

**DATED 2021**

**ASHFORD BOROUGH COUNCIL**

**and**

**TELEREAL PROPERTY DEVELOPMENTS 1 LIMITED**

**with unilateral obligations given to**

**THE KENT COUNTY COUNCIL**

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**DEED OF PLANNING OBLIGATION**

**Including  
Pooling and payment of Deferred Contributions**

Under Section 106 Town and Country Planning Act 1990  
relating to land at

**Former Wye College Buildings High Street Wye Ashford TN25 4AH**

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Terry Mortimer, Solicitor  
Corporate Director Law and Governance  
Ashford Borough Council  
Civic Centre  
Tannery Lane  
Ashford  
Kent TN23 1PL  
Legal Services Ref: DL/DS54/0805  
Planning Application Ref: 17/00567/AS (full)

Appeal: APP/E2205/W/20/4000703 (full) (Appeal A)

THIS DEED is made the

day of

2021

**BETWEEN:**

(1) **ASHFORD BOROUGH COUNCIL** of Civic Centre Tannery Lane Ashford Kent TN23 1PL (“**the Council**”); and

(2) **TELEREAL PROPERTY DEVELOPMENTS 1 LIMITED** (Company registration number 09615697) whose registered office address is at 140 London Wall London United Kingdom EC2Y 5DN (“**the Freeholder**”)

with unilateral obligations given to

(3) **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ (“**the County Council**”)

**1. DEFINITIONS AND INTERPRETATION**

1.1 Save as herein provided the Interpretation Act 1978 shall apply to this deed as if this deed is an Act of Parliament

1.2 In this deed the following words and expressions shall unless the context otherwise requires have the meanings given opposite them and the words and expressions set out in paragraph 1 of schedule 3 shall unless the context otherwise requires have the meanings given opposite them therein:

**WORDS AND EXPRESSIONS**

**MEANINGS**

**Act of Parliament**

a statute

**Affordable Housing Contribution**

the sum of £nil to be applied in the event of receipt towards the provision by the **Council** of affordable housing outside of the **Development** equivalent to the provision of thirty five percent (35%) by number of **Dwellings** within the **Development** due to the application of vacant building credit for the increase in floorspace on the **Site** from the **Development** as approved by the **Full Permission**

**Allotments Contribution**

the sum of £12,880 (twelve thousand eight hundred and eighty pounds) to be applied in the event of receipt towards the provision and maintenance of land within the Parish of Wye for use as allotments

**Appellant**

**TELEREAL TRILLIUM LIMITED** (Company registration number 06240976) whose registered office is at 140 London Wall London EC2Y 5DN

**Cemetery Contribution**

the sum of £9,283.25 (nine thousand two

hundred and eighty three pounds and twenty five pence) to be applied in the event of receipt towards the construction of an extension to Churchfield burial ground

**Clinical Commissioning Group** **NHS ASHFORD CLINICAL COMMISSIONING GROUP** of Protea House Marine Parade Dover Kent CT17 9HQ or any successor health authority for the area in which the **Site** is situated (including any agent or any other person appointed or nominated in writing to act for it for the purposes of this deed)

**Clinical Commissioning Group Contribution** the sum of £37,440 (thirty seven thousand four hundred and forty pounds) to be applied in the event of receipt towards the enhancement and increased capacity of Wye Surgery Oxentum Road Wye Kent TN25 5AY within the **Clinical Commissioning Group**

**Commencement of Construction** the commencement of the carrying-out of the part of the **Development** comprising the works of construction (including the excavation of foundations or routes for services or any piling or laying of services) of the two (2) new Dwellings comprising part of the **Development** within the Site (and related expressions such as “**Commence Construction**” and “**Commencement of Construction Notice**” shall be construed accordingly)

**Commencement Notice** a notice in writing by the **Current Owner/Owner** to the **Council** and the **County Council** announcing its intention to **Commence Development** on a specified date

**Commencement of Development** the carrying out of a **Material Operation** pursuant to the **Planning Permission** or the carrying out of a **Material Operation** which would constitute the beginning of the **Development** for the purposes of section 56(4) of the **Planning Act** but for non-compliance with any condition on a **Planning Permission** (and the related expression as “**Commence the Development**” shall be construed accordingly)

**Contributions – Pooled** the **Council Contributions** and the **County Council Contributions** and the **Clinical Commissioning Group Contribution** together

<b>Council Contributions</b>	<p>the <b>Affordable Housing Contribution</b></p> <p>the <b>Allotments Contribution</b></p> <p>the <b>Cemetery Contribution</b></p> <p>the <b>Informal/Natural Green Space Contribution</b></p> <p>the <b>Off Site Equipped Open Space And Play Facilities Contribution</b></p> <p>the <b>Outdoor Sports Contribution</b></p>
<b>County Council Contributions</b>	<p>the <b>Library Contribution</b></p> <p>the <b>Primary Education Contribution</b></p> <p>the <b>Secondary Education Contribution</b></p>
<b>Current Owner</b>	the <b>Freeholder</b>
<b>Development</b>	the development carried out pursuant to the Planning Permission granted in accordance with the <b>Appeal</b> and described in schedule 1 Part A or any variation under section 73 of the Planning Act or any non-material modification under section 96A of the Planning Act
<b>Disposal</b>	the completion of the first grant of a freehold commonhold or long leasehold interest in respect of (a) one or more <b>Dwelling(s)</b> fit for residential <b>Occupation</b> following the issue of a National Home-Building Council cover note or equivalent new homes or refurbishment warranty or architect's certificate or (b) any parking space on the Site or (c) any other part of the Site until no ownership interest therein remains (and " <b>Disposed of</b> " shall be construed accordingly)
<b>Dwellings</b>	<p>the forty (40) residential units within the Development comprising</p> <p>2 x 1-bed flats</p> <p>20 x 2-bed flats</p>

5 x 3-bed flats

8 x 2-bed houses

3 x 3-bed houses

1 x 4-bed house and

1 x 5-bed house to be constructed on the **Site** in accordance with the **Planning Permission** (and "**Dwelling**" shall be construed accordingly)

**Expert**

an independent chartered surveyor chartered engineer chartered town planner barrister or chartered accountant or other appropriately qualified person of not less than ten (10) years' post-qualification experience in the subject matter of the **Relevant Dispute** in question

**Index Linked**

adjusted in accordance with the provisions of clause 6 (and "**Index Linking**" shall refer to the process of such adjustment)

**Informal/Natural Green Space Contribution**

the sum of £14,186.38 (fourteen thousand one hundred and eighty six pounds and thirty eight pence) to be applied in the event of receipt towards either the leasing of additional land adjacent to Lady Joanna Thornhill Endowed Primary School Bridge Street Wye Ashford TN25 5EA (including all necessary preliminary costs, site clearance, design and implementation of infrastructure works and/or Parish Council identified additional quality improvements to the informal and natural facilities on the Wye Village Hall and recreation ground and green spaces, Bridge Street Wye Ashford TN25 5EA and/or the provision of informal recreation and natural areas on land alongside formal playing pitches and tennis courts in Bridge Street Recreation Ground and/or the provision of a surfaced area beside the MUGA at the Wye Village Hall and recreation ground and green spaces, bridge Street Wye Ashford TN25 5EA for informal all-weather games activities, skills training and socialising

**Initiation**

the beginning of the **Development** by 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**) and the phrase “**Initiate**” shall be construed accordingly

**Interest**

interest at four percentage (4%) points above the Bank of England base rate from time to time

**Joint Development Control Managers**

either one of those persons who from time to time hold (or act in) the posts of Development Management manager and Strategic Development and Delivery 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 the **Planning Permission**

**Land A**

the land described in paragraph 1 of schedule 1 Part B to this deed

**Land B**

the land described in paragraph 2 of schedule 1 Part B to this deed

**Library Contribution**

the sum of £1920.63 (one thousand nine hundred and twenty pounds and sixty three pence) (£48.02 x the Dwellings) to be applied in the event of receipt as a contribution towards additional book stock at Wye Library 6 Upper Bridge Street Wye Ashford TN25 5AF

**Material Operation**

material operation within the meaning of Section 56(4) of the **Planning Act** other than the following:

- (a) demolition and/or site clearance
- (b) earth works
- (c) archaeological investigations and works
- (d) the assessment of contamination
- (e) remedial action in respect of any contamination
- (f) the erection of fencing or other means of enclosure for site security
- (g) the erection of a site compound or site office
- (h) provision of temporary services

- (i) ecological investigation survey and mitigation measures
- (j) temporary sales presence including the construction and fitting out of any sales offices or associated facilities

**Monitoring Fee**

the sum of £1,000 (one thousand pounds) **Index Linked** to be applied in the event of receipt towards the **Council's** costs of monitoring the **Development** and checking compliance with and reporting upon the provisions of this deed and the **Planning Permission**

**Occupation Notice**

a notice to the Council of the intended date on which the total number of **Disposals** and/or **Occupations of Dwellings** will reach any of the numbers listed in paragraph 3.1 of schedule 2 (specifying the number in question)

**Occupy**

occupy or cause or permit occupation of any **Dwelling** for the first time other than occupation for the purpose of construction fitting out security or marketing or repair (and related expressions such as "**Occupation/s**" and "**Occupied**" shall be construed accordingly)

**Off-Site Equipped Open Space and Play Facilities Contribution**

the sum of £21,214.19 (twenty one thousand two hundred and fourteen pounds and nineteen pence) to be applied in the event of receipt towards (i) the acquisition of additional land adjacent to The Lady Joanna Thornhill Endowed Primary School playing field, clearance, design and implementation of infrastructure works and/or the improvement of existing play facilities to facilitate the provision of outdoor play facilities for 0 – 8 year olds and integrated accessible play equipment in the design for children with disabilities and special needs and/or (ii) the provision of additional or replacement adventure play/natural play equipment for 8 – 13 year olds at the village hall recreation ground

**Outdoor Sports Contribution**

the sum of £51,940.44 (fifty one thousand nine hundred and forty pounds and forty four pence) to be applied in the event of receipt towards an extension to the existing recreation ground off Bridge Street Wye

**Owner**

the **Current Owner** and any successors in title to its interests in **Land B** and all persons

<b>Parish Council</b>	<p>deriving any interest in <b>Land B</b> from or under it</p> <p>Wye with Hinxhill Parish Council Parish Council office Unit 2B Briar Close Bramble Lane Wye Ashford Kent TN25 5HB</p>
<b>Pay Regardless Contribution</b>	the sum of £10,000 (ten thousand pounds) to be applied towards the resurfacing of the AE110 footpath along the edge adjacent to the allotments up to Olantigh Road
<b>Planning Act</b>	The Town and Country Planning Act 1990 (as amended)
<b>Planning Application</b>	the application for planning permission for the <b>Development</b> validated by the <b>Council</b> under reference number 17/00567/AS (FULL)
<b>Planning Committee Report</b>	the published report (including any published written and public oral update reports) by the <b>Joint Development Control Managers</b> to the <b>Council's</b> planning committee meeting referred to in clause 2.5
<b>Planning Permission</b>	a full planning permission subject to conditions granted by the Planning Inspectorate pursuant to the <b>Appeal</b> (" <b>Full Permission</b> "), or any variations of those conditions under section 73 of the Planning Act or any non-material amendment under section 96A of the Planning Act
<b>Primary Education Contribution</b>	<p>the sum of £63,987 (sixty three thousand nine hundred and eighty seven pounds) comprising the sum of £43,212 (forty three thousand two hundred and twelve pounds:</p> <p>£3324 x 8 x 2-bed houses = £26,592 (twenty six thousand five hundred and ninety two</p> <p>£3324 x 3 x 3-bed houses = £9,972 (nine thousand nine hundred and seventy two pounds)</p> <p>£3324 x 1 x 4-bed house = £3,324 (three thousand three hundred and twenty four pounds)</p> <p>£3324 x 1 x 5-bed house = £3,324 (three thousand three hundred and twenty four pounds))</p> <p>and the sum of £20,775 (twenty thousand seven hundred and seventy five pounds:</p>



£0 x 2 x 1-bed flats = £0 (nil)

£831 x 20 x 2-bed flats = £16,620 (sixteen thousand six hundred and twenty pounds)

£831 x 5 x 3-bed flats) = £4155 (four thousand one hundred and fifty five pounds))

to be applied in the event of receipt towards the provision and maintenance of a new group room at Lady Joanna Thornhill Endowed Primary School Bridge Street Wye Ashford TN25 5EA

### **Relevant Dispute**

a dispute (other than in respect of the legal interpretation of this deed) as to the amount of any **Deferred Contribution** due pursuant to paragraph 2 of schedule 3 or a dispute as to whether any information required to be submitted pursuant to paragraph 2 of schedule 3 has been disclosed or a dispute over any nominated alternative index under clause 6.3 or a notice issued by the Council which is identified by the relevant party as disputed as referred to in paragraph 2.3 of schedule 3

### **Secondary Education Contribution**

the sum of £79,220 (seventy nine thousand two hundred and twenty pounds) comprising the sum of £53,495 (fifty three thousand four hundred and ninety five pounds):

£4115 x 8 x 2-bed houses = £32,920 (thirty two thousand nine hundred and twenty pounds)

£4115 x 3 x 3-bed houses = £12,345 (twelve thousand three hundred and forty five pounds)

£4115 x 1 x 4-bed house = £4115 (four thousand one hundred and fifteen pounds)

£4115 x 1 x 5-bed house = £4115 (four thousand one hundred and fifteen pounds))

and the sum of £25,725 (twenty five thousand seven hundred and twenty five pounds):

£0 x 2 x 1-bed flats = £0 (nil)

£1029 x 20 x 2-bed flats = £20,580 (twenty thousand five hundred and eighty pounds)

£1029 x 5 x 3-bed flats = £5145 (five thousand one hundred and forty five pounds))

to be applied in the event of receipt towards the expansion of the hall at The Norton Knatchbull

School Hythe Road Ashford Kent TN24 0QJ

**Secretary of State**

The Secretary of State for Housing and Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given for the Appeal

**Site**

**Land A** and **Land B** together shown for the purposes of identification only edged with a red line on the **Site Plan** and more particularly identified in Part B of schedule 1

**Site Plan**

the site location plan drawing 2742-01 Revision P4 (October 2016)

**Tele-Property Investments**

**TELE-PROPERTY INVESTMENTS LIMITED** (incorporated in the British Virgin Islands under company number 1882116) whose registered office is at Craigmuir Chambers Road Town Tortola VG1110 British Virgin Islands and whose principal address in England is 140 London Wall London United Kingdom EC2Y 5DN

**Working Day**

any day other than a Saturday or Sunday or a bank or public holiday in England or a day falling in the period from the 25<sup>th</sup> December to the 1<sup>st</sup> January of the consecutive year inclusive (and "**Working Days**" shall be construed accordingly)

- 1.3 References in this deed to a recital clause schedule paragraph or part are references where the context so admits to that recital clause schedule paragraph of a schedule or part of a schedule in this deed and references in a schedule to a paragraph or a part are (unless the context otherwise requires) references to that paragraph or part of that schedule
- 1.4 The headings appearing in this deed are for ease of reference only and shall not affect the construction or interpretation of this deed and the contents of column 4 of schedule 4 and the whole of schedules 5, 6 and 7 are included for ease of reference only and shall not affect the construction or interpretation of this deed
- 1.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.6 Words of a 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
- 1.7 References to a party to this deed shall include the successors in title to that party and anyone deriving title through or under that party and in the case of

the **Council** the **County Council** and the **Clinical Commissioning Group** the successors to their respective statutory functions relevant to this deed

1.8 Covenants made hereunder (unless otherwise stated):

1.8.1 if made by more than one person (including those made by the **Current Owner**) are made jointly and severally by those persons and for the avoidance of doubt can be enforced against all of them jointly and against each individually unless there is an express provision otherwise; and

1.8.2 if made by the **Current Owner** are to the intent that the same shall bind **Land B** and every part thereof and whomsoever shall become a successor or successors in title to **Land B** or any part thereof; and

1.8.3 if they bind **Land B** bind each and every part of **Land B** unless expressly stated otherwise; and

1.8.4 shall operate as a local land charge on **Land B** and shall be registered in the **Council's** register of local land charges in respect of **Land B**

1.9 References in this deed to any statute or delegated legislation include and import (unless the context otherwise requires) reference to that statute or delegated legislation as amended extended substituted or re-enacted from time to time and to any replacement or succeeding statute or delegated legislation from time to time

2. **RECITALS**

2.1 **Tele-Property Investments** is the registered freehold proprietor of **Land A** and the **Freeholder** is the registered freehold proprietor of **Land B**

2.2 The **Current Owner** confirms and warrants to the **Council** and to the **County Council** severally that at the date of this deed that no other person has any leasehold or freehold interest in **Land B** or part thereof nor any estate contract

2.3 The **Council** and the **County Council** are local **planning authorities** for the purpose of the **Planning Act** for the area within which the **Site** is situate and are entitled to enforce the provisions of this deed for the purposes of section 106 of the **Planning Act**

2.4 The **Council** is also the local housing authority for the area within which the **Site** is situate and the **County Council** is also the local highway authority for the purposes of section 278 of the Highways Act 1980 the local education authority and the library authority for the area within which the **Site** is situate and the **Clinical Commissioning Group** is responsible for national health services for the area within which the **Site** is situate

2.5 The Appellant submitted the Planning Application for the Development. The **Council** resolved at a meeting of its planning committee held on 20 June 2018 which considered the **Planning Committee Report** to grant the Full **Permission** for the **Development** subject (inter alia) to the completion of a deed under section 106 of the **Planning Act**. The Appellant has lodged an appeal against the non determination of the Planning Application by the issue

of a notice of appeal under reference APP/E2205/W/20/4000703 which is to be heard by the Planning Inspectorate under the inquiries procedure (“**the Appeal**”)

- 2.6 The **Council** and the **Current Owner** have accordingly agreed to enter into this deed pursuant to the provisions of Section 106 of the **Planning Act** upon the terms and conditions hereinafter appearing with the intention that it should be binding not only upon the **Council** and the **Current Owner** but also upon the **Owner** in the manner set out in the event that the **Appeal** is upheld
- 2.7 The provisions embodied in schedule 2 paragraph 4 and in schedule 3 and schedule 4 (which provide for certain payments towards necessary infrastructure provision and the payment to the **Council** of **Deferred Contributions** and ancillary provisions in this deed), reflect the specific circumstances of the **Development** (as regulated by the other provisions of this deed) and its contribution to strategic growth in Ashford and other matters referred to in the **Planning Committee Report**
- 2.8 The obligations by the **Current Owner/Owner** in this deed which are expressed to be to and/or for the benefit of and/or to take effect as covenants made with the **County Council** may in the event that the Appeal is upheld be enforced by the **County Council** as a beneficiary of this deed executed as a unilateral planning obligation under section 106 of the **Planning Act** as if the **County Council** had executed this deed as a party thereto and notwithstanding that in fact it has not done so save that this deed may be amended or varied in the manner set out in clause 3.5 by the **Council** (at its absolute discretion and for the avoidance of doubt not in any way subject to the provisions of clause 5) without the consent of the **County Council** to any such amendment or variation
- 2.9 In the event that the Appeal is upheld, under the terms of this deed the **Council** and the **Current Owner** have agreed the provisions under which the **Pay Regardless Contribution** will be paid and the **Council Contributions and the County Council Contributions** will be paid by way of the **Deferred Contributions**. The Council would normally require payment of the **Council Contributions and the County Council Contributions** in advance of or in parallel with the **Development** taking place. In this instance the **Current Owner** subject to the specific terms and conditions of this deed has agreed to pay the **Pay Regardless Contribution** and the **Deferred Contributions** in accordance with the relevant provisions of schedule 2 and schedule 3 respectively.

### **3. DEED AND COVENANTS AND ENFORCEMENT**

- 3.1 This deed is completed pursuant to section 106 of the **Planning Act**. In so far as the covenants and obligations herein fall wholly or partly within the scope of section 106 of the **Planning Act** they are planning obligations for the purposes of that statute. In so far as any covenants (if severable) fall wholly or partly outside the scope of section 106 of the **Planning Act** they are entered into under Section 111 of the Local Government Act 1972 the Localism Act 2011 and all other powers enabling the **Council** and the **County Council** and the covenants restrictions and requirements of the **Current Owner/Owner** hereinafter contained shall be ones to which the provisions of Section 106 of

the **Planning Act** shall apply and shall be binding and enforceable against the **Current Owner/the Owner** or any part thereof and persons deriving title from or claiming through or under them by the **Council** and the **County Council** in accordance with the provisions of clause 3.4 as local planning authorities PROVIDED THAT:

- 3.1.1 no person shall continue to be bound by any obligation or covenant once they have parted with all their interest in **Land B** (or if some part thereof can be separately identified on which any breach occurs then all their interest in that part) save in respect of any antecedent breach PROVIDED THAT:-
- (a) any easements, rights of way, drainage or support or restrictive covenants reserved on the transfer of **Land B** or any part thereof shall not be deemed to prevent the transferor from having parted with all its interest therein; and
  - (b) the **Current Owner** shall continue notwithstanding any such parting with its interest to be bound by the obligation to pay the **Pay Regardless Contribution** in accordance with schedule 2 paragraph 6.1; and
  - (c) the **Current Owner** shall continue notwithstanding any such parting with its interest to be bound by all the obligations in schedule 3 in respect of payment justification and disclosure of information in respect of **Deferred Contributions** for each **Disposal** made by it (if any)
- 3.1.2 the owner and/or the occupier of any **Dwelling** following a **Disposal** (and their respective funders, mortgagees or chargees (if any)) shall have no obligation to comply with or perform the obligations herein including for the avoidance of doubt all the requirements of schedule 2 and schedule 3 nor shall they be enforceable against such persons PROVIDED THAT if any such person has or had any other interest in **Land B** its other obligations hereunder are unaffected by this sub-clause 3.1.2
- 3.1.3 the obligations contained in this deed shall not be binding upon any interest of any statutory undertaker in the **Site** for or in respect of land for and/or rights or easements for plant apparatus conduits and fitments held as part of their statutory undertaking nor on any chargee of any such interest nor any receiver appointed by a chargee of any such interest
- 3.2 The **Current Owner** for themselves and successors in title to **Land B** hereby agree and covenant with the **Council** and as a separate covenant with the **County Council** in the terms set out in schedule 2 and schedule 3 and the **Council** hereby agrees and covenants with the **Owner** to comply with the obligations on its part set out in schedule 2 and schedule 3
- 3.3 The obligations in the schedules to this deed (save those in paragraphs 1.1, 1.2, 1.3 and 5 of schedule 2 which are immediately effective upon the grant of the **Full Permission**) are conditional and shall become unconditional on the Initiation of the **Development**

- 3.4 The covenants on behalf of the **Current Owner/Owner** contained in this deed will be enforceable by the **Council** alone in the case of a covenant made with it alone and by either or both the **Council** and the **County Council** severally in relation to any covenant expressed to be given to both of them
- 3.5 It is hereby agreed and declared between the parties hereto that save as expressly referred to herein this deed constitutes the whole agreement between the parties relating to the subject matter and that subject to section 106/106A of the **Planning Act** any release variation or discharge of liabilities under this deed shall not take effect unless evidenced in writing in a document under the seal of the **Council** (and the **County Council** where the variation or discharge affects a covenant given to the **County Council** save that (insofar as it is legally possible to do so) this deed may be amended or varied by the **Council** at its absolute discretion (and for the avoidance of doubt not in any way subject to the provisions of clause 5) without the consent of the **County Council** to any such amendment or variation
- 3.6 The construction validity performance and enforcement of this deed shall be governed by English law
- 3.7 Where any provision of this deed authorises or requires the service of a notice or the approval consent agreement or expression of satisfaction or opinion of the **Council** or the **County Council** or one of its officers such approval consent agreement or expression of satisfaction or opinion shall only be treated as given if contained in a non-electronic-mail communication on headed paper and signed by or on behalf of the officer named in this deed (or if no officer is named by or on behalf of an officer with authority or ostensible authority to give the relevant approval) and expressed to be given for the purpose of the relevant provision of this deed
- 3.8 Where any provision of this deed requires the approval consent agreement or expression of satisfaction or opinion in writing of the **Council** or one of its officers then unless otherwise stated such approval shall not be unreasonably withheld or delayed.
- 3.9 The undertakings, covenants and obligations on the part of the **Current Owner** in this deed shall not apply and shall not be enforceable by the **Council** or the **County Council** if the planning inspector appointed by the **Secretary of State** to hear the **Appeal** states clearly in the decision letter that the obligations, or any of them, are unnecessary or otherwise fail to meet the statutory tests set out in regulation 122 of the Community Infrastructure Regulations 2010 (as amended) PROVIDED THAT if any obligations are determined by the decision maker to be unnecessary or otherwise fail to meet the statutory tests it shall not affect the lawfulness of the balance of the covenants and obligations in the deed which shall continue to be enforceable

#### **4. NOTICES AND PAYMENTS**

- 4.1 Any notice under this deed shall be contained in a non-electronic mail communication in legible English and shall be duly served if it is delivered personally or sent by first class post or special delivery post, to a party at:

- 4.1.1 in the case of a notice to the **Current Owner/Owner** its registered office address in England
- 4.1.2 in the case of a notice to the **Council** at Civic Centre Tannery Lane Ashford Kent TN23 1PL (addressed to the **Joint Development Control Managers** and quoting reference 17/00567/AS (full))
- 4.1.3 or in any case such other address as may be notified to all appropriate parties in writing from time to time including DX or any other address for service permitted by rules of court. Service shall be deemed to have occurred in the case of sending by first class post or special delivery including DX when such letter would be assumed to have been delivered in the ordinary course of the post at that time
- 4.2 Where the Council or any other party is obliged or empowered to serve any notice upon or signify any consent agreement satisfaction or approval to the **Current Owner/Owner** under this deed such obligation or power may (without limiting any other method agreed in writing with the **Current Owner/Owner**) be discharged by serving the notice on or signifying consent agreement satisfaction or approval to the **Current Owner/Owner** or any party with an interest in **Land B** other than any funder, mortgagee or chargee of such an interested party in **Land B** or any part thereof
- 4.3 Payments to the **Council** under this deed shall be made (unless otherwise first agreed in writing by the **Joint Development Control Managers**) by electronic funds transfer to National Westminster Bank Plc Collection account number 74313363 sort code 60-01-21 quoting the planning reference 17/00567/AS (full) (or such other reference as appropriate) and stating the clause or schedule and paragraph of this deed to which the payment relates
- 5. INDEPENDENT EXPERT AND DISPUTE RESOLUTION**
- 5.1 Where a claim or dispute arising out of or in connection with this deed is not settled by negotiation the parties will consider using alternative dispute resolution techniques prior to (in the case of a **Relevant Dispute**) potential referral to an **Expert** in accordance with clause 5.2
- 5.2 In the event of any **Relevant Dispute** arising between the parties to this deed which has been identified in writing by one party to the others and has not been resolved within twenty (20) Working Days such **Relevant Dispute** may at the instance of any party thereto be referred to an **Expert**
- 5.3 The **Expert** shall be agreed upon between the parties to the **Relevant Dispute** or, if not agreed within twenty (20) Working Days of the **Relevant Dispute** having been identified in accordance with clause 5.2 then at the request and option of any of the parties to the **Relevant Dispute** shall be nominated by or on behalf of the President for the time being of the Royal Town Planning Institute
- 5.4 The **Expert** shall act as an expert and not as an arbitrator and his costs (including those of his nomination) shall be at his discretion and payable according to his direction whether or not his decision on the **Relevant Dispute** is accepted by the paying party

- 5.5 For the avoidance of doubt (other than in respect of his costs) the decision of the **Expert** shall be final and binding on the parties (save for any manifest error) to the **Relevant Dispute**
- 5.6 Unless otherwise agreed the **Expert** shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the **Relevant Dispute** and in any event not more than sixty (60) Working Days from the date of his appointment to act
- 5.7 The **Expert** shall be required to give notice to each of the parties to the **Relevant Dispute** inviting them to submit to him and each other within twenty (20) Working Days of his appointment written submissions and supporting material and shall afford an opportunity for all parties to make counter submissions within a further twenty (20) **Working Days** in respect of any such submission and material and his written decision with reasons shall be given to all parties to the **Relevant Dispute** within twenty (20) **Working Days** thereafter
- 5.8 In the event of a dispute in respect of the legal interpretation of this deed which has been identified in writing by one party to the others and has not been resolved within twenty (20) **Working Days** such dispute may at the instance of any party thereto be referred for determination to a barrister of not less than 20 years call to be agreed by the parties to the dispute or if not agreed within twenty (20) **Working Days** after expiry of the said twenty (20) **Working Days** then at the request and option of any party to the dispute to be nominated on behalf of the President for the time being of the Bar Council. The barrister's appointment shall be upon the same terms as for an **Expert** as set out in clauses 5.4 to 5.7
- 5.9. Nothing in this clause 5 shall prevent any party from seeking recourse to the High Court or any other court in England of competent jurisdiction or from exercising any right to take alternative action
- 5.10 This clause 5 shall not apply in respect of any dispute solely relating to the quantum of any financial contribution or payment to the **Council** where the amount due is expressly stated in this deed

## 6. INDEXATION

- 6.1 Where any sum mentioned in this deed is stated to be "**Index Linked**" the stated sum or the part of it which is payable or to be calculated or for which security is to be given on any occasion shall be adjusted in line with the change in the indices set out in this clause 6
- 6.2 In each case (unless otherwise stated) the relevant change is from the index figure last published before the **Council's** planning committee meeting held on 20 June 2018 to the index figure last published before the date of payment or calculation (as the case may be) of the sum
- 6.3 In the event that any index referred to in this clause ceases to be published then the **Council** shall by notice to the **Current Owner/the Owner** nominate the nearest equivalent alternative index (in its reasonable opinion) to be used in place of that index and in respect of the period after the date of such



cessation the relevant change for the purposes of **Index Linking** shall be the change in such nominated alternative index

- 6.4 The index to be used shall be the ‘All-In Tender Price Index’ as published by the Building Cost Information Service on behalf of the Royal Institution of Chartered Surveyors save for the **Monitoring Fee** which shall be **Index Linked** to the “All Items” Index of Retail Prices

## 7. **THIRD PARTY RIGHTS**

Other than the **Council** and (where expressly stated herein) the **County Council** (or a successor authority to the **Council** or the **County Council**) it is not intended that any person or body that is not (and is not a successor in title to) the **Current Owner/Owner** or otherwise a party to this deed shall in his or its own right enforce the terms covenants and obligations of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999

## 8. **COSTS**

On completion of this deed the **Current Owner** shall pay the **Council’s** and the **County Council’s** reasonable legal costs related to this deed and pay to the **Council**, the **Council’s** consultant’s fees related to the settlement of this deed which is agreed

## 9. **PARTNERSHIP**

Nothing in this deed shall create a legal partnership between any of the parties to this deed

## 10. **SEVERANCE**

If any provision in this deed shall be held to be invalid illegal or unenforceable it shall be deemed to be deleted and the validity legality and enforceability of the remaining provisions of this deed shall not in any way be affected or impaired

## 11. **NO FETTER OF DISCRETION**

Nothing contained or implied in this deed shall prejudice or affect the rights powers duties and obligations of the **Council** or the **County Council** in the exercise of any of their functions and the rights powers duties and obligations of the **Council** and the **County Council** under all public and private statutes byelaws orders and regulations may be as fully and effectually exercised as if the **Council** and the **County Council** were not parties to this deed

## 12. **LATE PAYMENT**

If any payment due by the **Current Owner/Owner** under any of the provisions of this deed is not made on or before the date on which it is due (for which purpose a sum shall be taken as due not later than the day before the relevant event occurs in relation to **Occupation** and/or **Commencement of Development** or otherwise prior to which the payment is to be made) the sum due shall bear **Interest** from the due date until the date of payment and the **Current Owner/Owner** hereby covenants with the **Council** and the **County**

**Council** severally to pay any **Interest** accrued at the same time and to the same recipient as the principal sum on which it has accrued is paid

### 13. **APPROVAL**

Any approval given by the **Council** or the **County Council** under this deed or for the purposes of this deed shall not be nor be deemed to be approval for any other purpose whatsoever (nor shall approval by one constitute approval by the other) PROVIDED THAT the Council may give approval on behalf of the **County Council** such approval to be at the absolute discretion of the **Council** and for the avoidance of doubt not in any way subject to the provisions of clause 5

### 14. **WAIVER BY THE COUNCIL AND/OR THE COUNTY COUNCIL**

No waiver (express or implied) by the **Council** or the **County Council** of any breach or default in performing or observing any of the terms and conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the **Council** or the **County Council** from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereof unless such waiver is evidenced in writing in accordance with clause 3.5

### 15. **PERPETUITY PERIOD**

For the purposes of any such parts of this deed as may be subject to the rule against perpetuities the perpetuity period shall be a period of eighty (80) years from the date hereof

### 16. **SATISFACTION OF OBLIGATIONS**

16.1 When in the reasonable opinion of the **Current Owner/Owner** or any party with a legal interest in **Land B** its obligations under this Deed have been satisfied either in whole or in part the **Current Owner/Owner** or such party may make an application in writing (a "**Certification Application**") to the **Council** for a certificate to the effect that such of its obligations under this deed as are set out in the **Certification Application** have been satisfied

16.2 Any **Certification Application** shall be accompanied by reasonable written proof of such satisfaction in respect of those obligations under this deed set out in the **Certification Application**

16.3 Upon the **Joint Development Control Managers** being satisfied that the obligations under this deed set out in a **Certification Application** have been satisfied either in whole or in part as the case may be then the **Council** shall issue a certificate to the applicant to such effect (not to be unreasonably withheld or delayed)

16.4 The **Council** will note on its register of local land charges the existence of any certificate issued pursuant to a **Certification Application**

### 17. **OTHER PLANNING PERMISSIONS**

Nothing in this deed shall prohibit or limit the right to develop any part of the **Site** in accordance with a planning permission (other than the **Planning**

**Permission and the 16/00893/AS permission dated 22 August 2016 (in relation to the Squires Cottages))** granted (whether or not on appeal) after the date of this deed

## 18. VAT

All sums paid in accordance with the terms of this deed shall be exclusive of any value added tax properly payable thereon which shall where appropriate be paid in addition

## 19. TERMINATION

If the **Full Permission** is quashed or revoked or ceases to have effect by operation of law or lapses before a material operation is begun within the meaning of section 56(4) of the **Planning Act** pursuant to the **Planning Permission** or which would be pursuant to the **Planning Permission** but for any non-compliance with any condition on a **Planning Permission** then:

- 19.1. this deed shall cease to have effect but without prejudice to liability for any breach which has arisen prior to that date (and for the avoidance of doubt any payment made or due under the provisions of this deed prior to this deed so ceasing to have effect shall not be repayable); and
- 19.2 the **Current Owner/Owner** may make a **Certification Application** in writing to the **Council** for a certificate that this deed has so ceased to have effect which shall be accompanied by reasonable written proof of such quashing revocation cessation of effect or lapse; and
- 19.3 upon the **Council** being satisfied of such quashing revocation cessation of effect or lapse as the case may be then (subject as stated in sub-clause 19.1) the **Council** shall issue a certificate that this deed has ceased to have effect to the applicant therefor and cancel all entries in its register of local land charges in respect of this deed

## 20. NOTIFICATION OF CHANGES IN OWNERSHIP AND INTERESTS

The **Current Owner** agrees and covenants with the **Council** to give to the **Council** as soon as reasonably practicable written notice of the transfer or granting of any lease or any change in ownership of the freehold title to **Land B** or part thereof occurring before all the obligations of the **Current Owner/Owner** under this deed have been discharged such notice to give details of the interest acquired and the transferee's or grantee's full name and registered office (if a company) or usual address (if not) together with the area of **Land B** or unit of occupation affected by reference to a plan or the proportion of the voting rights affected as the case may be

## 21. DELIVERY

The provisions of this deed (other than this clause which shall be of immediate effect) shall be of no effect until this deed has been dated

## 22. FORWARD-FUNDING AND REPAYMENT

If the **Council** or the **County Council** forward-funds any project facility infrastructure or other expenditure from its own resources and/or enters into a commitment to a third party to repay any similar forward-funding provided by that third party (whether in cash and/or in kind) 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/or repay such third party accordingly and in either case the receipt shall be treated as being immediately expended by the **Council** or the **County Council** for the purpose for which the forward-funding was expended.

**IN WITNESS** whereof the parties hereto have executed this deed the day and year first before written

## SCHEDULE 1

### PART A

#### THE DEVELOPMENT

The conversion of former college buildings with associated restoration and alterations to buildings demolition of later structures and rebuilding to provide thirty eight (38) Dwellings and community space; together with the provision of two (2) new Dwellings, parking courts with car barns, cycle storage and refuse stores on land to the north of the retained buildings and associated landscaping and change to parking arrangements for Squires Cottages (change of use from college residential accommodation back to four (4) individual dwellings approved under reference 16/00893/AS)

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### PART B

#### THE SITE

1. All that part of the part of the land known as part of Wye College High Street Wye Ashford the freehold to which is registered at the land registry under title number K909176 comprising part of the **Site** and known as the Squires Olantigh Road Wye Ashford Kent TN25 5EJ as described outlined in green on the land registry filed plan appended to this deed ("**Land A**") and
2. All that part of the part of the land known as part of Wye College High Street Wye Ashford TN25 5AH the freehold to which is registered at the land registry under title number TT103916 as described outlined in red on the land registry filed plan appended to this deed ("**Land B**")
3. The extent of the **Site** is shown for the purposes of identification only edged red on the **Site Plan** appended to this deed

## SCHEDULE 2

### PLANNING OBLIGATIONS

#### 1. COMMENCEMENT NOTICE

The **Current Owner/Owner** covenants with the **Council** and separately with the **County Council**:

- 1.1 To serve the **Commencement Notice** on the **Joint Development Control Managers** at least ten (10) **Working Days** prior to **Commencement of Development**
- 1.2 Not to **Commence Development** prior to the service of the **Commencement Notice**
- 1.3 Not to **Commence Development** before the date specified in the **Commencement Notice**
- 1.4 To serve on the **Joint Development Control Managers** within ten (10) **Working Days** after the **Commencement of Development** a notice stating the date on which **Commencement of Development** occurred

#### 2. PROGRESS NOTICE

- 2.1 To serve the **Commencement of Construction Notice** on the **Joint Development Control Managers** at least ten (10) **Working Days** prior to the **Commencement of Construction**
- 2.2 Not to **Commence Construction** prior to the service of the **Commencement of Construction Notice**
- 2.3 Not to **Commence Construction** before the date specified in the **Commencement of Construction Notice**
- 2.4 To serve on the **Joint Development Control Managers** within ten (10) **Working Days** after the **Commencement of Construction** a notice stating the date on which **Commencement of Construction** occurred

#### 3. OCCUPATION NOTICES

- 3.1 The **Current Owner/Owner** covenants with the **Council** and separately with the **County Council** to serve an **Occupation Notice** on the **Council** at least ten (10) **Working Days** prior to the date on which the **Current Owner** bona fide intends the total number of **Dwellings Disposed of** and/or **Occupied** to reach each of the following numbers:-
  - (a) one (1) **Dwelling**; and
  - (b) twenty (20) **Dwellings**; and
  - (c) thirty two (32) **Dwellings**; and

- (d) thirty six (36) **Dwellings**; and
- (e) the total number of **Dwellings** permitted by the Planning Permission

#### 4. CONTRIBUTIONS

4.1 The **Current Owner/Owner** covenants (subject to the provisions of schedule 3):-

4.1.1 with the **Council** to pay to the **Council** the **Council Contributions**; and

4.1.2 with the **Council** and separately with the **County Council** to pay to the **Council** the **Pay Regardless Contribution** and the **County Council Contributions**; and

4.1.3 with the **Council** to pay to the **Council** the **Clinical Commissioning Group Contribution**

in accordance with paragraph 6 of this schedule (**Pay Regardless Contribution**) and in accordance with schedule 3 (**Deferred Contributions**) and for the avoidance of doubt schedule 4 is included in this deed for the purpose of the Council's obligation as set out in paragraph 2.3.3 of schedule 3 to calculate the **Total Index-Linked** by Index-Linking the **Total Contribution – Pooled** both as an audit trail and in order to ensure that the total payments made in respect of the **Council Contributions** and the **County Council Contributions** do not exceed the appropriate amounts for the **Development** as set out in schedule 4 (subject to **Index Linking** as set out in clause 6) and therefore this deed does not impose liability to pay any sum solely by reason of its appearance within schedule 4

4.2 The **Council** covenants:

4.2.1 to hold the **Pay Regardless Contribution** the **Deferred Contributions** and **Interest** thereon under clause 12 received or to be received by it and interest accrued thereon in appropriate accounts until disbursed to the appropriate departments of the **Council** and/or to the **County Council** and/or to the **Clinical Commissioning Group** in accordance with decisions made as set out below

4.2.2 to decide in its absolute discretion how the **Deferred Contributions** and **Interest** thereon received or to be received by it and interest accrued thereon shall be allocated to or towards the settlement of the individual items within the **Contributions – Pooled** as set out in this deed

4.2.3 to transfer the **Pay Regardless Contribution** and **Interest** thereon received or to be received by it and interest accrued thereon to the appropriate department of the County Council and to transfer the **Deferred Contributions** and **Interest** thereon received or to be received by it and interest accrued thereon to the appropriate department of the **Council** and/or pay to the **County Council** and/or

the **Clinical Commissioning Group** (as appropriate) on appropriate terms as it shall have so decided to allocate

4.2.4 keep up-to-date records of all such decisions made by it

4.2.5 make all of the above records available to the **Owners** the **County Council** and the **Clinical Commissioning Group** on reasonable written notice to the **Joint Development Control Managers**

## 5. **MONITORING FEES**

The **Current Owner** covenants with the **Council** not to **Commence the Development** until the **Monitoring Fee** has been paid to the **Council**

## 6. **PAY REGARDLESS CONTRIBUTION**

6.1 The **Current Owner** covenants with the **Council** and separately with the **County Council** as follows:-

6.1.1 To pay the **Pay Regardless Contribution** to the **Council** prior to the Occupation of the twentieth (20<sup>th</sup>) Dwelling

6.1.2 not to Occupy more than twenty (20) Dwellings prior to the payment to the Council of the **Pay Regardless Contribution**



## SCHEDULE 3

### Provisions for the Deferred Contributions

#### 1. INTERPRETATION

In this deed and specifically in this schedule the following words and expressions shall unless the context otherwise requires have the following meanings:

#### WORDS AND EXPRESSIONS

#### MEANINGS

<b>Actual Sale Price</b>	the aggregate total consideration expressed in the legal documents (meaning the Land Registry transfer deed or lease and/or such other document(s) as shall be applicable and including a completion statement) to be payable on or in connection with a <b>Disposal</b> (for the avoidance of doubt inclusive of any payment in kind or any similar consideration payable or received as the case may be by the <b>Current Owner</b> or a party connected in any way to the <b>Current Owner</b> within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010 or by virtue of any <b>Linked Transaction</b> ) PROVIDED THAT where a <b>Disposal</b> is to a party connected in any way to the <b>Current Owner</b> within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010 then the <b>Actual Sale Price</b> shall be such greater sum (if any) as would be likely to have been the <b>Actual Sale Price</b> if that <b>Disposal</b> had been a <b>Disposal</b> at arms' length on the open market on usual terms
<b>Gross Development Value or A</b>	the aggregate of the <b>Actual Sale Price</b> in respect of each <b>Disposal</b> that has occurred on or before the <b>Review Date</b> and the <b>Estimated Sale Prices</b> in respect of each and every <b>Disposal</b> that is yet to occur as at the <b>Review Date</b>
<b>Base Development Value or B</b>	nineteen million six hundred thousand pounds (£19,600,000)
<b>Contribution Percentage or C</b>	sixty percent (60%)
<b>Deferred Contribution or D</b>	$(A - B) \times C$ (provided that D must not be negative and also must not exceed the <b>Total</b> )

## Index Linked)

<b>Estimated Sale Price</b>	the sum which is estimated by a chartered surveyor to be the <b>Actual Sale Price</b> (if that <b>Disposal</b> were to occur on the <b>Review Date</b> at arms' length on the open market on usual terms
<b>Gross Development Value Report</b>	a report by an independent chartered surveyor of not less than ten (10) years' post qualification experience in the types of disposal concerned certifying the <b>Gross Development Value</b> and including the items referred to in paragraph 2.2 below
<b>Linked Transaction</b>	any exchange or part-exchange with which a particular <b>Disposal</b> forms part of a single scheme arrangement or related series of transactions
<b>Non-Open Market Disposal</b>	<p>a <b>Disposal</b>:</p> <ul style="list-style-type: none"><li>(i) to a purchaser who is connected in any way to the vendor grantor transferor or lessor or any other party in any exchange or part-exchange with which the disposal forms part of a single scheme arrangement or series of transactions including within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010</li></ul> <p>and/or</p> <ul style="list-style-type: none"><li>(ii) which is not an arm's length true value purchase on usual terms (save as to price)</li></ul>
<b>Payment Date</b>	twenty eight (28) days after notification of the Deferred Contribution by the Council or the date of Occupation of the thirty sixth (36 <sup>th</sup> ) Dwelling, whichever is earlier
<b>Review Date</b>	the date upon which the thirty second (32 <sup>nd</sup> ) Dwelling is Occupied

<b>Total Contribution - Pooled</b>	the sum of two hundred and ninety two thousand and seventy one pounds and eighty nine pence (£292,071.89) prior to <b>Index Linking</b> and comprised of the <b>Contributions - Pooled</b> items as set out in columns 2 and 3 respectively in schedule 4
<b>Total Index-Linked</b>	The <b>Total Contribution - Pooled</b> as <b>Index-Linked</b> pursuant to paragraph 2.3.3 below

## 2. OBLIGATIONS AND PROCEDURE

### 2.1 Payment of Deferred Contributions

The **Current Owner** covenants with the **Council** and as a separate covenant with the **County Council** to:-

- 2.1.1 include in the **Disposal** of each one (1)-bed Dwelling either one (1) allocated parking space within the **Site** or the exclusive right to use one (1) parking space within the **Site** designated from time to time in accordance with normal practice; and
- 2.1.2 Include in the **Disposal** of all two (2)-bed, three (3)-bed four (4)-bed and five(5)-bed Dwellings either two (2) allocated parking spaces within the **Site** or the exclusive right to use two (2) parking spaces within the **Site** designated from time to time in accordance with normal practice; and
- 2.1.2 pay to the **Council** the **Deferred Contribution** in respect of the Development in accordance with the provisions contained in paragraphs 2.2 and 2.3 below

### 2.2 Deferred Contributions

The **Deferred Contribution** in respect of the **Development** is to be calculated justified and paid as follows:

The **Current Owner** covenants with the **Council** and as a separate covenant with the **County Council** to deliver to the **Joint Development Control Managers** within ten (10) **Working Days** after the **Review Date**:

- the **Gross Development Value Report**:
  - (i) certifying the following in relation to the Development:-
    - 1 the **Actual Sale Prices** comprised in the **Gross Development Value**

- 2 the **Estimated Sale Prices** comprised in the **Gross Development Value**
- 3 the **Gross Development Value (A)**
- 4 the **Deferred Contribution (D)** (which may be nil if none is calculated to be payable or the formula gives a negative result)

- accompanied by the following:-

(A) a list of all **Disposals** that have occurred on or before the **Review Date**, setting out for each one:

1. its date;
2. the postal address (if known) and the plot number by reference to a floor plan either previously lodged with the **Council** or attached to the list of the **Dwelling(s)** concerned;
- 2A. confirmation that the **Disposal** complies with either the paragraph 2.1.1 or 2.1.2 obligation in this schedule 3 (as appropriate) (allocated parking spaces within the **Site** or the exclusive right to use parking spaces within the **Site** designated from time to time in accordance with normal practice);
3. the **Actual Sale Price**;
4. the names and addresses of all purchasers grantees transferees and lessees as the case may be;
5. whether or not any **Non-Open Market Disposal** exists, , and if so, provide full details;
6. whether or not any **Linked Transaction** exists, and if so, full details of it including its date and nature, the property concerned, the consideration, the names and addresses of all parties, and whether or not any of them are connected to any vendor grantor transferor or lessor or other party in the **Disposal** or the **Linked Transaction** in any way within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010 or otherwise, and if so, details of the connection

and

(B) certified copies of the relevant page or pages (stating the date and identity of the document from which they are extracted) of the transfers leases grants and any other relevant legal documents in respect of each **Disposal** and of any **Linked Transaction** showing (collectively) the **Actual Sale Price**

and

- (C) a list of all Disposals that are yet to occur as at the **Review Date** (whether or not the **Owner** intends to make such **Disposals**) and an explanation identifying the basis on which the chartered surveyor has estimated the **Estimated Sale Prices** in respect of each one

and

- (D) the chartered surveyor's calculation of the **Deferred Contribution** ignoring the proviso contained within the definition thereof

## 2.3 Council's review of the **Gross Development Value Report**

2.3.1 The **Council** shall notify the **Current Owner** within twenty (20) **Working Days** of receipt of the **Gross Development Value Report** if it fulfils the definition thereof and the obligations under paragraph 2.2 of this schedule 3 and if not what further information or evidence is required. This procedure shall be repeated as many times as necessary until the **Gross Development Value Report** is approved in writing by the **Council** as satisfactory or the **Current Owner** has invoked the disputes resolution procedure in clause 5 of this deed

2.3.2 if the **Council** fails to notify the **Current Owner** within twenty (20) **Working Days** of receipt of the **Gross Development Value Report** either that it is satisfactory or that specified further information or evidence is required, then it will be deemed satisfactory and the remainder of this paragraph 2.3 shall be followed

2.3.3 The **Council** shall **Index Link** the **Total Contribution – Pooled** up to the date on which the **Gross Development Value Report** is either approved in writing by the **Council** as satisfactory or is deemed satisfactory pursuant to paragraph 2.3.2 or is declared by an **Expert** to be satisfactory pursuant to clause 5 and shall notify the Owner of the **Deferred Contribution** and the **Review Cost** (as defined in paragraph 2.3.5 below) to be paid within fifteen (15) Working Days of that date

2.3.4 In the event the **Current Owner** disagrees with a request for further information or evidence pursuant to paragraph 2.3.1 or with the **Deferred Contribution** notification pursuant to paragraph 2.3.3 of this schedule 3, then it may provide the Council with additional information for the **Council's** consideration or invoke the dispute resolution procedure in clause 5 of this deed and in the event that the **Expert** determined that the **Gross Development Value Report** requires correction then the calculation of the **Deferred Contribution** shall be corrected accordingly

2.3.5 The **Council** may in any event appoint a suitably qualified and competent external assessor to review and advise it upon the **Gross Development Value Report** and the cost of the review and advice will be included in the **Deferred Contribution** notification pursuant to paragraph 2.3.3 to this schedule 3 for payment by the **Current Owner** to the **Council** in full up to

a maximum of eight thousand pounds (£8,000) **Index Linked** plus VAT (**"the Review Cost"**)

2.3.6 The **Current Owner** covenants to pay the **Deferred Contribution** and the **Review Cost** to the Council in full on the **Payment Date**

2.3.7 The **Current Owner** covenants not to **Occupy** or permit the **Occupation** of more than thirty six (36) **Dwellings** in the **Development** until the **Deferred Contribution** and the **Review Cost** is paid in full to the Council

## SCHEDULE 4

### TABLE OF CONTRIBUTIONS – POOLED

*(Note:- the purpose of this schedule is explained in schedule 2, paragraph 4.1)*

<u>column 1</u> Contributions – Pooled items	<u>column 2</u> value for the Development (prior to Index Linking)	<u>column 3</u>	<u>column 4*</u>	<u>column 5*</u> value per Dwelling or per Eligible Dwelling (prior to Index Linking)
<b>Allotments Contribution</b>	£12,880.00			£320 per Dwelling
<b>Cemetery Contribution</b>	£9,283.25			£232.08125 per Dwelling
<b>Clinical Commissioning Group Contribution</b>	£37,440.00			£936 per Dwelling
<b>Informal/Natural Green Space Contribution</b>	£14,186.38			£354.6595 per Dwelling
<b>Library Contribution</b>	£1,920.63			£48.01575 per Dwelling
<b>Off-Site Equipped Open Space and Play Facilities Contribution</b>	£21,214.19			£530.35475 per Dwelling
<b>Outdoor Sports Contribution</b>	£51,940.44			£1298.511 per Dwelling

<b>Primary Education Contribution</b>	£63,987.00		£1,683.8684 per Dwelling (excluding the two (2) x 1-bed flats)
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<b>Secondary Education Contribution</b>	£79,220.00		£2,084.7368 per Dwelling (excluding the two (2) x 1-bed flats)
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<b>Sub-Total</b>	<b>£292,071.89</b>		
<b>Affordable Housing Contribution</b>	£nil		£nil per Dwelling

<b>Total Contribution – Pooled</b>	<b>£ 292,071.89</b>		
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<b>Review Date:</b>		(schedule 3, definition)
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<b>Total Index-Linked up to Review Date</b>	£	(schedule 3, paragraph 2.3.3)
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\*columns 4 and 5 are for reference only



## SCHEDULE 5

### Occupation Notices and related obligations (For Reference Only)

<b>NUMBER OF DWELLINGS</b>	<b>RELEVANT PARAGRAPH NUMBER OF SCHEDULE 2</b>	<b>SUMMARY OF RELEVANT OBLIGATION(S)</b>
<b><u>Dwellings</u></b>		
1	3.1(a)	serve <b>Occupation Notice</b>
20	3.1(b)	serve <b>Occupation Notice</b>
	6.1.1/6.1.2	pay <b>the Pay Regardless Contribution</b>
32	3.1(c)	serve <b>Occupation Notice</b>
36	3.1(d)	serve <b>Occupation Notice</b>
40	3.1(d)	serve <b>Occupation Notice</b>

## SCHEDULE 6

### Obligations prior to Commencement of Development

(For Reference Only)

RELEVANT MATTER	RELEVANT PARAGRAPH NUMBER OF SCHEDULE 2	SUMMARY OF RELEVANT OBLIGATION(S)
Commencement Notice	1.1	serve notice at least ten (10) <b>Working Days</b> in advance
	1.3	not to <b>Commence Development</b> before date specified
Monitoring Fee	5	pay <b>Monitoring Fee</b>

SCHEDULE 7

Obligations during the Development

(For Reference Only)

RELEVANT MATTER	RELEVANT PARAGRAPH NUMBER OF SCHEDULE 2 OR SCHEDULE 3	SUMMARY OF RELEVANT OBLIGATION(S)
Commencement of Development	schedule 2 paragraph 1.4	serve notice of actual Commencement within ten (10) <b>Working Days</b>
PROGRESS NOTICE	SCHEDULE 2, PARAGRAPH 2.1	serve notice of proposed <b>Material Operation/s</b> no less than ten (10) <b>Working Days</b> prior to a <b>Material Operation</b>
	SCHEDULE 2, PARAGRAPH 2.4	serve notice of actual <b>Material Operations</b> within ten (10) <b>Working Days</b> after a <b>Material Operation</b>
Disposals	schedule 3, paragraph 2	provide <b>Gross Development Value Report</b> and pay any <b>Deferred Contribution</b> and the <b>Review Cost</b>

THE COMMON SEAL OF )  
ASHFORD BOROUGH COUNCIL )  
was affixed to this deed )  
in the presence of )

Mayor

Solicitor, Legal & Democracy

SIGNED AS A DEED BY )  
**TELEREAL PROPERTY DEVELOPMENTS** )  
**1 LIMITED** )  
Acting by a Director in the presence )  
of a witness )

Signature of Director:

Name of Director:

Signature of Witness:

Name of Witness:

Occupation of Witness:

Address of Witness: