment and resources for the new learners at Adult Education Centres ("AECs") and outreach provision within the Council's administrative area which may include Ashford Gateway and Homewood School AECs
<b>Community Learning Contribution</b>	means the sum calculated by multiplying the number of Dwellings in the Development by £34.21 (Thirty four pounds and twenty one pence) towards Community Learning
<b>Index</b>	the All-in Tender Price Index as published by the Office for National Statistics or any other successor organisation
<b>Index-Linked</b>	index-linked in accordance with paragraph 2.4 of this schedule

### **2. Owner's Covenants**

The Owner covenants with the Council and the County Council as follows

2.1. To pay to the Council the Community Learning Contribution Index-Linked in the following instalments

- 2.1.1. 50% of the Community Learning Contribution Index-Linked prior to the Occupation of 25% of the Dwellings and
- 2.1.2. the balance of the Community Learning Contribution Index-Linked prior to the Occupation of 50% of the Dwellings
- 2.2. Not to Occupy more than 25% of the Dwellings until the payment referred to in paragraph 2.1.1 has been made
- 2.3. Not to Occupy more than 50% of the Dwellings until the payment referred to in paragraph 2.1.2 has been made
- 2.4. The Community Learning Contribution (or portion of such contribution as appropriate) which is payable in accordance with paragraph 2.1 shall be Index-Linked using the following formula

$$\left( \begin{array}{l} \text{The figure for the Index last} \\ \text{published before the date on} \\ \text{which the payment specified in} \\ \text{this deed is made} \end{array} + \begin{array}{l} \text{The Index figure for} \\ \text{Q2 2022} \end{array} \right) \times \begin{array}{l} \text{Community} \\ \text{Learning} \\ \text{Contribution} \\ \text{(or portion as} \\ \text{appropriate)} \end{array}$$

- 2.5. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such the cessation of such Index and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the County Council considers a comparable index

### **3. The Council's Covenants**

- 3.1. The Council agrees with the Owner that in the event that
  - 3.1.1. the Community Learning Contribution has been paid in full to the Council and
  - 3.1.2. the Community Learning Contribution is not spent or committed to be spent in full by the County Council within 10 years of the date of Occupation of 100% of the Development and

3.1.3. following the expiry of that 10 year period the Council have received a written request for the return of any unspent or uncommitted Community Learning Contribution from the person who made the final instalment of the Community Learning Contribution

3.1.4. the Council have received written notification from the Owner of the date of Occupation of 100% of the Development

the Council will pay the balance of the Community Learning Contribution which is not committed to be spent to the person who paid the final instalment of the Community Learning Contribution

## Schedule 10 Health Care Contribution

### 1. Definitions

1.1 In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1 of this deed

<b>Health Care</b>	towards the refurbishment reconfiguration and/or extension of Woodchurch Surgery and/or Headcorn Surgery and/or towards new general practice premises in the area
<b>Health Care Contribution</b>	means the sum calculated by multiplying <ol style="list-style-type: none"> <li>(1) the number of 1-bed Dwellings in the Development by £504 (five hundred and four pounds) and</li> <li>(2) the number of 2-bed Dwellings in the Development by £720 (seven hundred and twenty pounds) and</li> <li>(3) the number of 3-bed Dwellings in the Development by £1008 (one thousand and eight pounds) and</li> <li>(4) the number of 4-bed Dwellings in the Development by £1260 (one thousand and two hundred and sixty pounds) and</li> <li>(5) the number of 5-bed or more Dwellings in the Development by £1728 (one thousand seven hundred and twenty eight pounds)</li> </ol>
<b>Index</b>	shall means the All-In Tender Price Index as published by the Building Cost Information Service on behalf of the Royal Institution of Chartered Surveyors or any successor organisation

<b>Index-Linked</b>	index-linked in accordance with paragraph 2.4 of this schedule
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## **2. Owner's Covenants**

The Owner covenants with the Council as follows

**2.1. To pay to the Council the Health Care Contribution Index-Linked in the following instalments**

**2.1.1. 50% of the Health Care Contribution prior to the Occupation of 25% of the Dwellings and**

**2.1.2. the balance of the Health Care Contribution prior to the Occupation of 50% of the Dwellings**

**2.2. The Owner will not Occupy more than 25% of the Dwellings until the payment referred to in paragraph 2.1.1 has been made**

**2.3. The Owner will not Occupy more than 50% of the Dwellings until the payment referred to in paragraph 2.1.2 has been made**

**2.4. The Health Care Contribution (or portion of such contribution as appropriate) which is payable in accordance with paragraph 2.1 shall be Index-Linked using the following formula**

$$\left( \begin{array}{l} \text{The figure for the Index last} \\ \text{published before the date on} \\ \text{which the payment specified} \\ \text{in this deed is made} \end{array} \right) + \left( \begin{array}{l} \text{Quarterly index} \\ \text{figure last published} \\ \text{before the date of} \\ \text{the Planning} \\ \text{Permission} \end{array} \right) \times \left( \begin{array}{l} \text{Health Care} \\ \text{Contribution} \\ \text{(or portion as} \\ \text{appropriate)} \end{array} \right)$$

**2.5. In the event that the Index ceases to be published the above formula shall be used to calculate the indexation increase until such the cessation of such Index and the indexation increase thereafter shall be calculated in a similar manner using such replacement index as the Council considers a comparable index**

### **3. The Council's covenants**

#### **3.1. The Council agrees with the Owner that in the event that**

**3.1.1. the Health Care Contribution has been paid in full to the Council and**

**3.1.2. the Health Care Contribution is not passed or committed to be passed in full by the Council to the ICB within 10 years of the date of Occupation of 100% of the Development**

**3.1.3. following the expiry of that 10 year period the Council and the ICB have received a written request from the person who made the final instalment of the Health Care Contribution and**

**3.1.4. The Council has received written notification from the Owner of the date of Occupation of 100% of the Development**

**the Council will pay the balance of the Health Care Contribution which is not committed to be passed to the ICB within 10 years of the date of Occupation of 100% of the Development to the person who paid the final instalment of the Health Care Contribution**