

Dated 27 FEBRUARY 2017

- (1) **HODSON DEVELOPMENTS (ASHFORD) LIMITED
and others**
- (2) **ASHFORD BOROUGH COUNCIL**
- (3) **KENT COUNTY COUNCIL**

DEED OF AGREEMENT

**Imposing planning obligations
under section 106 of the Town and Country Planning Act 1990**

for land at Chilmington Green, Ashford Road, Great Chart

Planning & Development
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
TN23 1PL

Planning Application Number: 12/00400/AS

Ashford Legal Services Reference: DS54-0669

THIS DEED of AGREEMENT is made the 27 day of FEBRUARY 2017

BETWEEN:

1. **HODSON DEVELOPMENTS (ASHFORD) LIMITED** (company registration number 07468189) whose registered office is at Office Suite 9, 55 Park Lane, London, W1K 1NA ("Hodson")
2. **CHILMINGTON GREEN DEVELOPMENTS LIMITED** (company registration number 09286703) whose registered office is at Office Suite 9, 55 Park Lane, London, W1K 1NA ("Chilmington Green Developments")
3. **HODSON DEVELOPMENTS (CG ONE) LIMITED** (company registration number 10392676) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA ("Hodson CG One")
4. **HODSON DEVELOPMENTS (CG TWO) LIMITED** (company registration number 10392663) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA ("Hodson CG Two")
5. **CHELMDEN LIMITED** (company registration number 10321428) whose registered office is at Bartlett Farmhouse Great Chart Ashford Kent TN23 3DW ("Chelmden")
6. **MALCOLM COLIN JOHN JARVIS** of Great Chilmington Farmhouse, Great Chart, Ashford, TN23 3DP ("Mr Jarvis")
7. **BEVERLEY JUNE JARVIS** of Great Chilmington Farmhouse, Great Chart, Ashford, TN23 3DP ("Mrs Jarvis")
8. **MALCOLM JARVIS HOMES LIMITED** (company registration number 04470416) whose registered office is at Great Chilmington Farmhouse, Great Chart, Ashford, TN23 3DP ("Jarvis Homes")
9. **PENTLAND KENT LIMITED** (company registration number 09276298) whose registered office is at The Estate Office, Canterbury Road, Etchinghill, Folkestone, CT18 8FA ("Pentland Kent")
10. **PENTLAND HOMES LIMITED** (company registration number 01031651) whose registered office is at The Estate Office, Canterbury Road, Etchinghill, Folkestone, CT18 8FA ("Pentland Homes")
11. **BDW TRADING LIMITED** (company registration number 03018173) whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("BDW")
12. **HOMES AND COMMUNITIES AGENCY** whose registered office is at Homes and Communities Agency, Fry Building, 2 Marsham Street, London SW1P 4DF ("the HCA")
13. **TITLESTONE PROPERTY LENDING LIMITED** (company registration number 08144104) whose registered office is at 40 Gracechurch Street, London, EC3V 0BT ("Titlestone")
14. **CLOSE BROTHERS LIMITED** (company registration number 00195626) whose registered office is at 10 Crown Place London EC2A 4FT ("Close Brothers").
15. **ASHFORD BOROUGH COUNCIL** of Civic Centre, Tannery Lane, Ashford, TN23 1PL ("the Council")

16. **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone ME14 1XQ ("the County Council")

RECITALS

Whereas

- A. Hodson has a freehold interest in that part of the Site coloured beige on the Land Ownership Plan One by virtue of being the registered proprietor with title absolute of the freehold interest in those parts of the Site registered under title numbers K448700 and TT36322 (subject to the transfer of the land shown coloured light blue and cross hatched red on Land Ownership Plan Two pursuant to a transfer dated ~~1~~ of an even date between 1) Hodson and 2) Hodson CG Two referred to at Recital D7) and TT35024 (subject to the transfer of the land shown coloured orange and numbered 8 on Land Ownership Plan Two pursuant to a transfer dated ~~1~~ of an even date between 1) Hodson and 2) Hodson CG One referred to at Recital C and subject to the transfer of the land shown coloured light blue and numbered 11 on the Land Ownership Plan Two pursuant to transfer dated ~~1~~ of an even date between 1) Hodson and 2) Hodson CG Two referred to at Recital D6) and acquiring the:-
1. freehold interest in the land coloured yellow hatched red edged in black and numbered 1 & 15 on Land Ownership Plan Two being part of the land registered under title number K720599 at the date of this Deed pursuant to a transfer dated ~~1~~ of an even date between 1) Hodson CG Two and 2) Hodson.
 2. freehold interest in the land coloured yellow hatched red and numbered 14 on Land Ownership Plan Two being part of the land registered under title number K111341 at the date of this Deed pursuant to a transfer dated ~~1~~ of an even date between 1) Hodson CG Two and 2) Hodson.
 3. freehold interest in the land coloured yellow and cross hatched red and numbered 12 on Land Ownership Plan Two being that part of the land registered under title number K42532 at the date of this Deed pursuant to a transfer dated ~~1~~ of an even date between 1) Pentland Homes and 2) Hodson.
 4. freehold interest in the land coloured red and numbered 7 on the Land Ownership Plan Two being part of the land registered under title number K631376 at the date of this Deed pursuant to a transfer dated ~~1~~ of an even date between 1) Ward Homes Limited and 2) Hodson.
- B. Chilmington Green Developments has a freehold interest in that part of the Site hatched yellow on Land Ownership Plan One by virtue of being the registered proprietor with title absolute of that part of the Site registered under title number K725773 subject to the transfer of the freehold interest in that land shown coloured light blue cross hatched red and numbered 10 on the Land Ownership Plan Two pursuant to a transfer dated ~~1~~ of an even date between 1) Chilmington Green Developments and 2) Hodson CG Two referred to at Recital D8.
- C. Hodson CG One has a freehold interest in that part of the Site coloured orange on the Land Ownership Plan One by virtue of acquiring part of that land registered under title number TT35024 as at the date of this Deed being coloured orange and numbered 8 on the Land Ownership Plan Two pursuant to a transfer dated ~~1~~ of an even date between 1) Hodson and 2) Hodson CG One.
- D. Hodson CG Two has a freehold interest in that part of the Site coloured light blue on Land Ownership Plan One by virtue of:-
1. Acquiring the freehold interest in part of the land registered under title number K720599 pursuant to a transfer dated ~~1~~ of even date between 1) Alan John Pullen and 2) Hodson CG Two but subsequently having transferred that land (being the land coloured yellow edged in black and hatched red and numbered 1

& 15 on Land Ownership Plan Two to Hodson pursuant to a transfer ~~dated []~~ of an even date between 1) Hodson CG Two and 2) Hodson referred to at Recital A1 above.

2. Acquiring the freehold interest in all that land shown coloured light blue and edged in black and numbered 4 on Land Ownership Plan Two pursuant to a transfer of all that land registered under title number K111341 at the date of this Deed ~~dated []~~ of even date between 1) Alan John Pullen and 2) Hodson CG Two but subject to i) a subsequent transfer of the land shown coloured dark blue and numbered 13 on Land Ownership Plan Two and comprising of part of the land registered under title number K111341 at the date of this Deed pursuant to a transfer ~~dated []~~ of an even date between 1) Hodson CG Two and 2) BDW referred to at Recital L1 and ii) a subsequent transfer of the land coloured yellow hatched red and numbered 14 on Land Ownership Plan Two being part of the land registered under title number K111341 at the date of this Deed pursuant to a transfer ~~dated []~~ of an even date between 1) Hodson CG Two and 2) Hodson and referred to at recital A2 above.
3. Acquiring the freehold interest in all that land shown coloured light blue edged in black and numbered 5 on Land Ownership Plan Two being part of that land registered at the date of this Deed under title number K343699 pursuant to a transfer ~~dated []~~ of an even date between 1) Alan John Pullen and 2) Hodson CG Two.
4. Acquiring the freehold interest in all that land shown coloured light blue edged in black and numbered 2 on the Land Ownership Plan Two and all that land coloured light blue edged in black and numbered 4 on Land Ownership Two and all that land coloured dark blue cross hatched in black and numbered 16 being all of that land registered at the date of this Deed under title numbers K114296 K440838 and K702249 pursuant a transfer ~~dated []~~ of an even date between 1) Alan John Pullen and 2) Hodson CG Two but subject to a subsequent transfer of the freehold interest in that land shown coloured dark blue and hatched black and numbered 16 on Land Ownership Plan Two comprising part of the land registered under title number K114296 pursuant to a transfer ~~dated []~~ of an even date between 1) Hodson CG Two and 2) BDW referred to at Recital L2.
5. Acquiring the freehold interest in all that land shown coloured light blue and numbered 3 on Land Ownership Plan Two being registered at the date of this Deed under title numbers K518531 and K514398 pursuant to a transfer ~~dated []~~ of an even date between 1) Alan John Pullen and Kathleen Marguerite Pullen and 2) Hodson CG Two. *for an even*
6. Acquiring the freehold interest in part of that land registered at the date of this Deed under title number TT35024 and shown coloured blue and numbered 11 on Land Ownership Plan Two pursuant to transfer dated ~~[]~~ of an even date between 1) Hodson and 2) Hodson CG Two.
7. Acquiring the freehold interest in part of that land registered at the date of this Deed under title number TT36322 and shown coloured light blue and cross hatched red and numbered 9 on the Land Ownership Plan Two pursuant to a transfer ~~dated []~~ of an even date between 1) Hodson and 2) Hodson CG Two.
8. Acquiring the freehold interest in part of that land registered at the date of this Deed under title number K725773 and shown coloured blue cross hatched red and numbered 10 on Land Ownership Plan Two pursuant to a transfer ~~dated []~~ of an even date between 1) Chilmington Green Developments and 2) Hodson CG Two.
9. *Acquiring the freehold interest in part of that land registered at the date of this Deed under title number K653593 and numbered 6 on Land Ownership Plan Two and that land registered at the date of this Deed under title number K333776 and also numbered 6 on Land Ownership Plan Two pursuant to a transfer of an even date between 1) Alan John Pullen and 2) Hodson CG Two.*

[REDACTED]

E. Mr Jarvis has a freehold interest in the Site by virtue of being a joint registered proprietor with title absolute of that part of the Site registered under title number K851181 and being cross hatched in blue on Land Ownership Plan One.

Mrs Jarvis has a freehold interest in the Site by virtue of being a joint registered proprietor with title absolute of that part of the Site registered under title number K851181 and being cross hatched in blue on Land Ownership Plan One.

G. Jarvis Homes has a freehold interest in the Site by virtue of being the registered proprietor with title absolute of that part of the Site registered under title number K965776 and being hatched in blue on Land Ownership Plan One.

H. The County Council has an interest in the Site by virtue of being the registered proprietor with title absolute of part of the Site registered under title numbers K86052 and K956029 and K602040.

I. Pentland Kent has a freehold interest in the Site by virtue of being the registered proprietor with title absolute of that part of the Site registered under title number TT31992 and being edged in red and cross hatched red on Land Ownership Plan One.

J. Pentland Homes has a freehold interest in that part of the Site edged in red and hatched in red on Land Ownership Plan One by virtue of being the registered proprietor with title absolute of the parts of the Site registered under title number TT42532 subject to the transfer of the freehold interest in that part of the Site registered coloured yellow and cross hatched red and numbered 12 on the Land Ownership Plan Two pursuant to a transfer dated [REDACTED] of an even date between 1) Pentland Homes and 2) Hodson referred to at Recital A3.

K. Chelmden Limited has a freehold interest in that part of the Site coloured green on Land Ownership Plan One.

L. BDW has a freehold interest in that part of the Site coloured dark blue on the Land Ownership Plan One by virtue of:-

1. Acquiring the freehold interest in all that land coloured dark blue and numbered 13 on the Land Ownership Plan Two and being part of that land registered under title number K111341 at the date of this Deed pursuant to a transfer dated [REDACTED] of an even date between 1) Hodson CG Two and 2) BDW

2. Acquiring the freehold interest in all that land coloured dark blue and hatched black and numbered 16 on the Land Ownership Plan Two and being part of that land registered under title number K114296 at the date of this Deed pursuant to a transfer dated [REDACTED] of an even date between 1) Hodson CG Two and 2) BDW

3. having the benefit of a contract to acquire those parts of the Site registered under title numbers TT35024, K725773 and TT36322 and shown edged red on the BDW Agreement To Acquire Plan One edged red on the BDW Agreement To Acquire Plan Two and edged red on the BDW Agreement To Acquire Plan Three pursuant to a contract between 1) BDW and 2) Hodson CG Two dated [REDACTED] of an even date. 27 November 2016

M. The HCA has an interest in the Site by virtue of:-

1. a charge dated [REDACTED] of an even date in respect of the entirety of Hodson's freehold interest in the Site set out at recital A above.

2. and a charge dated [REDACTED] of an even date in respect of the entirety of Chilmington Green Development's interest in the Site set out at recital B above and a charge of an even date in respect of the entirety of Hodson CG Two's interest in the Site set out at Recital C.

N. Titlestone has an interest in the Site by virtue of a charge dated [REDACTED] of an even date in

and a charge in respect of the entirety of Hodson CG Two's interest in the Site set out at Recital C.

respect of the entirety of Hodson CG One's interest in the Site set out at Recital C.

Close Brothers has an interest in the Site by virtue of a charge dated ~~_____~~ of an even date in respect of the entirety of Hodson CG Two's interest in the Site set out at Recital D.

The Council and the County Council are the local planning authorities for the purposes of the Planning Act for the area within which the Site is situate and enter into this Deed in their capacities as local planning authorities and are entitled to enforce this Deed for the purposes of Section 106 of the Planning Act.

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 the local education authority the library authority and the authority responsible for social services for the area within which the Site is situate.

For the avoidance of doubt, notwithstanding the County Council's interest in the Site set out in recital H above, the County Council enters into this Deed in its capacity as local authority (including in particular as local planning authority, education authority, library authority, and highway authority) only and not as landowner.

- S. The Council resolved at a meeting of its planning committee held on 15 October 2014 to grant the Planning Permission for the Development subject (inter alia) to the completion of a Deed under Section 106 of the Planning Act.
- T. The Council the County Council the Owners and the Chargees 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 the County Council the Owners and the Chargees but upon persons deriving title from the Owners and any persons claiming through under or in trust for the Owners to the extent and in accordance with the provisions provided herein.
- U. The Council and the County Council have agreed to certain of the persons having an interest in the Site at the date of this Deed entering into and being bound by some but not all of the covenants and obligations in this Deed (in particular the Positive Planning Obligations To Pay) due to the particular circumstances pertaining to the development of the Site pursuant to the Planning Permission and in light of the security provided by other provisions of this Deed.

NOW THIS DEED WITNESSES as follows:-

1 DEFINITIONS

- 1.1 In this Deed the following expressions shall have the following meanings:-

"A28 Improvement Works"	means the A28 Works as defined in the S.278 Agreement.
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<p>"Additional Affordable Housing Provision"</p>	<p>The maximum quantum of additional Affordable Housing Units (if any) that can be afforded to be provided in the relevant one of Viability Review Phase Two to Viability Phase Ten (inclusive) over and above the Minimum Affordable Housing Provision for that Viability Review Phase to be provided in accordance with the Additional Affordable Housing Provision: Mix Proportions for that Viability Review Phase and the requirements of Schedule 1 of this Agreement and which:-</p> <ol style="list-style-type: none"> shall not exceed the Affordable Housing Cap; and shall (subject to the application of the Affordable Housing Cap) be calculated by substituting Open Market Dwellings in the Viability Review Template (Additional Affordable Housing Provision) for the relevant Viability Review Phase for additional Affordable Housing Units (of a type quantum and form that complies with the Additional Affordable Housing Provision: Mix Proportions for that Viability Review Phase and the requirements of Schedule 1 of this Deed) over and above the Minimum Affordable Housing Provision for that Viability Review Phase until either 1) 100% of the Surplus as shown by the Viability Review Template (Minimum Housing Provision) is exactly eliminated; or 2) no more Open Market Dwellings can be substituted for additional Affordable Housing Dwellings (of whatever type) without resulting in a Deficit and there is a Residual Surplus.
<p>"Additional Affordable Housing Provision: Mix Proportions"</p>	<p>What the Council require the Additional Affordable Housing Provision for the relevant Viability Review Phase to comprise of (in the event the Viability Review Template (Minimum Affordable Housing Provision) being part of the Viability Review Submission for that Viability Review Phase shows a Surplus) over and above the Minimum Affordable Housing Provision in that Viability Review Phase in terms of different types of Affordable Housing Units to be confirmed by the Council by the completion of a copy of Table 3 to show what proportion of the total quantum of Affordable Housing Units comprising the Additional Affordable Housing Provision for that Viability Review Phase (whatever that total quantum may be if any) shall be provided as each of the different types of Affordable Housing Units as detailed by column 1 of Table 3. Such proportions shall be expressed as a percentage (in column 2 of Table 3) of the total quantum of the Affordable Housing Units in that Viability Review Phase comprising the Additional Affordable Housing Provision (if any)</p>
<p>"Adoptable Access"</p>	<p>An access road made up to not less than base course level which immediately abuts a school site and connects it with the adopted highway, and which, in the opinion of the County Council, is capable of serving the school on that site in a manner sufficient for the operation of the school for all normal and incidental purposes.</p>

<p>"Affordable Housing Cap"</p>	<p>The maximum quantum of Affordable Housing Units to be provided within any given Viability Review Phase (for the avoidance of doubt including the Minimum Affordable Housing Provision and the Additional Affordable Housing Provision (if any) for the relevant Viability Review Phase) which shall be:-</p> <ul style="list-style-type: none"> a) 40% of the total number of Dwellings within the relevant Viability Review Phase; and b) 1725 Affordable Housing Units (or in the event that when the total number of Dwellings constructed or to be constructed on the Site is finally known following the determination of all Reserved Matters Applications by the Council and such number is different from 5750 such number of Affordable Housing Units that is 30% of that total number Dwellings) when combined with all of the Affordable Housing Units already provided and have been approved by the Council to be provided and have been determined to be provided pursuant the terms of this Deed within other Viability Review Phases
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"Affordable Housing Dwelling Mix"

Full details of the quantum of each different type of tenure and form of all of the Affordable Housing Units intended to comprise the Minimum Affordable Housing Provision and/or the Additional Affordable Housing Provision (as appropriate depending on whether the Viability Review Template (Minimum Affordable Housing Provision) or the Viability Review Template (Additional Affordable Housing Provision) is being produced) and intended to be provided within the relevant Viability Review Phase which shall:-

- a) include the following details in respect of each such Affordable Housing Unit:-
 - i) whether it is intended to be an Affordable Rented Unit a Shared Ownership Unit or an Intermediate Housing Unit; and
 - ii) whether it is intended to be a house or a flat;
 - iii) how many bedrooms it is intended to have;
 - iv) whether it is intended to be provided as extra care housing and/or other accommodation for older persons and/or accommodation for vulnerable groups;
 - v) what the GIA and NIA it is intended to be;
- b) be in accordance with the constraints imposed by and the details of the Parameter Plans and Environmental Statement; and
- c) be in accordance with the requirements of the Planning Permission including all relevant conditions to the Planning Permission; and
- d) be in accordance with and shall be consistent with the details of any Reserved Matters Application/s for that Viability Review Phase submitted to the Council prior to the Viability Review Submission for the same Viability Review Phase.

<p>"Affordable Housing Information Reply"</p>	<p>A written reply to the Affordable Housing Information Request from the Council to the Owners' Agent which:-</p> <ol style="list-style-type: none"> 1) shall set out the following by means of populating column 3 of Table 3:- <ol style="list-style-type: none"> a) the Council's requirements for the Minimum Affordable Housing Provision for the relevant Viability Review Phase in terms of:- <ol style="list-style-type: none"> i) whether each of the Affordable Rented Units (comprising 60% of the Minimum Affordable Housing Provision for the relevant Viability Review Phase in accordance with Schedule 1 of this Deed) shall be flats or houses and how many bedrooms each of those units shall have; and ii) whether the remaining 40% of the Minimum Affordable Housing Provision for the relevant Viability Review Phase shall be provided as Shared Ownership Units or Intermediate Housing Units (which the Council shall decide in its absolute discretion) in accordance with the requirements of Schedule 1 of this Deed; and iii) whether each of those Shared Ownership Units or Intermediate Housing Units (as appropriate) shall be provided as flats or houses and how many bedrooms each of those units shall have; and 2) shall include the Additional Affordable Housing Provision: Mix Proportions for the relevant Viability Review Phase; and 3) for the avoidance of doubt shall not require any Affordable Housing Units comprising the Minimum Affordable Housing Minimum Provision to be provided as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups.
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"Affordable Housing Information Request"	A notice served on the Council by the Owners' Agent asking the Council to confirm what it requires a) the Minimum Affordable Provision in the relevant Viability Review Phase to comprise of and b) what it requires the Additional Affordable Housing Provision (if any) in the relevant Viability Review Phase to comprise of.
"Affordable Housing Land"	The parts of the Site as identified as such in approved reserved matters on which the Affordable Housing Units are to be or have been constructed together with their respective gardens, garages, parking spaces, drives and communal areas for the sole benefit of the occupiers of the relevant Affordable Housing Unit/s.
"Affordable Housing Positive Planning Obligations To Provide And/Or Construct"	all those positive planning obligations to provide and/or construct Affordable Housing Units and Extra Care Housing Units as detailed by Schedule 1 of this Deed.
"Affordable Housing Units"	Affordable Rent Units and/or Intermediate Affordable Housing Units (if any Intermediate Affordable Housing Units are approved by the Council at its absolute discretion to be confirmed by the Council in writing to the Owners' Agent) and/or Shared Ownership Units.
"Affordable Rent Units"	Dwellings identified as such in approved reserved matters which are to be occupied in accordance with the provisions of paragraph 17 of Schedule 1 of this Deed that apply to this defined term.
"Appraisal"	The original viability appraisal of the Development dated 16/09/2014 and prepared for and on behalf of the Consortium Members by Messrs Turner Morum LLP and supplied to the Council on a confidential basis in view of its commercial sensitivity and retained in the Council's records.

"Approved Additional Affordable Housing Provision"	<p>The Additional Affordable Housing Provision (if any) to be provided within a Viability Review Phase:</p> <ul style="list-style-type: none"> a) as approved by the Council pursuant to paragraph 3 of Schedule 23 of this Deed; or b) as determined by an Expert following the reference of the relevant Viability Review Submission to an Expert pursuant to the provisions of paragraph 3 and paragraph 4 of Schedule 23 of this Deed; <p>which for the avoidance of doubt shall be provided in accordance with:-</p> <ul style="list-style-type: none"> (a) the full details of the quantum of each different type of tenure and form of Affordable Housing Unit comprising the Additional Affordable Housing Provision for the relevant Viability Review Phase as approved by the Council pursuant to paragraph 3 of Schedule 23 of this Deed or as determined by reference to dispute resolution pursuant to paragraph 3 and paragraph 4 of Schedule 23 of this Deed; and (b) the requirements of Schedule 1 of this Deed.
"Archaeological Archiving Contribution"	The sum of £40,000.00 (forty thousand pounds) for adequate storage space at a suitable repository such as a museum for the storage of archaeological findings from the Site Index Linked.
"Archaeologist Contribution"	A total sum of £45,000.00 (forty five thousand pounds) Index Linked to fund the employment of a community archaeologist for the Site for three years payable by equal instalments of £15,000 Indexed Linked and Archaeologist Contribution (1), (2) and (3) shall be construed accordingly.
"BCIS"	The Building Cost Information Service.
"BCIS Rate"	The Building Cost Information Service "All In Tender Price Index" median rate for estate housing and for flats as provided by the Royal Institute of Chartered Surveyors (or such equivalent successor index as may be approved by the Council in writing in the event the Building Cost Information Service "All In Tender Price Index" is no longer published)
BDW Agreement To Acquire Plan One	The plan at Annex 9 to this Deed.
BDW Agreement To Acquire Plan Two	The plan at Annex 10 to this Deed.
BDW Agreement To Acquire Plan Three	The plan at Annex 11 to this Deed.

"Blocks"	All buildings containing more than one Dwelling constructed pursuant to the Planning Permission and references to 'Block' shall be construed accordingly and references to "Block" and "Blocks" shall include the land on which such building/s is to be constructed.
"Bond"	A duly executed dated deed executed by the Issuer and completed by the County Council, in which the Issuer promises to pay the County Council on demand any sum demanded up to and including the full Index Linked amount of each of PS1 Contributions 2 to 4, PS2 Contributions 2 to 4, PS3 Contributions 2 to 4, PS4 Contributions 2 and 3, Stage 1 Secondary School Contributions 1, 2 3 and 4, and Stage 2 Secondary School Contributions 1, 2, 3 and 4, as and when such contributions shall have fallen due, such Issuer to be first approved in writing by the County Council's Director of Finance, which deeds shall be in the precise form set out at Schedule 15B.
"Building"	A building (not being a Dwelling) to be constructed on the Site pursuant to the Planning Permission irrespective of any non-compliance with any condition.
"Bulk Sales"	The disposal of six or more Dwellings to one person or consortium of persons under one contract or a series of contracts.
"Chargees"	The HCA Titlestone and Close Brothers and 'Chargee' shall mean any one of them.
"Chilmington Green Area Action Plan"	The Chilmington Green Area Action Plan forming part of the development plan and adopted by the Council on 18th July 2013.
"Chilmington Green Carbon Reduction Project"	A project to reduce the carbon footprint of the Development including measures to be implemented within the Site and/or serving the Site including planting trees public and community transport initiatives that reduce the use and/or reliance on the private motor vehicle and energy saving adaptations to buildings and/or facilities.
"Chilmington Hamlet"	The area identified as such on Figure 7 in the Chilmington Green Area Action Plan.
"Chilmington Green Developments Phase One Land"	All that land owned by Chilmington Green Developments within Viability Phase One shown hatched yellow on the Viability Phase One Plan.
"Chilmington Green Developments Land"	All that land owned by Chilmington Green Developments as at the date of this Deed referred to in Recital B of this Deed and coloured [] on Land Ownership Plan One.

hatched yellow

"Chilmington Green Partnership CMO Working Group"	<p>A working group made up of persons drawn from the entities referred to paragraph 1 of Schedule 4 in the numbers referred to in the same paragraph whose function pending creation of the CMO is to assist the Consortium Members in an advisory capacity</p> <p>a) with the production of the CMO Operating Business Plan by the Consortium Members pursuant to paragraph 6 of Schedule 4;</p> <p>b) by inputting to the detailed design of any community buildings should Reserved Matters Applications in respect of such buildings be made prior to the creation of the CMO as an entity pursuant to paragraph 3 of Schedule 4.</p>
"CHP"	A combined heat and power plant located in the District Centre in the location marked combined heat and power on the masterplan to be approved under condition 17 of the Planning Permission;
"Clause 7.2 Negative Planning Obligation"	That Negative Planning Obligation detailed by clause 7.2 of this Deed.
"CMO"	The community management organisation for the Development being a company limited by guarantee created using the articles of association at Schedule 4 and in accordance with the provisions of Schedule 4 which shall carry out a combination of estate management and community development functions as detailed by those articles of association.
"CMO Membership Application Form"	An application form enabling an owner or occupier of a Dwelling to become a member of the CMO.

- 8) details of all the estate services to be provided by the CMO that are to be funded from the amounts paid by all rent payers and details of all other items of expenditure the CMO will use such amounts for including setting aside reasonable provision for future costs predicted to be incurred by the CMO in providing such estate services; and
- 9) details of all predicted costs to be incurred by the CMO in providing such estate services and items of expenditure referred to in 8) above; and
- 10) it must contain the information and follow the format detailed by the document at Schedule 40.

"CMO Operating Business Plan"

An operating business plan for the CMO to be submitted by the Owners to the Council for its approval in draft form pursuant to paragraph 6 of Schedule 4 of this Deed which must comply with the following:-

- 1) it shall be an operating business plan for all of the accounting years of the CMO that fall during the period between the date on which this business plan is submitted to the Council for its approval pursuant to paragraph 6 of Schedule 4 and the date which is the twentieth anniversary of the predicted date on which the first Dwelling to be Occupied is Occupied; and
- 2) the operating business plan for the accounting year of the CMO during which the predicted date on which the first Dwelling to be Occupied is Occupied falls and for the following 3 accounting years of the CMO shall be a detailed operating business plan and the operating business plan for remainder of the accounting years referred to at 1) above shall be an outline operating business plan; and
- 3) it must set out the CMO's projected sources of income and the projected amount of such income from such sources of income during the accounting years referred to at 1) above; and
- 4) it must set out the CMO's projected liabilities including the CMO's tax liabilities (if any) during the accounting years referred to at 1) above; and
- 5) it must set out the CMO's projected net expenditure over the course of the accounting years referred to at 1) above taking into account factors including but not limited to operational costs taxation income reserves and appropriate provision for asset replacement/renewal; and
- 6) it must include a proposed Interim Charge for each type and size of Dwelling (including those Dwellings in Blocks and to include the method of calculating such Interim Charge/s) for all those Rentcharge Deeds entered into during the First Service Charge Year relating to the first Rentcharge Deed entered into and the subsequent two Service Charge Years relating to the first Rentcharge Deed entered into; and
- 7) it must include a proposed Sum A for each size and type of Dwelling (including Dwellings in Blocks) and the method of calculating Sum A (which should be consistent with the methodology for calculating the proposed Interim Charge pursuant to 6) above; and

- 8) details of all the estate services to be provided by the

See Rider ①

"CMO Second Operating Premises Design Brief and Specification"	A brief and specification that shall be in the same format as and include all the details and items listed in the document at Schedule 33.
"CMO Start-Up Contribution"	The sum of £150,000.00 (one hundred and fifty thousand pounds) to be paid to the Council in two instalments and to be used for the purposes of covering the costs incurred by the Council and/or the CMO in creating the CMO and establishing the CMO as a working organisation including but not limited to paying for the provision and recruitment of staff and provision and purchase of equipment.

"CMO's First Operating Premises"

An operating premises for the CMO that-

- a) shall be located in a prominent and visible location within Main Phase 1 and be accessible via highway adopted by the Highways Authority as public highway or via a highway that is to be proposed to be adopted as public highway by the Highway Authority or is in the process of being adopted by the Highways Authority as public highway pursuant to a Highways Agreement as a highway and is useable by all classes of vehicular and pedestrian traffic; and
- b) shall be no less than 200 square metres GIA, and
- c) shall be fully serviced with all necessary conduits and apparatus to enable connection of such operating premises to the main networks for the supply of/disposal of (as appropriate) gas electricity phone and internet access potable water and sewage disposal; and
- d) may be a temporary type of construction for example a "portacabin" style building and must be new or in "as new" condition or through conversion of an existing building(s) for temporary office use; and
- e) shall have provision for access to those with mobility difficulties at ground floor level and otherwise enable the CMO as occupier of the building to discharge its duties under the Equality Act 2010 or such other equivalent legal duties as may supersede those duties from time to time; and
- f) shall have exclusive access to 12 car parking spaces (including 1 disabled space) and a further area of grass capable of accommodating at least a further 3 cars which together must be for the exclusive use of the CMO's staff and visitors to the CMO; and
- g) shall include a fitted out reception area, office area, meeting area and appropriate storage, toilet and kitchenette facilities and basic furniture and decoration.

“CMO’s First Operating Premises Lease”	A lease of the CMO’s First Operating Premises to be granted to the CMO and to be in accordance with the Heads of Terms for the Lease of the CMO’s First Operating Premises and such other terms as may be agreed by the CMO and the relevant Owner.
“CMO’s First Operating Premises Design Brief and Specification”	A brief and specification that shall be in the same format as and include all the details and items listed in the document at Schedule 32.

**"CMO's Second
Operating Premises"**

A second operating premises for the CMO that:-

- a) shall be 300 square metres of GIA and external appearance and type of construction to include access for those with mobility difficulties; and
- b) shall be located within the District Centre and be accessible via highway adopted by the Highways Authority as public highway or via a highway that is to be proposed to be adopted as public highway by the Highway Authority or is in the process of being adopted as public highway by the Highway Authority pursuant to a Highways Agreement and is useable by all classes of vehicular and pedestrian traffic; and
- c) shall be located in a permanent building designed for uses consistent with use classes A1 and/or B1 of the UCO 1987 and community uses and for the avoidance of doubt may accommodate occupiers in addition to the CMO; and
- d) shall be fully serviced with all necessary conduits and apparatus to enable connection of such operating premises to the main networks for the supply of/disposal of (as appropriate) gas electricity phone and internet access potable water and sewage disposal; and
- e) shall have provision for access to those with mobility difficulties and otherwise enable the CMO as occupier of the building to discharge its duties under the Equality Act 2010 or such other equivalent legal duties as may supersede those duties from time to time; and
- f) shall have exclusive access to 15 car parking spaces (including 1 disabled space) which must be for the exclusive use of the CMO's staff and visitors to the CMO; and
- g) shall include a fitted out reception area, office area, meeting area and appropriate storage, toilet and kitchenette facilities and basic furniture and decoration.

"CMO's Second Operating Premises Lease"	A lease of the CMO's Second Operating Premises to be granted to the CMO and to be in accordance with the Heads of Terms for the Lease of the CMO's Second Operating Premises and such other terms as may be agreed by the CMO and the relevant Owner.
"Commence (Statutory) the Development"	The carrying out of a Material Operation (Statutory) pursuant to the Planning Permission or the carrying out of a Material Operation (Statutory) which would constitute the beginning of the Development for the purpose of Section 91 of Planning Act but for non-compliance with any condition of the Planning Permission and related expressions such as "Commenced (Statutory) the Development" "Commence (Statutory) the Development" shall be construed accordingly.
"Commence the 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 purpose of Section 91 of Planning Act but for non-compliance with any condition of the Planning Permission and related expressions such as "Commenced the Development" "Commence the Development" and "Commencement of Development" shall be construed accordingly
"Commercial Estate"	A building or buildings or part of a building and/or buildings that is to be constructed on the Site pursuant to the Planning Permission and is suitable for one or more of the following uses as approved by the Council pursuant to its approval of the relevant Commercial Estate Brief: use class A1, A2, B1, B2, A3 – A5 (inclusive) or D1 or D2 of the UCO 1987

<p>“Commercial Estate: Basic Provision”</p>	<p>Commercial Estate of no less than 15,000 square feet GIA and up to 20,000 square feet of GIA to be provided to the CMO pursuant to paragraph 9 of Schedule 4 which:-</p> <ul style="list-style-type: none"> a. shall be accessible via highway adopted by the Highways Authority for maintenance purposes or via a highway that is due to be proposed to be adopted as public highway or is in the process of being adopted as public highway by the Highways Authority pursuant to a Highways Agreement and is useable by all classes of vehicular and pedestrian traffic; and b. shall be fully serviced with all necessary conduits and apparatus to enable connection of such Commercial Estate to the main networks for the supply of/disposal of (as appropriate) gas electricity phone and internet access potable water and sewage disposal; and c. may comprise part of a building/s or all of a building/s; and d. shall have provision for access for those with mobility difficulties and otherwise enable the CMO as occupier of the building to discharge its duties under the Equality Act 2010 or such other equivalent legal duties as may supersede those duties from time to time; and e. shall have exclusive access to the quantum of car parking spaces that the Council’s planning parking policy from time to time identifies as appropriate for the type size and use of the building/s or part of the building/s comprising the Commercial Estate: Basic Provision; and f. shall include a fitted out reception area, office area, meeting area and appropriate storage, toilet and kitchenette facilities (or access to and use of shared toilet and kitchenette facilities if appropriate depending on the nature of the building in which it is located) and basic furniture and decoration.
<p>“Commercial Estate: Basic Provision Design Brief and Specification”</p>	<p>A design brief and specification for the Commercial Estate: Basic Provision to be in the same format and to include all of the details and items listed in the document at Schedule 36 and all of the details and requirements referred to in the definition of the Commercial Estate: Basic Provision.</p>

<p>"Commercial Estate Marketing Report"</p>	<p>A written marketing report to be prepared by a surveyor qualified with RICS and with at least five years of experience of advising in relation to commercial property in the borough of Ashford that shall:-</p> <ul style="list-style-type: none"> a) assess the performance of the Commercial Estate: Basic Provision up to the date of the report in terms of yields; and b) assess the likely future market for letting the Commercial Estate: Basic Provision in terms of likely future yields; and c) assess the likely future market for letting further Commercial Estate and predicted yields of the same; and d) recommend the most marketable form location and quantum of further provision of Commercial Estate over and above the Commercial Estate: Basic Provision.
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**"Commercial Estate:
Second Tranche"**

Further Commercial Estate (in addition to the Commercial Estate: Basic Provision) of up to 15,000 square feet of GIA to be provided to the CMO pursuant to paragraph 11 of Schedule 4 if the Council notifies the Owners' Agent that the CMO has elected Option "A" via the Endowment Election and which:-

- a) shall be accessible via highway adopted by the Highways Authority for maintenance purposes or via a highway that is due to be proposed to be adopted as public highway or is in the process of being adopted as public highway by the Highways Authority pursuant to a Highways Agreement and is useable by all classes of vehicular and pedestrian traffic; and
- b) shall be fully serviced with all necessary conduits and apparatus to enable connection of such Commercial Estate to the main networks for the supply of/disposal of (as appropriate) gas electricity phone and internet access potable water and sewage disposal; and
- c) may comprise part of a building/s or all of a building/s; and
- d) shall have provision for access for those with mobility difficulties and otherwise enable the CMO as occupier of the building/s to discharge its duties under the Equality Act 2010 or such other equivalent legal duties as may supersede those duties from time to time; and
- e) shall have exclusive access to the quantum of car parking spaces that the Council's planning parking policy from time to time identifies as appropriate for the type size and use of the building/s or part of the building/s comprising such Commercial Estate; and
- f) shall include a fitted out reception area, office area, meeting area and appropriate storage, toilet and kitchenette facilities (or access to and use of shared toilet and kitchenette facilities if appropriate depending on the nature of the building in which it is located) and basic furniture and decoration.

<p>“Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification”</p>	<p>A design brief and specification for the Commercial Estate: Second Tranche or the Commercial Estate Third Tranche (as appropriate) to be in the same format and to include all of the details and items listed in the document at Schedule 37 and all of the details and requirements referred to in the definition of the Commercial Estate: Second Tranche and –the Commercial Estate: Third Tranche (as appropriate).</p>
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**"Commercial Estate:
Third Tranche"**

Further Commercial Estate (in addition to the Commercial Estate: Basic Provision and the Commercial Estate: Second Tranche) of up to 15,000 square feet of GIA to be provided to the CMO pursuant to paragraph 12 of Schedule 4 if the Council notifies the Owners' Agent that the CMO has elected to be provided with such further Commercial Estate pursuant to the Endowment Election which:-

- a) shall be accessible via highway adopted by the Highways Authority for maintenance purposes or via a highway that is due to be proposed to be adopted as public highway or is in the process of being adopted as public highway by the Highways Authority pursuant to a Highways Agreement and is useable by all classes of vehicular and pedestrian traffic; and
- b) shall be fully serviced with all necessary conduits and apparatus to enable connection of such Commercial Estate to the main networks for the supply of/disposal of (as appropriate) gas electricity phone and internet access potable water and sewage disposal; and
- c) may comprise part of a building/s or all of a building/s; and
- d) shall have provision for access for those with mobility difficulties and otherwise enable the CMO as occupier of the building/s to discharge its duties under the Equality Act 2010 or such other equivalent legal duties as may supersede those duties from time to time; and
- e) shall have exclusive access to the quantum of car parking spaces that the Council's planning parking policy from time to time identifies as appropriate for the type size and use of the building/s or part of the building/s comprising such Commercial Estate; and
- f) shall include a fitted out reception area, office area, meeting area and appropriate storage, toilet and kitchenette facilities (or access to and use of shared toilet and kitchenette facilities if appropriate depending on the nature of the building in which it is located) and basic furniture and decoration.

"Commercial Land"	<p>All the net developable land within the relevant Viability Review Phase that is to be used for uses falling within Use Class B1 Use Class A1 to A5 (inclusive) as defined by the UCO 1987 for the avoidance of doubt to exclude:-</p> <ul style="list-style-type: none"> a) any land on which the Community Hub Building is to be constructed; and b) any land on which the CHP or DHP is to be constructed unless the CHP or DHP forms an integral part of a building that falls within the use classes referred to above; and c) any land which is intended to be transferred or leased to the CMO pursuant to the provisions of this Deed.
"Commercial Premises"	A building that is constructed so that it is suitable for one or more of the following uses: use class A1, A2, B1 B2, A3 – A5 (inclusive) and D1 of the UCO 1987.
"Community Hub Building"	The multi-purpose community leisure building with associated hub space, family and social care facility, youth facility, library access point, community learning facility, police space, outdoor multi-use games area and car parking together with a health centre to be provided under schedule 12 and part of which is available for use by the County Council or by its nominee approved by the County Council in writing which building has been approved by the Council in accordance with (1) the approved brief and (2) the need for the County Council to have the right to use such space in the terms set out in paragraph 1.4 of Schedule 12 in order to deliver services paid for with contributions under the terms of this Deed.
"Community Learning Contribution 1"	The sum of £106,500.00 (one hundred and six thousand and five hundred pounds) Index Linked.
"Community Learning Contribution 2"	The sum of £106,500.00 (one hundred and six thousand and five hundred pounds) Index Linked.
"Community Learning Contribution"	The sum of £213,000.00 (two hundred and thirteen thousand pounds) for the provision and subsidy of new adult learning classes Serving the Development payable by instalments referred to as Community Learning Contribution 1 and Community Learning Contribution 2 each Index Linked from 1 April 2014 to the dates on which the payments fall due.
"Companies House"	The office of the Registrar of Companies.

"Complete"	Fully constructed including but not limited to the completion of all external and interior finishing of the relevant building the completion of associated exterior hard and soft landscaping including pathways the completion of car parking relating to the relevant building so that such car parking is finished to a wearing course the completion (with the exception of the wearing course) of the access road/s that serves the relevant building and connects to and provides vehicular access and egress for the relevant building to and from an adopted highway (or connects to and provides vehicular and pedestrian access and egress for the relevant building to and from a road that is in the process of being adopted as public highway by the Highways Authority pursuant to a completed Highways Agreement with the Highways Authority) so that such road/s is useable by all classes of vehicular and pedestrian traffic the installation and connection of all services to the main networks for those services in respect of the relevant building so that such services are ready for and capable of being used the fitting out of the interior of the relevant building (to include the provision of kitchen and toilet facilities and basic decoration and furniture where relevant) and any other works reasonably required in order to render the relevant building associated car parking access roads pathways and associated landscaping capable of being used and ready for use in accordance with its intended use and "Completed" shall be construed accordingly.
"Consortium Members"	The four members of the consortium who submitted the Planning Application to the Council being BDW Hodson Pentland Kent and Jarvis Homes together with Pentland Homes Chelmden Chilmington Green Developments Hodson CG One and Mr Jarvis Mrs Jarvis Hodson CG Two but for the purposes of this definition shall exclude persons deriving title to the Site from or under them.
"Contamination"	Any substance that is classified as contamination under Part 2A of the Environmental Protection Act 1990.
"Contribution"	Any of the financial payments required to be made to either the Council or the County Council under this Deed.
"Council Contributions Bank Account"	The interest bearing deposit bank account in the sole name of the Council in which the monies paid in advance of use by the Council will be held.

"Council Minimum Balance"	<p>£2,966,902 up to the Occupation of the 5474th Dwelling</p> <p>£2,735,951 between the Occupation of the 5475th Dwelling and the 5549th Dwelling</p> <p>£1,039,251 between the Occupation of the 5550th Dwelling and the 5624th Dwelling</p> <p>£757,902 between the Occupation of the 5625th Dwelling and the 5699th Dwelling</p> <p>£35,021 between the Occupation of the 5700th Dwelling and the 5749th Dwelling</p> <p>£0 upon Occupation of the 5750th Dwelling or in the event the Development is completed with fewer than 5750 Dwellings, upon completion of the Development.</p>
"Council's Extra Care Design Standards"	The document entitled "Ashford Extra Care Sheltered Housing (revised February 2014)" or such later revision of that document or policy superseding that document as may be adopted by the Council.
"Council's Offices"	The Civic Centre Tannery Lane Ashford Kent TN23 1PL or such other offices as are notified to the Owners' Agent by the Council in writing.
"County Council Contributions Bank Account"	the interest bearing deposit bank account in the sole name of the County Council in which the monies paid in advance of use by the County Council will be held.
"County Council Minimum Balance"	<p>Means the sum of £475,000 (Four Hundred and Seventy Five Thousand Pounds) up to the Occupation of the first 5,100 Dwellings</p> <p>£250,000 (two hundred and fifty thousand pounds) between the Occupation of the first 5,101 Dwellings and the first 5,600 Dwellings</p> <p>£225,000 (two hundred and twenty five thousand pounds) from the Occupation of the first 5,601 Dwellings until all contributions to be paid to the County Council have been paid in full.</p>
"Current Viability Review Phase"	The Viability Review Phase that relates to and is the subject of the Viability Review Submission.
"Defects"	Any defects in the relevant facility that are due to a defect in design or materials or workmanship or supervision of contractors or site preparation works and "Defect" shall be construed accordingly

"Deficit Grant Contribution"	The sum of £3,350,000.00 (three million three hundred and fifty thousand pounds) to be paid to the Council in ten instalments and Index Linked accordingly to use as revenue for the CMO and towards the costs incurred by the CMO in carrying out its functions and discharging its responsibilities such as maintaining and managing the facilities provided to it pursuant to the terms of this Deed and engaging in and facilitating community development activities within the Site.
"Deficit"	A negative sum of money for the relevant Viability Review Phase equivalent to the Residual Land Value less the Benchmark Land Value.
"Developer Costs"	A sum of money for the relevant Viability Review Phase equivalent to the sum of the A28 Improvement Works Additional Costs (if any) the A28 Additional Bonding Costs (if any) the Acquisition Costs the Base Build Costs (Affordable Housing Flats) the Base Build Costs (Affordable Housing Houses) the Base Build Costs (Open Market Flats) the Base Build Costs (Open Market Houses) the Education Bonding Additional Costs the Extra Care Additional Affordable Housing Costs (for the avoidance of doubt in relation to Viability Review Phase Two only) the Environmental Requirements Costs the Construction Fees the Construction Finance Costs the Affordable Housing Transaction Costs the Additional Services Costs (if any) and the Legal and Marketing Fees (Open Market Housing).
"Developers"	The Consortium Members and any other developers identified as such in writing by the Owner's Agent to the Council.
"Developers' Capital Bank Account – Council"	the interest bearing deposit bank account in the name of Hodson (or such other bodies as the Council may approve) into which the monies the Council may use in default will be held.
"Developers' Contingency Bank Account – Council"	the interest bearing deposit bank account in the sole name of Hodson (or such other body as the Council may approve) in which the Council Minimum Balance will be held.
"Developers' Contingency Bank Account – County Council"	the interest bearing deposit bank account in the sole name of Hodson (or such other body as the County Council may approve) in which the County Council Minimum Balance will be held.
"Development"	The development of the Site pursuant to the Planning Permission.

“DHP”	Means a district heating plant located in the District Centre in the location marked “combined heat and power” on the masterplan to be approved under condition 17 of the Planning Permission.
“Discovery Park Sports Hub”	The 1.37 ha of facilities to be provided on the land marked “S3” or “DP3” on the attached plan numbered OPA06R rev. P2 at Annex 3 of this Deed
“Discovery Park Sports Pitches”	22.08 ha of sports pitches/courts to be provided on the land marked “S3” on the plan numbered OPA06R rev. P2 at Annex 3 of this Deed.
“Discovery Park”	Together the <ul style="list-style-type: none"> combined 27.39 ha of land marked “DP1” and “DP2”, and 7.44 ha of land marked “DP3” on the attached plan OPA06R rev. P2 at Annex 3 of this Deed.
“Disposal”	The transfer or the grant of any estate or interest and (save where reference is made herein to the completion of a Disposal or Disposals) in either case includes any contract therefor and “Dispose” shall be construed accordingly
“District Centre”	The part of the Site identified as the “District Centre Character Area” in figure 4 of the Chilmington Green Area Action Plan.
“DP3”	The 7.44 ha of land marked “DP3” on plan numbered OPA06R rev. P2 at Annex 3 of this Deed to be provided as a strategic park.
“Dwellings”	The residential dwellings (whether flats maisonettes houses or any other type of self-contained residential accommodation within Use Class C3 for an individual or a household including live/work units and any other building that comprises of one unit of such residential accommodation and other use) constructed pursuant to the Planning Permission and “Dwelling” shall be construed accordingly
“EC Harris Cost Plan”	The summary of strategic infrastructure cost estimate dated March 2016 report produced by EC Harris (known as Arcadis at the date of this Deed) and supplied to the Council on a confidential basis in view of its commercial sensitivity and retained in the Council’s records and which forms part of the Appraisal.

"Education Contributions"	all financial contributions to be made to the County Council under Schedule 15 of this Deed for expenditure on Education Purposes for the school to which the relevant contribution relates.
"Education Purposes"	the construction of Primary School 1 Primary School 2 Primary School 3 Primary School 4 and Secondary School respectively.
"Endowment Election"	<p>A decision made by the CMO and notified to the Council as to whether the CMO chooses:-</p> <ul style="list-style-type: none"> a. to be provided with the Commercial Estate: Second Tranche and the Commercial Estate: Third Tranche (Option "A"); or b. to be provided with the First Cash Endowment and the Second Cash Endowment (Option "B") <p>pursuant to the terms of this Deed.</p>
"Ensure Access"	provide and maintain a reliable access in common with any other construction traffic for the passage of all construction traffic necessary to reach each of the PS1 Site the PS2 Site the PS3 Site the PS4 Site and the Secondary School Site, from the date of transfer to the County Council until an Adoptable Access has been provided, and "Ensured Access" and all like variations of that term shall be construed accordingly.
"Environmental Statement"	The environmental statement considered by the Council with the Planning Application prepared by WSP Environment and Energy of Mountbatten House Basing View Basingstoke Hampshire RG21 4HJ and issued June 2012 as updated by an Addendum prepared by Turkington Martin and issued September 2014 and a further addendum prepared by WSP of WSP House 70 Chancery Lane WC2A 1AR and issued February 2015.
"Estate Rentcharge"	The model estate rentcharge at Schedule 31 of this Deed or such other model estate rentcharge in substantially the same form as the document at Schedule 31 of this Deed as may be approved by the Council in writing in its absolute discretion.
"EU"	The European Union.
"Excluded Areas"	The site of any multi-use games area provided pursuant to Schedule 12, the sports pitches provided pursuant to Schedule 10, the allotments provided pursuant to Schedule 9, the equipped portion of the play spaces provided pursuant to Schedule 8 and the footprint of any building.

"Existing Title Matters"	All matters contained in and referred to in the registers of title to the Site and registered under Title Numbers as at the date of this Deed.
"Expert CHP/DHP"	an expert selected by the Owners' Agent from the Panel and who shall be assisted in preparing his report by a quantity surveyor and an experienced valuer.
"Extra Care Housing Units"	<p>Affordable Housing Units identified as such in approved reserved matters that are designed and constructed to accommodate the needs of older people (those persons over 55 years of age) and with the facilities necessary to provide varying levels of care and support to those persons within the same building(s) and which shall comply with the following</p> <ul style="list-style-type: none"> a) each Dwelling shall be a self-contained home, within a residential apartment building and shall have its own "front door"; and b) each Dwelling shall be designed and constructed so that it complies with the recommendations of the HAPPI Reports (or such other government guidance as may supersede the HAPPI Reports that the Council approves of in writing to the Owners' Agent in its absolute discretion); and c) in order to meet the ongoing needs of older people each Dwelling shall be designed and constructed so that it complies with wheelchair standards; d) each Dwelling shall be designed and constructed so that it is dementia friendly and incorporates and complies with all of the requirements (including design standards) as detailed by the Council's Extra Care Design Standards; and e) the building in which the individual Dwellings are located shall be designed and constructed so it is "dementia friendly" and shall include communal facilities that are available for the exclusive use of the occupants of the homes/units referred to in this defined term and their carers and visitors.
"Family Social Care Contribution"	<p>The sum of £272,00.000 (two hundred and seventy two thousand pounds) Index Linked based on 10 years rent free space of the following elements to supplement the running costs of the Community Hub Building based on 340 square metres client meeting space; use of a DDA compliant kitchen and 18 square metres changing space; for service and administrative charges arising from occupation of the District Centre Community Hub to include but not be limited to caretaking reception services security business rates (if any) and utilities which shall be payable in two equal instalments of £136,000.00 (one hundred and thirty six thousand pounds) Index Linked and Family Social Care Contribution (1) and Family Social Care Contribution (2) shall be construed accordingly.</p>

"Feasibility/Viability Study"	<p>A study to be carried out by the Expert CHP/DHP to determine whether the use of a CHP or DHP scheme including all ancillary or related or incidental buildings, plant, apparatus, pipework and machinery at the district centre scale or (save for the Dwellings in Viability Review Phase 1) at the whole Development scale is Feasible and which study shall without prejudice to the generality consider technical feasibility, practicality (including the developability of the Site in accordance with the Planning Permission) comparative land – take and all installation, maintenance, depreciation and replacement costs and assess the financial viability of providing a CHP or DHP district heating network at the district centre scale and the whole development scale, compared with conventional heating and power supplies to the Development as at the date of the report and having regard to existing and any anticipated changes in feed in tariffs and other incentives and the need to reinforce or upsize any gas supply utilities and the availability thereof and the impact on the surrounding area in bringing additional gas supplies and other fuel sources to and from the Site the cost of fuel and the seasonal and variable daily demand for hot water for domestic use.</p>
"Feasible"	<p>All of the CHP or DHP scheme under Scenarios 1 2 3 or 4 as appropriate (including all ancillary or related or incidental buildings, plant, apparatus, pipework and machinery) which would:</p> <ol style="list-style-type: none"> 1. be practical financially viable, cost – effective and feasible from the developers' perspective; and 2. be consistent with and not conflict with the terms and conditions and limitations of the Planning Permission; and 3. be no more costly to the developers than a non CHP or DHP form of Development; and 4. not have a short medium or long term negative effect on scheme development costs viability or the developability of the Site or part of it (when viewed in each case from the perspective of the developers); and 5. not interfere with the deliverability or developability of or retard the development of the Site in accordance with the Planning Permission; and 6. not cause a nuisance or annoyance or adversely affect the amenities of neighbouring development or sensitive receptors; <p>and the expression "Feasibility" shall be construed accordingly.</p>
"First Cash Endowment"	<p>The sum of £2,190,750.00 (two million one hundred and ninety thousand seven hundred and fifty pounds) Index Linked to be used for the purposes of creating a medium and/or long term investment to generate income for the CMO.</p>

“First Service Charge Year”	Shall have the same meaning as is detailed by the Rentcharge Deed.
“Fitting Out”	Internal decoration, basic furniture, kitchenette facilities and storage.
“Fixed Assumption Viability Review Inputs “	Those inputs to the Viability Review Template as defined at Schedule 44 of this Deed.
“Framework Agreement”	An agreement in the same form as that at Schedule 38 of this Deed.
“GIA”	Gross internal area measured in accordance with the RICS Code of measuring practice 6 th edition.
“HAPPI Reports”	The first and second reports produced by the All Parliamentary Group on Housing and Care for Older People
“HCA”	The Homes and Communities Agency or such successor to its functions.
“Heads of Terms for the Lease of the CMO’s First Operating Premises “	The heads of terms for the lease of the CMO’s First Operating Premises to the CMO at Schedule 34.
“Heads of Terms for the Lease of the CMO’s Second Operating Premises”	The heads of terms for the lease of the CMO’s Second Operating Premises to the CMO at Schedule 35.
“Heritage Interpretation Contribution”	£60,000.00 (sixty thousand pounds) Index Linked to be spent on community activity Serving the Development relating to the heritage of the Site.
“Highways Act”	The Highways Act 1980 (as amended).
“Highways Agreement”	An agreement under Section 38/Section 278 of the Highways Act for the adoption of land as a public highway and/or works to the public highway.
“Highways Authority”	The County Council or such successor to the County Council as highways authority for highways in the borough of Ashford.
“Hodson Viability Phase One Land”	All that land owned by Hodson within Viability Phase One shown coloured beige on the Viability Phase One Plan.

	"Hodson Land"	All that land with the Site that Hodson has an interest in as at the date of this Deed and as referred to at Recital A of this Deed being coloured beige on Land Ownership Plan One.
	"Hodson CG One Land"	All that land withn the Site that Hodson CG One has an interest in as at the date of this Deed and as referred to at Recital C of this Deed being coloured orange on Land Ownership Plan One.
	"Hodson CG Two Land"	All that land Hodson CG Two has an interest in as at the date of this Deed and as referred to at Recital C of this Deed being coloured light blue on Land Ownership Plan One.
	"Hodson CG One Viability Phase One Land"	All that land owned by Hodson CG One within Viability Phase One shown coloured orange on the Viability Phase One Plan.
	"Index Linked"	Adjusted in accordance with clause 28 and "Index Linking" shall refer to the process of adjustment.
	"Informal/Natural Green Space Facilities"	The Main Phase 1 Informal/Natural Green Space or the Main Phase 2 Informal/Natural Green Space or the Main Phase 3 Informal/Natural Green Space or the Main Phase 4 Informal/Natural Green Space.
	"Initial Service Charge Cap"	Means the "Initial Service Charge Cap" as defined by the Rentcharge Deed.
	"Interest"	<p>In respect of payments due and payable to the Council means: interest calculated at a rate two percentage points above the prevailing base interest rate of the Bank of England payable in accordance with provisions of clause 18.</p> <p>In respect of payments due and payable to the County Council means interest calculated at a rate three percentage points above the prevailing base interest rate of the Bank of England payable in accordance with provisions of clause 18.</p>
	"Interim Charge"	Means the "Interim Charge" as defined by the Rentcharge Deed.
	"Intermediate Affordable Housing Units"	The Dwellings identified as such in approved reserved matters or as the Council may have confirmed under paragraph 2, 4, 9 or 12 of Schedule 1 and occupied in accordance with the provisions of paragraph 17 of Schedule 1 that apply to this defined term and not being Shared Ownership Units or Affordable Rent Units.
	"Jarvis"	Means Mr Jarvis and Mrs Jarvis and Jarvis Homes.

"Jarvis' Viability Phase One Land"	Means all that land owned by the Jarvis' within Viability Phase One shown coloured cross hatched blue and hatched blue on the Viability Phase One Plan.
"KCC General Site Transfer Requirements"	means that save as otherwise provided the terms of transfer and condition of the relevant property at the date of transfer accords with the terms of the document entitled "General Site Transfer Requirements" detailed by Schedule 15A so that it has proper connections within its boundary ,to connect it to adopted surface water drainage facilities and to mains foul drainage water gas (except where the relevant site is served entirely by any Combined Heat and Power (CHP) or District Heating Power (DHP) plant and apparatus) electricity and telecommunications services and utilities to location(s) first approved in writing by the County Council on the relevant school site boundary which are of sufficient capacity and depth to accommodate the maximum potential requirement of the school without mechanical aid; that it is served by an Adoptable Access pursuant to the Planning Permission and is adequate for its prospective use; that it has reserved to it all necessary rights over land to allow all necessary access to and egress from the property; that no restrictive covenants exist of a kind that would prevent or limit its proposed use; that no uses or operations exist adjacent to or proximate to it which cause a nuisance to the land or people or property on it other than for building operations and authorised uses pursuant to the Planning Permission; that the land is not in any way contaminated or polluted so as to prevent its use and development as a school site; that no ordnance or protected species are to be found on the land;
"Land Ownershipship Plan One"	The plan annotated 'Land Ownership Plan One' and annexed to this Deed at Annex 6.
"Land Ownership Plan Two"	The plan annotated 'Land Ownership Plan Two' and annexed to this Deed at Annex 7.
"Legal Fees Sum"	A sum of £2000.00 (two thousand pounds) Index Linked in respect of legal fees incurred by the CMO in relation to the transfer of the freehold interest in the land on which the Commercial Estate: Basic Provision Commercial Estate: Second Tranche or the Commercial Estate: Third Tranche (as appropriate) is located or the grant of a Long Lease of the part of a building in which the Commercial Estate: Basic Provision Commercial Estate: Second Tranche or Commercial Estate Third Tranche is located or the grant of the CMO First Operating Premises Lease or the grant of CMO Second Operating Premises Lease (as appropriate).
"LEP Funding"	A sum of approximately £10,200,000.00 (ten million two hundred thousand pounds) that the Local Enterprise Partnership may (at the date of this or following the date of this Deed) grant to the County Council on a non - refundable basis to provide the A28 Improvement Works.

"Land Parcel"	An area of land located entirely within the Hodson Land and/or the Hodson CG One Land and/or the Hodson CG Two Land and/or the Chilmington Green Developments Land only and which also must comprise of all of the land identified and approved by the Council as a land parcel for the purposes of condition 17 of the Planning Permission.
"Library Services Contribution 1"	£225,000.00 (two hundred and twenty five thousand pounds) Index Linked.
"Library Services Contribution 2"	£225,000.00 (two hundred and twenty five thousand pounds) Index Linked.
"Library Services Contribution 3"	£225,000.00 (two hundred and twenty five thousand pounds) Index Linked.
"Library Services Contribution 4"	£225,000.00 (two hundred and twenty five thousand pounds) Index Linked.
"Library Services Contribution"	The sum of £900,000.00 (nine hundred thousand pounds) to expand the library service capacity Serving the Development and in particular at the library access point in the Community Hub Building but excluding the provision of infrastructure payable by instalments referred to as Library Services Contribution 1-4 each Indexed Linked from 1 April 2014 to the dates on which the payments fall due.
"Lifetime Home Standards"	The incorporation of the 16 design standards which together create a flexible blueprint for accessible and adaptable housing published by the Joseph Rowntree Foundation Lifetime Homes Group and relevant Homes and Community Agency standards (or such relevant standards as may be required of an Affordable Housing Provider by any successor organisation to the Homes and Community Agency).
"Local Enterprise Partnership"	The South East Local Enterprise Partnership a public/private body established to drive economic growth across East Sussex, Essex, Kent, Medway, Southend and Thurrock whose office is at County Hall, Market Rd, Chelmsford, Essex CM1 1QH or its successor to its functions.

"Long Lease"	<p>A lease (including a sub-lease) with a term of a minimum of 125 years at a peppercorn ground rent and which:-</p> <ul style="list-style-type: none"> a) shall not secure any service charge in relation to the premises; and b) shall be unencumbered (except for any easements or other rights to lay maintain enter repair divert renew replace connect to and use any new or existing and proposed service media) and subject always to the provisions of this Deed and the terms of any conditions to the Planning Permission that apply to the relevant Commercial Estate; and c) shall confer the relevant Commercial Estate with all legal rights and easements over neighbouring and adjacent land and other parts of the building in which the relevant Commercial Estate is located that do not form part of the demised premises for the purposes of the lease for the benefit of the relevant Commercial Estate that are reasonably necessary and appropriate to enable the relevant Commercial Estate to be used for its intended uses and purposes (in particular including appropriate rights conferring exclusive use of the car parking spaces to be provided to the relevant Commercial Estate if such car parking spaces do not form part of the demised premises).
"Long Leasehold"	<p>A lease (including a sub-lease) with a term of a minimum of 125 years at a peppercorn ground rent and a service charge which charges that portion of the sums payable pursuant to the estate Rentcharge Deed applicable to the building in which the relevant Affordable Housing Units are located and that relate to the relevant Affordable Housing Units only and those services that serve those Dwellings and any curtilage and common parts of the Block (other than those which exclusively serve any other part of the Development) and the title to which is Unencumbered.</p>
"Main Phase 1 Allotment"	<p>The 0.7 ha allotment marked "A6+A4" on plan numbered OPA06R rev. P2 at Annex 3 of this Deed (or in such other location as may have been approved by the Council) to be provided at a total capital cost not exceeding £313,542.00 (three hundred and thirteen thousand five hundred and forty two pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.</p>
"Main Phase 1 Informal/Natural Green Space"	<p>The 6.96 ha of informal/natural green space to be provided in Main Phase 1 to be provided at a total capital cost not exceeding £522,722.00 (five hundred and twenty two thousand seven hundred and twenty two pounds) Index Linked but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.</p>

"Main Phase 1"	The first phase of the Development being the 'District Centre Phase' as identified in the Chilmington Green Area Action Plan and in particular at figure 18 of that document.
"Main Phase 2 Allotment"	The 0.57 ha allotment marked "A3" on plan OPA06R rev. P2 at Annex 3 of this Deed (or in such other location as may have been approved by the Council) to be provided at a total capital cost not exceeding £255,312.00 (two hundred and fifty five three hundred and twelve pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Main Phase 2 Informal/Natural Green Space"	The 5.76 ha of informal/natural green space to be provided in Main Phase 2 to be provided at a total capital cost not exceeding £432,597.00 (four hundred and thirty two thousand five hundred and ninety seven pounds) Index Linked but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Main Phase 2"	The second phase of the Development being the 'Central Phase' as identified in the Chilmington Green Area Action Plan and in particular at figure 19 of that document.
"Main Phase 3 Allotment"	The 0.72 ha allotment marked "A7" on the attached plan OPA06R rev. P2 at Annex 3 of this Deed (or in such other location as may have been approved by the Council) to be provided at a total capital cost not exceeding £322,500.00 (three hundred and twenty two thousand and five hundred pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Main Phase 3 Informal/Natural Green Space"	The 7.2 ha of informal/natural green space to be provided in Main Phase 3 to be provided at a total capital cost not exceeding £540,747.00 (five hundred and forty thousand seven hundred and forty seven pounds) Index Linked but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Main Phase 3"	The third phase of the Development being the 'Southern Phase' as identified in the Chilmington Green Area Action Plan in particular at figure 20 of that document.

"Main Phase 4 Allotment"	The 0.77 ha allotment marked "A1+A2" on the plan OPA06R rev. P2 at Annex 3 of this Deed (or in such other location as may have been approved by the Council) to be provided at a total capital cost not exceeding £344,896.00 (three hundred and forty four thousand and eight hundred and ninety six pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Main Phase 4 Informal/Natural Green Space"	The 7.68 ha of informal/natural green space to be provided in Main Phase 4 to be provided at a total capital cost not exceeding £576,797.00 (five hundred and seventy six thousand seven hundred and ninety seven pounds) Index Linked but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Main Phase 4"	The fourth phase of the Development being the 'South Eastern Phase' as identified within the Chilmington Green Area Action Plan in particular at figure 21 of that document.
"Main Phase"	Any of Main Phase 1 or Main Phase 2 or Main Phase 3 or Main Phase 4 as appropriate.
"Material Operation (Statutory)"	A material operation within the meaning of Section 56(4) of the Planning Act.
"Material Operation (CMO)"	<p>A material operation within the meaning of Section 56(4) of the Planning Act other than the following:-</p> <ul style="list-style-type: none"> a. archaeological investigation works and archaeological works; and b. site compounds; and c. ecological investigation works and ecological works; and d. site surveys; and e. the erection of any temporary means of enclosure; and f. testing for contamination and trial pits for the purposes of identifying/testing for contamination but for the avoidance of doubt not remediation works.

"Material Operation"	<p>A material operation within the meaning of Section 56 (4) of the Planning Act other than the following:-</p> <ul style="list-style-type: none"> a) site clearance; and b) site compounds; and c) site surveys; and d) demolition work; and e) archaeological investigation works and archaeological works; and f) ecological investigation works and ecological works; and g) investigations for the purpose of assessing ground conditions; and h) remedial work in respect of any contamination or other adverse ground conditions; and i) diversion or laying of services; and j) erection of any temporary means of enclosure; and k) the temporary display of site notices or advertisements.
"Minimum Affordable Housing Provision"	<p>The minimum quantum of Affordable Housing Units to be provided within each Viability Review Phase being 10% of the total number of Dwellings in the relevant Viability Review Phase and to be provided in accordance with:-</p> <ul style="list-style-type: none"> a) the Council's requirements as to the number type and tenure of such units as detailed by the Affordable Housing Information Reply for the relevant Viability Review Phase; and b) the requirements of Schedule 1 of this Deed.
"Negative Planning Obligations"	<p>All those covenants obligations and restrictions in this Deed prohibiting or restraining any action. This term includes but shall not be limited to covenants 'not to Occupy', 'not to Commence the Development', 'not to Commence (Statutory) the Development', 'not to carry out any works of construction above foundation level of any Dwelling', not to carry out a Material Operation (CMO) pursuant to the Planning Permission, not to carry out a Material Operation pursuant to the Planning Permission, or similar negative covenant or negative obligation restricting commencement or continuation of development works or construction in, on, over or under the Site and/or the use, occupation, sale, letting, or disposal, of land and/or buildings on the Site whether or not such covenants are 'planning obligations' for the purpose of section 106 of the Planning Act 1990, and "Negative Planning Obligation" shall be construed accordingly.</p>
"NIA"	<p>Net internal area as defined by the Royal Institute of Chartered Surveyors Guidance Note: Code of Measuring Practice 6th Edition.</p>

"Non Fixed Assumption Viability Review Inputs"	Those inputs to the Viability Review Template as defined at Schedule 43 of this Deed.
"Notification Obligations"	All those obligations and covenants to give the Council and/or the County Council notification of a given stage in the development pursuant to the Planning Permission (for example notification that a given number of Dwellings have been or are intended to be Occupied) and any other notification required to be given by the Owners pursuant to the provisions of this Deed except those obligations to notify the Council and County Council detailed by clause 7.2 of this Deed.
"Occupation Notice"	A written notice to the Council informing the Council of the intended date on which each of the numbers of Dwellings detailed by column 2 of Table 1 are to be Occupied for the first time such intended date (to be no later than 15 Working Days after that date on which the notice relating to that number of Dwellings is served on the Council).
"Occupy"	To occupy a Dwelling for the first time whether or not it subsequently remains occupied and/or for any period of time thereafter other than occupation for the purposes of its construction, fitting-out, security, marketing or repair and to include facilitating suffering encouraging assisting or permitting such occupation and related expressions such as "Occupation" and "Occupied" shall be construed accordingly.
"Off-site Traffic Calming"	Traffic calming measures in Great Chart village, Magpie Hall Road and Shadoxhurst, which are indicatively shown on the attached drawings 131065-A-24-Rev B, 131065-A-25-Rev B, 131065-A-59 and 131065-A-60-Rev A.

"Open Market Dwelling Mix"	<p>Details of the estimated number and mix of all Open Market Dwellings to be constructed within the relevant Viability Review Phase which shall be:-</p> <ul style="list-style-type: none"> a) in accordance with the constraints imposed by and the details of the Parameter Plans and the Environmental Statement; and b) in accordance with the requirements of the Planning Permission including all relevant conditions to the Planning Permission; and c) in accordance with and shall be consistent with the details of any Reserved Matters Application/s for the relevant Viability Review Phase submitted to the Council prior to the Viability Review Submission for the same Viability Review Phase; and <p>shall include the following:-</p> <ul style="list-style-type: none"> i) The estimated number of Open Market Units that are flats to include details of how many bedrooms such Open Market Units will have and the NIA and GIA of such Open Market Dwellings; and ii) The estimated number of Open Market Units that are houses to include details of how many bedrooms such Open Market Units will have and the NIA and GIA of such Open Market Dwellings.
"Open Market Dwelling"	Any Dwelling that is not Affordable Housing Unit and "Open Market Dwellings" shall be construed accordingly
"Owners"	Hodson and Chilmington Green Developments and Hodson CG One and Hodson CG Two and Chelmden and Mr Jarvis and Mrs Jarvis and Jarvis Homes and Pentland Kent and Pentland Homes and BDW and references to an "Owner" shall mean any one of them.
"Owners' Agent"	A person through whose agency the Owners shall submit all applications and submissions for the Council's approval of documents specifications drawings plans and schemes, and other documents required pursuant to the provisions of this Deed to the Council, which person is to be notified to the Council in accordance with clause 5 or clause 5.2.
"Panel"	The agreed panel of Experts CHP/ DHP in Schedule 3A.

"Parameter Plans"	<p>the plans with the following references:-</p> <p>OPA01R1: Application Boundary Plan</p> <p>OPA02R1: Lane Use Plan</p> <p>OPA03R1: Residential Density Plan</p> <p>OPA04R1: Storey Heights Plan</p> <p>OPA05R1: Access and Strategic Vehicle Routes Plan</p> <p>OPA06R rev P2: Open Space Plan</p> <p>OPA07R1: Building Parameters Plan</p> <p>131065/SK/1106: Footpath and Cycle Routes Plan</p>
"Paying Owners"	<p>Chilmington Green Developments and Hodson and Hodson CG One and Hodson CG Two and "Paying Owner" shall mean any one of them.</p>
"Permitted Disposal"	<p>A mortgage or charge by way of security and any easement to be granted to or disposal to any statutory undertaker utility company or service provider for the purposes of providing a service or utility.</p>
"Planning Act"	<p>The Town and Country Planning Act 1990.</p>

"Planning Application"

The application for planning permission registered under the Council's reference number 12/00400/AS for a comprehensive mixed use development of the Site comprising:-

- Up to 5,750 residential units, in a mix of sizes, types and tenures;
- Up to 10,000 sq m (gross external floorspace) of Class B1 use;
- Up to 9,000 sq m (gross external floorspace) of Class A1 to A5 uses;
- Education (including a secondary school of up to 8 ha and up to four primary schools of up to 2.1 ha each);
- Community Uses (Class D1) up to 7,000 sq m (gross external floorspace);
- Leisure Uses (Class D2) up to 6,000 sq m (gross external floorspace);
- Provision of local recycling facilities;
- Provision of areas of formal and informal open space;
- Installation of appropriate utilities infrastructure as required to serve the development, including flood attenuation works, SUDS, water supply and wastewater infrastructure, gas supply, electricity supply (including substations), telecommunications infrastructure and renewable energy infrastructure (including CHP in the District Centre);
- Transport infrastructure, including provision of three accesses on to the A28, an access on to Coulter Road/Cuckoo Lane, other connections on to the local road network, and a network of internal roads, footpaths and cycle routes;
- New planting and landscaping, both within the Site and on its boundaries, and ecological enhancement works; and
- Associated groundworks;

Where appearance, landscaping, layout and scale are reserved for future approval and where access is reserved for future approval with the exception of the three accesses on to the A.28 and the access on to Coulter Road/Cuckoo Lane.

"Planning Permission"	The planning permission granted by the Council pursuant to the Planning Application annexed at Schedule 41 of this Deed and all other planning permissions granted by the Council pursuant to an application under section 73 73A and 96A of the Planning Act and by the Secretary of State on appeal that vary or release conditions to that planning permission.
"Positive Planning Obligations To Pay"	A positive planning obligation to pay a sum of money to the Council or the County Council in this Deed, excluding the Schedule 2 Positive Planning Obligation To Pay, and "Positive Planning Obligation to Pay" shall be construed accordingly.
"Positive Planning Obligations To Provide And/Or Construct"	A positive planning obligation to provide and/or construct a facility and/or structure and/or building and/or carry out works in this Deed excluding the Affordable Housing Positive Planning Obligations To Provide And/Or Construct and "Positive Planning Obligation to Provide And/Or Construct" shall be construed accordingly.

<p>"Premature Viability Review Submission"</p>	<p>Means a Viability Review Submission for</p> <ul style="list-style-type: none"> a) Viability Review Phase Two that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 500th Dwelling to be Occupied is Occupied; b) Viability Review Phase Three that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 1200th Dwelling to be Occupied is Occupied; c) Viability Review Phase Four that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 1800th Dwelling to be Occupied is Occupied; d) Viability Review Phase Five that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 2324th Dwelling to be Occupied is Occupied; e) Viability Review Phase Six that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 2824th Dwelling to be Occupied is Occupied; f) Viability Review Phase Seven that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 3324th Dwelling to be Occupied is Occupied; g) Viability Review Phase Eight that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 3883rd Dwelling to be Occupied is Occupied; h) Viability Review Phase Nine that is submitted to the Council prior to the date which is 40 Working Days after the date on which the 4383rd Dwelling to be Occupied is Occupied; i) Viability Review Phase Ten that is submitted to the Council prior to the date on which the 4883rd Dwelling to be Occupied is Occupied; <p>as appropriate.</p>
<p>"Previous Viability Review Phase"</p>	<p>The Viability Review Phase that is immediately previous to the Viability Review Phase that is the subject of the Viability Review Submission, for example the Previous Viability Review Submission in the context of the Viability Review Submission of Viability Review Phase Four is Viability Review Phase Three.</p>

"Primary School 1"	means a primary school in Main Phase 1 capable once built of offering two form entry to 420 children between the ages of 4 and 11 and a further 26 places for early years provision.
"Primary School 2"	means a primary school in Main Phase 2 capable once built of offering two form entry to 420 children between the ages of 4 and 11 and a further 26 places for early years provision.
"Primary School 3"	means a primary school in Main Phase 3 capable once built of offering two form entry to 420 children between the ages of 4 and 11 and a further 26 places for early years provision.
"Primary School 4"	means a primary school in Main Phase 4 capable once built of offering one form entry to 210 children between the ages of 4 and 11 and a further 26 places for early years provision with capacity to be upgraded to accommodate two form entry for 420 children.
"Proposed Additional Affordable Housing Provision"	<p>The Additional Affordable Housing Provision for the relevant Viability Review Phase as proposed by the developer of that Viability Review Phase in the Viability Review Submission for that Viability Review Phase to include:-</p> <ul style="list-style-type: none"> a) full details of the quantum of different types and forms of Affordable Housing Units that the developer is proposing should comprise the Additional Affordable Housing Provision for that Viability Review Phase; and b) confirmation that the details of such Affordable Housing Units comply with Council's requirements as detailed by the Additional Affordable Housing Provision: Mix Proportions for that Viability Review Phase and the requirements of Schedule 1 of this Deed.
"Provided a Bond"	Delivered to the County Council a Bond which has been executed by the Issuer and completed by the County Council so as to take effect. "Provide a Bond", "Bond has been Provided" and like expressions shall be interpreted accordingly
"PS1 Contribution 1"	£150,000.00 (one hundred and fifty thousand pounds) Index Linked;
"PS1 Contribution 2"	£2,285,000.00 (two million two hundred and eighty five thousand pounds) Index Linked;
"PS1 Contribution 3"	£2,103,200.00 (two million one hundred and three thousand and two hundred pounds) Index Linked;

"PS1 Contribution 4"	£1,461,800.00 (one million four hundred and sixty one thousand and eight hundred pounds) Index Linked;
"PS1 Contribution"	£6,000,000.00 (six million pounds) for Primary School 1 or for Education Purposes payable by instalments referred to as PS1 Contributions 1-4 each Index Linked;
"PS1 Site"	the site of Primary School 1 being within Main Phase 1 in a position in conformity with the masterplan approved by the Council for Main Phase 1 pursuant to condition 17 of the Planning Permission of 2.05ha and otherwise in full accordance with the KCC General Site Transfer Requirements.
"PS2 Contribution 1"	£150,000.00 (one hundred and fifty thousand pounds) Index Linked.
"PS2 Contribution 2"	£2,000,000.00 (two million pounds) Index Linked.
"PS2 Contribution 3"	£2,000,000.00 (two million pounds) Index Linked.
"PS2 Contribution 4"	£1,850,000.00 (one million eight hundred and fifty thousand pounds) Index Linked.
"PS2 Contribution"	£6,000,000.00 (six million pounds) for Primary School 2 or for Education Purposes payable by instalments referred to as PS2 Contributions 1-4 each Index Linked.
"PS2 Site"	the site of Primary School 2 being within Main Phase 2 in a position in conformity with the masterplan approved by the Council for Main Phase 2 pursuant to condition 17 of the Planning Permission of 2.05ha and otherwise in full accordance with the KCC General Site Transfer Requirements.
"PS3 Contribution 1"	£150,000.00 (one hundred and fifty thousand pounds) Index Linked.
"PS3 Contribution 2"	£2,000,000.00 (two million pounds) Index Linked.
"PS3 Contribution 3"	£2,000,000.00 (two million pounds) Index Linked.
"PS3 Contribution 4"	£1,850,000.00 (one million eight hundred and fifty thousand pounds) Index Linked.

"PS3 Contribution"	£6,000,000.00 (six million pounds) for Primary School 3 or for Education Purposes payable by instalments referred to as PS3 Contributions 1-4 each Index Linked.
"PS3 Site"	the site of Primary School 3 being within Main Phase 3 in a position in conformity with the masterplan approved by the Council for Main Phase 3 pursuant to condition 17 of the Planning Permission of 2.05ha and otherwise in full accordance with the KCC General Site Transfer Requirements.
"PS4 Contribution 1"	£475,000.00 (four hundred and seventy five thousand pounds) Index Linked.
"PS4 Contribution 2"	£2,025,000.00 (two million and twenty five thousand pounds) Index Linked.
"PS4 Contribution 3"	£2,000,000.00 (two million pounds) Index Linked.
"PS4 Contribution"	£4,500,000.00 (four million five hundred thousand pounds) for Primary School 4 or for Education Purposes payable by instalments referred to as PS4 Contributions 1-3 each Index Linked.
"PS4 Site"	the site of Primary School 4 being within Main Phase 4 in a position in conformity with the masterplan approved by the Council for Main Phase 4 pursuant to condition 17 of the Planning Permission of 2.05ha and otherwise in full accordance with KCC General Site Transfer Requirements.
"PS6"	The 1.44 ha of land marked "PS6" on the attached plan numbered OPA06R rev P2 at a total capital cost not exceeding £676,837.00 (six hundred and seventy six thousand eight hundred and thirty seven pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs.
"Registered Provider"	A provider of social housing registered with the regulator of social housing and who has signed a nominations agreement with the Council or is otherwise approved by the Council at the Council's absolute discretion to be confirmed in writing to the Owners' Agent.

"Relevant Dispute"	<p>Any dispute relating to this Deed other than:-</p> <ul style="list-style-type: none"> a) any dispute in respect of legal interpretation of this Deed, which shall not be subject to any dispute resolution or expert determination procedure set out in this Deed; and b) any dispute as to the quantum of any Contribution or other payment to the Council or to the County Council where the amount due and/or method of calculation is expressly set out in this Deed, which shall not be subject to any dispute resolution or expert determination procedure set out in this Deed; and c) any dispute relating to Schedule 3 (Combined Heat and Power Plant); and d) any dispute relating to Schedule 23 (Viability); (Viability) which shall be dealt with pursuant to the expert determination procedure set out in schedule 23; and e) any dispute as the extent and/or existence of a Defect/s in a facility, building, works, landscaping, structure or infrastructure and/or the adequacy of step/s taken to rectify such Defect/s and/or time taken to rectify such Defect/s which shall be dealt with pursuant to the expert determination procedure set out in clause 11
Relevant Dispute: Expert Determination	<p>Any dispute as the extent and/or existence of a Defect/s in a facility, building, works, landscaping, structure or infrastructure and/or the adequacy of step/s taken to rectify such Defect/s and/or time taken to rectify such Defect/s.</p>

"Relevant Index"

All Items Index of Retail Prices issued by the Office for National Statistics shall apply to all legal costs and fees (except clause 4) and to the amounts in the following schedules:

4 (paragraph 8.1.4 only), 20 (paragraph 1.11 only) and the instalments of the Start Up Contribution payable pursuant to paragraph 14 of Schedule 4;

All-in Tender Price Index as published by BCIS on behalf of RICS shall apply to the amounts in the following schedules:

5, 20 (paragraph 2 only), 24, 26, 27 and 28

General Buildings Cost Index as published by BCIS on behalf of RICS shall apply to the amounts in the following schedules:

2, 7, 12, 13, 15, 16 and 25

Output Price Indices for Public Works as published by BCIS on behalf of RICS shall apply to the amounts in the following schedules:

6, 8, 9, 10 and 11

Civil Engineering Cost Index as published by BCIS shall apply to the amounts in the following schedules:-

18 19 and 21;

The monthly index of retail price inflation in the United Kingdom (May 2005 = 100) maintained by the Office for National Statistics of the United Kingdom (or by any government department or other body upon which duties in connection with the retail prices index shall have devolved) in the case of "Sum A" and the instalments of the Deficit Grant payable pursuant to paragraph 7 of Schedule 4;

the monthly index of retail price inflation in the United Kingdom (May 2005 = 100) maintained by the Office for National Statistics of the United Kingdom (or by any government department or other body upon which duties in connection with the retail prices index shall have devolved) in the case of "Sum B";

The Output Prices Index for Non Public Housing Works in the case of the budget of £200,000.00 for the CMO's First Operating Premises to be provided pursuant to paragraph 4 of schedule 4, the budget of £250,000.00 for the CMO's Second Operating Premises to be provided pursuant to paragraph 5 of schedule 4, the total capital cost of the Commercial Estate: Basic Provision provided pursuant to paragraph 9 of Schedule 4, the total capital cost of the Commercial Estate: Second Tranche provided pursuant to paragraph 11 of Schedule 4 (if the CMO elects "Option A" pursuant to the Endowment Election" and such Commercial Estate is to be provided) the total capital cost of the Commercial Estate: Third Tranche provided pursuant to paragraph 12 of Schedule 4 (if the CMO elects "Option A" pursuant to the Endowment Election" and such Commercial Estate is to be provided) and the First Cash Endowment and the Second Cash Endowment payable pursuant to paragraph 13 of Schedule 4 (if the CMO elects "Option B" pursuant to the Endowment Election and such sums are to be paid);

or any replacement or successor to each such index from time to time as may be approved by the Council or the County

"Rentcharge Deed"	An estate rentcharge deed in the same form as the draft estate rentcharge deed at Schedule 31 of this Deed or an estate rentcharge deed that is in substantially the same form as the draft estate rentcharge deed at Schedule 31 of this Deed and has been approved in its absolute discretion by the Council in writing.
"Reserved Matters Application"	An application for the approval of the reserved matters pursuant to conditions 10 of the Planning Permission.
"Residual Land Value"	A sum of money for the relevant Viability Review Phase equivalent to: the Total Gross Development Value less the sum of the Developer Costs and the Total Developer Profit and the Infrastructure Costs the Section 106 Costs and the Construction Finance Costs.
"Residual Surplus"	Any residual Surplus that is shown to be left when calculating the Additional Affordable Provision for a Viability Review Phase after having substituted as many Open Market Dwellings for Additional Affordable Housing as possible in accordance with the methodology detailed by the definition of "Additional Affordable Provision" (and in particular subject to the application of the Affordable Housing Cap) in the Viability Review Template: Additional Affordable Housing Provision for the relevant Viability Review Phase without resulting in a Deficit. For the avoidance of doubt such residual Surplus shall be a positive sum of money and shall not be equal to or more than 100% of the cost to the developer/s of the relevant Viability Review Phase of providing one Affordable Housing Unit of whatever type tenure or size within that Viability Review Phase.
"RICS"	The Royal Institution of Chartered Surveyors of Great George Street, Parliament Square, London SW1P 3AD.
"S.278 Agreement"	The agreement pursuant to section 278 of the Highways Act in the precise form of the draft of such agreement at Schedule 18A of this Agreement that shall be completed either prior to or simultaneously with this Deed.
"Scenario 1"	A CHP serving all suitable buildings in the District Centre and all ancillary or related or incidental buildings, plant, apparatus, pipework cabling and machinery.
"Scenario 2"	A DHP serving the District Centre and all ancillary or related or incidental buildings, plant, apparatus, pipework, cabling and machinery.

"Scenario 3"	A CHP on a whole Development scale serving the whole Development other than Viability Review Phase 1 and the District Centre and including all ancillary or related or incidental buildings, plant, apparatus, pipework cabling and machinery.
"Scenario 4"	A DHP on a whole Development scale serving the whole Development other than Viability Phase 1 and the District Centre and including all ancillary or related or incidental buildings, plant, apparatus, pipework cabling and machinery.
"Schedule 2 Planning Obligations"	all those obligations and covenants detailed by paragraph 1 of Schedule 2 to this Deed including the Schedule 2 Positive Planning Obligation To Pay and the Schedule 2 Negative Planning Obligation.
"Schedule 2 Negative Planning Obligation"	The Negative Planning Obligation detailed by paragraph 1.1 of Schedule 2 of this Deed.
"Schedule 2 Positive Obligation to Pay"	The positive planning obligation to pay the sums of money to the Council under paragraph 1.2 of Schedule 2 of this Deed.
"Second Cash Endowment"	The sum of £2,190,750.00 (two million one hundred and ninety thousand seven hundred and fifty pounds) Index Linked to be used for the purposes of creating a medium and/or long term investment to generate income for the CMO.
"Secondary School Site"	the site of the Secondary School being located in a position in conformity with the masterplan approved by the Council for the relevant Main Phase/s pursuant to condition 17 of the Planning Permission of 8.0ha in extent and otherwise in full accordance with the KCC General Site Transfer Requirements.
"Secondary School"	a 6 form entry secondary school with capacity to be upgraded to accommodate 8 form entry
"Secretary of State"	the Secretary of State for Communities and Local Government or such replacement post/post-holder
"Serving the Development"	EITHER provided within the Site for the benefit of the Site or its residents OR provided away from the Site but still for the benefit of the Site or its residents in which latter case the County Council may be required to deliver to the Council an explanation in writing for its reason or reasons for delivery off-Site.
"Shared Ownership Units"	Dwellings identified as such in approved reserved matters and occupied in accordance with the provisions of paragraph 17 of Schedule 1 that apply to this defined term.

"Site Plan"	Drawing number OPA01R5 rev P1annotated 'Application Boundary Plan' and at Annex 1 of this Deed.
"Site"	All that land shown outlined in red on the Site Plan.
"Stage One Secondary Contribution 1"	£500,000.00 (five hundred thousand pounds) Index Linked.
"Stage One Secondary Contribution 2"	£4,500,000.00 (four million five hundred thousand pounds) Indexed Linked.
"Stage One Secondary Contribution 3"	£6,000,000.00 (six million pounds) Index Linked.
"Stage One Secondary Contribution 4"	£2,550,000.00 (two million five hundred and fifty thousand pounds) Index Linked.
"Stage One Secondary Contribution"	£13,550,000.00 (thirteen million five hundred and fifty thousand pounds) for the Secondary School or for Education Purposes payable by instalments referred to as Stage One Secondary Contributions 1-4 each Index Linked.
"Stage Two Secondary Contribution 1"	£3,000,000.00 (three million pounds) Index Linked.
"Stage Two Secondary Contribution 2"	£3,000,000.00 (three million pounds) Index Linked.
"Stage Two Secondary Contribution 3"	£1,500,000.00 (one million five hundred thousand pounds) Index Linked.
"Stage Two Secondary Contribution 4"	£1,450,000.00 (one million four hundred and fifty thousand pounds) Index Linked.
"Stage Two Secondary Contribution"	means £8,950,000.00 (eight million nine hundred and fifty thousand pounds) for the Secondary School or for Education Purposes payable by instalments referred to as Stage Two Secondary Contributions 1-4 each Index Linked.
"Stamp Duty Land Tax" or "SDLT"	a tax to be paid to Her Majesty's Revenue and Customs in respect of all property bought or transferred with a value in excess of that as may be prescribed from time to time.

"Sum A"	The Initial Service Charge Cap for all those Rentcharge Deeds entered into during the First Service Charge Year relating to the first Rentcharge Deed entered into which shall be a sum of money based on £335.00 (three hundred and thirty five pounds) Index Linked in accordance with clause 28 per annum per Dwelling as an average across all different types and sizes of Dwellings (including those Dwellings in Blocks), the exact sum for each type and size of Dwelling to be calculated and submitted to the Council for its approval as part of the CMO Operating Business Plan.
"Sum B"	The Initial Service Charge Cap for all those Rentcharge Deeds entered into after the First Service Charge Year relating to the first Rentcharge Deed entered into has elapsed which shall be a sum of money equivalent to Sum A as Index Linked in accordance with clause 28.
"Surplus"	A positive sum of money (if any) for the relevant Viability Review Phase equivalent to the Residual Land Value less the Benchmark Land Value plus any Residual Surplus relating to the Previous Viability Review Phase.
"Table 1"	The table entitled "Table 1" at Schedule 45 of this Deed.
"Table 2"	The table entitled "Table 2" at Schedule 46 of this Deed.
"Table 3"	The table entitled "Table 3" at Schedule 47 of this Deed.
"Table 4"	The table entitled "Table 4" at Schedule 48 of this Deed.
"Telecare Contribution"	The sum of £26,450.00 (twenty six thousand four hundred and fifty pounds) Index Linked for the provision of assistive technology to enable people on the Site to live at home independently with technical aids at hand.
"Temporary Building Services"	means proper connections so as to connect the PS1 Site to surface a 3 Phase 70KVA electricity service and a 25mm OD water service for the use of the building contractors of Primary School 1 during its construction and which will be located within the PS1 Site boundary at the "Ensured Access" together with a suitable lockable meter enclosure to UK Power Network's standards for meters to monitor water and electricity usage by the County Council and their contractors.
"Title Numbers"	Title numbers K111341, K114296, K33776, K343699, K440838, K514398, K518531, K683893, K720599, K934218, K702249, TT31992, TT35024, TT36322, TT42532, K851181, K965776, K448700, K725773, K602040, K86052, K956029, K631376, K180092 and such other title numbers as may exist and relate to land within the Site as at the date of this Deed.

"Total Base Build Costs"	A sum of money for the relevant Viability Review Phase equivalent to the sum of the Base Build Costs (Affordable Housing Flats) the Base Build Costs (Open Market Flats) the Base Build Costs (Affordable Housing Houses) and the Base Build Costs (Open Market Houses).
"Total Developer Profit"	A sum of money for the relevant Viability Review Phase equivalent to the sum of the Affordable Housing Developer Profit and the Open Market Housing Developer Profit and the Commercial Land Profit
"Total Gross Development Value"	A sum of money for the relevant Viability Review Phase equivalent to the sum of the Affordable Housing Income the Open Market Housing Income the Social Housing Grant (if any) the Other Forms of Funding (if any) and the Commercial Land Capital Value.
"Transfer Terms CMO"	A transfer of the freehold interest in the land on which the relevant Commercial Estate is located which is free from encumbrances (except any easements or other rights to lay maintain enter repair renew replace divert connect to and use any new or existing and proposed service media) and any Contamination and shall confer all legal rights and easements over neighbouring and adjacent land for the benefit of the relevant Commercial Estate that are reasonably necessary and appropriate to enable the relevant Commercial Estate to be used for its intended uses and purposes (in particular including appropriate rights conferring exclusive use of the car parking spaces to be provided to the relevant Commercial Estate if such car parking spaces do not form part of the land which the freehold interest of is transferred to the CMO).

<p>"Transfer Terms"</p>	<p>The terms on which the land comprising the relevant facility ("the Land") is transferred to the CMO which shall:-</p> <ol style="list-style-type: none"> provide that the Unencumbered (Transfer Terms) freehold of the Land is transferred to the CMO at nil or nominal consideration; provide that the Land has reserved to it (as appropriate depending on the nature of the facility) all necessary rights and easements over other land necessary for the intended use of the Land for its intended purpose (such as surface water drainage facilities mains foul drainage water gas electricity and telecommunications); provide that the Land has reserved to it any necessary rights over any other land necessary to access to and egress the Land (for the avoidance of doubt including both vehicular and pedestrian access and egress) leading to and connecting with a highway adopted by the highways authority or a highway that is in the process of being adopted by the highways authority pursuant to a highways agreement. <p>Subject to the definition of Unencumbered (Transfer Terms), any such transfer may be subject to:</p> <ul style="list-style-type: none"> mutual rights and easements as between the Owners in order to comply with the obligations and to satisfy the covenants restrictions and limitations of this Deed and the planning conditions; rights and easements granted in favour of the Council and/or the County Council or a statutory undertaker service provider or utility company; the absolute right to leave overhead or underground electricity and telecommunications conduits wires cables pylons supports poles and other apparatus plant and machinery in situ and the CMO shall take the land subject to any wayleaves or easements Restrictive covenants preventing the use of any land works and facilities other than the uses for which they were intended <p>PROVIDED THAT the exercise of any such right by the Owners shall be with a minimum of disturbance and an obligation to make good and repair any damage and to re-instate the land following the exercise of any such right.</p>
<p>"Transfer"</p>	<p>For the purposes of Schedules 15, a transfer - save as otherwise provided for in paragraph 3 of Schedule 15 - in full accordance with the KCC General Site Transfer Requirements, which shall be at nil cost to the County Council, together with any other associated documents as may be required which shall also be at nil cost to KCC.</p>

"UCO 1987"	The Town and Country Planning (Use Classes) Order 1987 as in force at the date of this Deed.
"Unencumbered (Transfer Terms)"	Means unencumbered except for:- <ul style="list-style-type: none"> a) any covenants restricting the use of land for its intended purposes b) any easements or other rights to maintain enter repair renew replace connect to and use any new or existing and proposed services and service media (it being recognised that there will be a need for existing as well as new and improved and/or diverted services and service media to serve the Development and that some such services and service media will of necessity be sited in on under or over the Land) EXCEPT FOR any easements or other rights in relation to any services or service media which do not exist at the date of the transfer beneath any part of the Excluded Areas c) the provisions of this Deed and (subject to the provisions of Schedules 6, 7, 8, 9,10,12 and 13) the terms of any conditions to any planning permission that apply to the Land and relevant facility on it.
"Unencumbered"	Freehold or leasehold title unencumbered by any financial charges or any matter which would prevent its development use and occupation for affordable housing purposes subject always to the provisions of this Deed and the terms of any conditions to any planning permissions that apply to the relevant Dwellings/building save that if the requirements of any such conditions are required to be discharged prior to the first occupation/use of the relevant Affordable Housing Unit/s all such requirements shall have been discharged in full prior to the transfer of the relevant Dwellings.
"Valuation Date"	The date on which the values inputs and evidence comprising the content of a Viability Review Submission are accurate up to, which shall be the date on which the relevant Viability Review Submission is submitted by the Owners' Agent to the Council pursuant to the provisions of Schedule 23.
"Viability Phase One"	The area of land which must be within Main AAP Phase One to include the District Centre and on which 1000 Dwellings are intended to be built shown edged red on the Viability Phase One Plan.
"Viability Phase One Plan"	The plan at Annex 2 to this Deed.
"Viability Review Fee"	A sum of £10,000.00 (ten thousand pounds) Index Linked towards the Council's costs of instructing professional advisors to assist in the Council's consideration of the relevant Viability Review Submission.

<p>“Viability Review Phase Two”</p>	<p>The area/s of land which must be within Main AAP Phase One and on which it must be intended to build a further 500 Dwellings (over and above the 1000 Dwellings to be built within Viability Phase One) and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Two and:-</p> <ul style="list-style-type: none"> i) which must not overlap with any other land comprised of Viability Phase One; and ii) when combined with the land comprised of Viability Phase One must comprise of 100% of the land in Main AAP Phase One; and iii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase One.
<p>“Viability Review Phase Three”</p>	<p>The area/s of land which must be within Main AAP Phase Two and on which it must be intended to build a further 600 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Three and:-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One and Viability Review Phase Two; and ii) for the avoidance of doubt may comprise of more than one area of land within the Main AAP Phase Two.
<p>“Viability Review Phase Four”</p>	<p>The area/s of land which must be within Main AAP Phase Two and on which it must be intended to build a further 524 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Four and:-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One Viability Review Phase Two and Viability Phase Three; and ii) when combined with the land comprised of Viability Phase Three must comprise of 100% of the land in Main AAP Phase Two; and iii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Two.

<p>“Viability Review Phase Five”</p>	<p>The area/s of land which must be within Main AAP Phase Three and on which it must be intended to be built a further 500 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Five and:-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One Viability Review Phase Two Viability Review Phase Three and Viability Review Phase Four; and ii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Three.
<p>“Viability Review Phase Six”</p>	<p>The area/s of land which must be within Main AAP Phase Three and on which it must be intended to build a further 500 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Six and:-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One Viability Review Phase Two Viability Review Phase Three Viability Review Phase Four and Viability Review Phase Five; and ii. for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Three.
<p>“Viability Review Phase Seven”</p>	<p>The area/s of land which must be within Main AAP Phase Three and on which it must be intended to build a further 559 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Seven and:-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase 1 Viability Review Phase Two Viability Review Phase Three Viability Review Phase Four Viability Review Phase Five and Viability Review Phase Six; and ii) when combined with the land comprised of Viability Review Phase Five and Viability Review Phase Six must comprise of 100% of the land in Main AAP Phase Three; and iii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Three.

<p>“Viability Review Phase Eight”</p>	<p>The area/s of land which must be within Main AAP Phase Four and on which it is must be intended to build a further 500 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Eight and:-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One Viability Review Phase Two Viability Review Phase Three Viability Review Phase Four Viability Review Phase Five Viability Review Phase Six and Viability Review Phase Seven; and ii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Four
<p>“Viability Review Phase Nine”</p>	<p>The area/s of land which must be within Main AAP Phase Four and on which it must be intended to build a further 500 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Nine and-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One Viability Review Phase Two Viability Review Phase Three Viability Review Phase Four Viability Review Phase Five Viability Review Phase Six Viability Review Phase Seven and Viability Review Phase Eight; and ii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Four

"Viability Review Phase Ten"	<p>The area/s of land which must be within Main AAP Phase Four and must be on land on which it is intended to build a further 567 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan as part of the Viability Review Submission relating to Viability Review Phase Ten and-</p> <ul style="list-style-type: none"> i) which must not overlap with the land comprised of Viability Phase One Viability Review Phase Two Viability Review Phase Three Viability Review Phase Four Viability Review Phase Five Viability Review Phase Six Viability Review Phase Seven Viability Review Phase Eight and Viability Review Phase Nine; and ii) when combined with the land comprised of Viability Review Phase Eight and Viability Review Phase Nine must comprise of 100% of the land in Main AAP Phase Four; and iii) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Four.
"Viability Review Phase Plan"	<p>A plan of at least 1:1250 scale showing:-</p> <ul style="list-style-type: none"> 1) the area/s of land comprised in the Viability Review Phase relating to the relevant Viability Review Submission in the colour detailed by column 2 of Table 2 and corresponding to the relevant Viability Review Phase detailed by column 1 of Table 2; and 2) the areas of land in the previous Viability Review Phase/s (if any) and Viability Phase One in the colours as detailed by column 2 of Table 2 and corresponding to the relevant preceding Viability Review Phase/s (if any) and Viability Phase One as detailed by column 1 of Table 2.
"Viability Review Phase"	Any of Viability Review Phase Two to Viability Review Phase Ten (inclusive).

<p>“Viability Review Submission”</p>	<p>A written submission to the Council for the relevant Viability Review Phase to comprise of the following relating to the relevant Viability Review Phase:-</p> <ul style="list-style-type: none"> a) a short narrative introduction confirming which Viability Review Phase the Viability Review Submission relates to and the Valuation Date for the Viability Review Submission; and b) a Viability Review Phase Plan; and c) a Viability Review Template (Minimum Affordable Housing Provision);and d) a Viability Review Template (Additional Affordable Housing Provision) if the Viability Review Template (Minimum Affordable Housing Provision) shows a Surplus; and e) confirmation that the Minimum Affordable Housing Provision will be provided in accordance with the Council's requirements as detailed by the Affordable Housing Information Reply for the relevant Viability Review Phase in so far as such requirements relate to the Minimum Affordable Housing Provision for that Viability Review Phase (with full details as to the quantum of each type (house or flat) size and tenure of Affordable Housing Unit comprising the Minimum Affordable Housing Provision to be provided in the relevant Viability Review Phase); and f) the Proposed Additional Affordable Housing Provision if the Viability Review Template (Minimum Affordable Housing Provision) shows a Surplus; and g) full details of all relevant calculations documents communications and other sources of information as specified and referred to by the Viability Review Template used to calculate and determine each Viability Review Template Input and each Viability Review Template Result; and h) the Residual Surplus (if any).
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“Viability Review Template (Additional Affordable Housing Provision)”

A Viability Review Template completed in respect of the relevant Viability Review Phase which:-

- a) shall assume the Minimum Affordable Housing Provision is provided within that Viability Review Phase in the form and types as required by the Council in the Council's Affordable Housing Information Reply for the relevant Viability Review Phase and in accordance with the requirements of Schedule 1 of this Deed and shall detail such Affordable Housing Units; and
- b) shall assume the Additional Affordable Housing Provision is provided in the relevant Viability Review Phase in the quantum type and form that complies with the Additional Affordable Housing Provision: Mix Proportions for that Viability Review Phase and the requirements of Schedule 1 of this Deed and shall detail such Affordable Housing Units; and
- c) shall be populated with all of the Viability Review Template Inputs; and;
- d) shall be populated and show the Total Gross Development Value the Developer Costs (including those that are Viability Review Template Inputs) the Total Developer Profit the Residual Land Value and any Residual Surplus; and
- e) shall be calculated and populated in accordance with the principles methods assumptions and using the sources of data and information as detailed in the definitions of the Viability Review Template Inputs.

<p>“Viability Review Template (Minimum Affordable Housing Provision)”</p>	<p>A Viability Review Template completed in respect of the relevant Viability Review Phase which:-</p> <ul style="list-style-type: none"> a) shall assume the only Affordable Housing Units to be provided in that Viability Review Phase will be the Minimum Affordable Housing Provision in the form and types as required by the Council in the Council's Affordable Housing Information Reply for the relevant Viability Review Phase and in accordance with the requirements of Schedule 1 of this Deed and shall detail such Affordable Housing Units; and b) shall assume there shall be no Additional Affordable Housing Provision provided in the relevant Viability Review Phase; and c) shall be populated with all Viability Review Template Inputs other than the Additional Affordable Housing Provision: Mix Proportions; and d) shall show the Total Gross Development Value the Developer Costs (including those that are Viability Review Template Inputs) the Total Developer Profit the Residual Land Value and the Surplus (if any); and e) shall be calculated and populated in accordance with the principles methods assumptions and using the sources of data and information as detailed in the definitions of the Viability Review Template Inputs other than the Additional Affordable Housing Provision: Mix Proportions.
<p>“Viability Review Template Inputs”</p>	<p>All of the following as they apply to the relevant Viability Review Phase:-</p> <p>The Non Fixed Assumption Viability Review Inputs the Fixed Assumption Viability Review Inputs the Affordable Housing Information Reply the Minimum Affordable Housing Provision the Additional Affordable Housing: Mix Proportions the Affordable Housing Mix the Open Market Dwelling Mix and the Viability Review Phase Plan</p> <p>and “Viability Review Template Input” shall be construed as referring to one of the above as the context so requires.</p>

"Viability Review Template Results"	<p>All of the following as they apply to the relevant Viability Review Phase:-</p> <p>The items detailed by paragraph f) of the definition of Viability Review Submission together with the Total Gross Development Value the Developer Costs the Total Developer Profit the Residual Land Value the Surplus (if any) the Deficit (if any) and the Residual Surplus (if any).</p>
"Viability Review Template"	The template viability assessment summary to be used in the review of the viability of each of Viability Review Phases Two to Viability Review Phase Ten (inclusive) detailed at Schedule 49 of this Deed.
"Voluntary Sector"	Charities and charitable or not for profit organisations (not registered as charities), including the church and which organisations undertake work for the benefit of the new community within the Development.
"Working Day"	Any day other than a Saturday or a Sunday or a bank holiday or a public holiday in England or a day falling in the period from the 25th December to the 1st January of the consecutive year inclusive and "Working Days" shall be construed accordingly
"Youth Services Contribution 1"	The sum of £59,750.00 (fifty nine thousand seven hundred and fifty pounds) Index Linked.
"Youth Services Contribution 2"	The sum of £59,750.00 (fifty nine thousand seven hundred and fifty pounds) Index Linked.
"Youth Services Contribution 3"	The sum of £119,500.00 (one hundred and nineteen thousand and five hundred pounds) Index Linked
"Youth Services Contribution"	The sum of £239,000.00 (two hundred and thirty nine thousand pounds) for the provision by the County Council or its nominees of youth services Serving the Development but excluding the provision of infrastructure payable by instalments referred to as Youth Services Contribution 1, 2 and 3 each Index Linked.

1.2 In this Deed where the context so requires:-

- 1.2.1** The expressions "the Owners" or to any one or more of the Owners (including for the avoidance of doubt "Paying Owners" and the "Jarvis' ")_ shall include all persons deriving title to any part of the Site from or under them including successors in title to their respective interests in the Site or any part thereof save where specifically provided to the contrary by this Deed;
- 1.2.2** The expressions Council and the County Council shall include the successors to their respective statutory functions relevant to this Deed and their nominees;

- 1.2.3 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons;
- 1.2.4 Words importing persons include firms, companies, other corporate bodies or legal entities and vice versa;
- 1.2.5 Any reference to a specific statute shall include any regulation, order or other secondary legislation made under such statute, as well as any legislative application, extension, modification amendment or re-enactment of such statute and secondary legislation save where specifically provided to the contrary by this Deed;
- 1.2.6 References in this Deed to any clause, sub-clause or Schedule without further designation shall be construed as a reference to the clause, sub-clause or Schedule to this Deed so numbered;
- 1.2.7 Words denoting an obligation on a person to do any act matter or thing include an obligation to procure that it be done,
- 1.2.8 Words 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;
- 1.2.9 Save in respect of the Planning Permission, in the event of any conflict between the terms conditions and provisions of this Deed and any document annexed hereto or referred to herein, the terms conditions and provisions of this Deed will prevail;
- 1.2.10 In this Deed, unless otherwise specifically stated, any reference to the term "month" shall mean calendar month, any reference to the term "day" shall mean any day which is not declared as a Bank Holiday under the Banking and Financial Dealings Act 1971 and any reference to the term "year" shall mean calendar year;
- 1.2.11 The Interpretation Act 1978 shall apply to this Deed.
- 1.3 In this Deed the expressions detailed by column 1 of the table at Schedule 43 (Non-Fixed Viability Review Inputs) shall have the meanings given to them in column 2 of the same table.
- 1.4 In this Deed the expressions detailed by column 1 of the table at Schedule 44 (Fixed Viability Review Inputs) shall have the meanings given to them in column 2 of the same table.

2. THE PLANNING OBLIGATIONS AND COVENANTS

2.1 Statutory Powers

- 2.1 1 In so far as any covenants fall wholly or partly outside the scope of section 106 of the Planning Act they are (to the extent permissible in law) entered into under section 111 of the Local Government Act 1972, the Localism Act 2011, section 39 of the Wildlife and Countryside Act 1981, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, and all other powers enabling the Council and the County Council to enforce them against the Owners and the covenants restrictions and requirements of the Owners as provided in this Deed shall be ones to which the provisions of Section 106 of the Planning Act shall apply and shall be binding and enforceable as planning obligations against the Owners (including all persons deriving title to any part of the Site from or under them and successors in title to their respective interests in the Site or any part thereof) by the Council and the County Council as local planning authorities to

extent provided by and in accordance with this clause 2.

2.2 Release from liability

2.2.1 In the event that an Owner shall have parted with the entirety of their interest in the whole or any part of the land comprised in the Site, and shall have no possession of or control over that land, then that Owner shall no longer be bound by covenants to do or not to do anything in, on, over or under that land in which they have parted with the entirety of their interest and retain no possession of or control over, and shall cease to be liable to make any payments calculable by reference to, or secured by way of local land charge exclusively on, that area of land Save That:-

2.2.1.1 the Owner shall remain liable for any antecedent breach of this Deed occurring during the period of his ownership, possession or control of that land; and

2.2.1.2 Where a monetary payment is expressed to be payable by an Owner, or an obligation is binding upon an Owner, in their capacity as an Owner irrespective of the extent of their interest in the Site, then they shall continue to be liable; and

2.2.1.3 Chilmington Green Developments Hodson CG One Hodson CG Two and Hodson shall continue to be personally jointly and severally bound by all of the Positive Planning Obligations to Pay; and

2.2.1.4 each Owner who is severally liable pursuant to a Positive Planning Obligation to Provide And/Or Construct to rectify and/or repair any Defects in a facility and/or building and/or works pursuant to the provisions of this Deed shall continue to be liable to rectify/repair such Defects in accordance with the provisions of this Deed notwithstanding that it has disposed of its interest or part of its interest in the land on which the relevant facility and/or building and/or works is situated to the CMO.

2.3 For the avoidance of doubt clause 2.2 does not apply to any obligation to Provide a Bond, because such obligations are not requirements to do or not to do anything on the land comprised in the Site, and so they shall continue to be personally enforceable against the Paying Owners irrespective of whether they retain any interest in the Site.

2.4 No person(s) shall be bound by the Positive Planning Obligations To Pay obligations to Provide A Bond and Positive Obligations To Provide And/Or Construct under this Deed in their capacity as:-

2.4.1 A private individual or a joint private individual who has purchased a completed Dwelling or a tenant or occupier of a completed Dwelling; and

2.4.2 a mortgagee or chargee of a private individual or joint private individual who has purchased a completed Dwelling.

2.5 No person(s) shall be bound by the Negative Planning Obligations (with the exception of the obligations and covenants pursuant to paragraph 8 of Schedule 4 of this Deed and paragraph 17 of Schedule 1 of this Deed) in their capacity as:-

2.5.1 A private individual or a joint private individual who has purchased a completed Dwelling or a tenant or occupier of a completed Dwelling; and

2.5.2 a mortgagee or chargee of a private individual or joint private individual who has purchased a completed Dwelling

2.6 No person who is a Registered Provider and has acquired an interest in the Site that comprises entirely of either i) the freehold interest in Affordable Housing Land pursuant to the provisions of Schedule 1 of this Deed and/or ii) the Long Leasehold of Affordable

Housing Units that are flats pursuant to the provisions of Schedule 1 of this Deed shall be bound by the Positive Planning Obligations to Pay and the obligations To Provide a Bond. 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.

- 2.7 For the avoidance of doubt, a private individual or a joint private individual who has purchased a completed Dwelling and a tenant or occupier of a completed Dwelling and a mortgagee or chargee of a private individual or joint private individual who has purchased a completed Dwelling shall be bound by the obligations and covenants pursuant to paragraph 8 of Schedule 4 of this Deed and paragraph 17 of Schedule 1 of this Deed.
- 2.8 The obligations contained in this Deed shall not be binding upon any interest in any part of the Site of any statutory undertaker provided that the such interest in the Site is held by such statutory undertaker solely for the purpose of providing drainage or sewerage or supplying electricity, gas, water or telecommunications only nor on any chargee of any such interest nor any receiver appointed by a chargee of any such interest.
- 2.9 The obligations contained in this Deed shall not be binding upon any interest in any part of the Site:-
- 2.9.1 acquired by the CMO (once created pursuant to schedule 4 of this Deed), the Council and the County Council pursuant to the provisions of this Deed except the provisions of paragraph 1.4 of Schedule 12 which shall bind and be enforceable against the CMO once it acquires a freehold interest in the land on which the Community Hub Building is constructed pursuant to the provisions of Schedule 12; and
 - 2.9.2 acquired by the Council and the County Council otherwise than pursuant to the provisions of this Deed to exercise their statutory functions provided that such interest in the Site is held by the Council and/or County Council (as appropriate) solely for the purpose of exercising its statutory functions; and
 - 2.9.3 the obligations in Schedule 1 of this Deed (Affordable Housing) not being enforced against a mortgagee or chargee of an Registered Provider and other categories of persons who are successor/s in title to the Owner/s and derive title to and from the Owner/s interest in the Site in the circumstances and on the terms set out in paragraph 18.2 of Schedule 1 of this Deed.

2.10 Negative Planning Obligations and Notification Obligations

- 2.10.1 The Owners hereby covenant and agree with the Council and the County Council to comply with all of the terms set out in this Deed that are Negative Planning Obligations (except for the Negative Planning Obligation at clause 7.2 of this Deed and the Schedule 2 Negative Planning Obligation) and Notification Obligations (except the Notification Obligations at clause 7.2 of this Deed).
- 2.10.2 The covenants obligations and restrictions made by the Owners hereunder that are Negative Planning Obligations (except for the Negative Planning Obligations at clause 7.2 of this Deed) and Notification Obligations are made by the Owners jointly and severally, and for the avoidance of doubt can be enforced against all of them jointly and each of them, or any combination of them, individually, by both the Council and the County Council except the Schedule 2 Negative Planning Obligation which are made severally and are enforceable in accordance with clause 2.15 below.
- 2.10.3 Hodson CG One Hodson CG Two Chilmington Green Developments and Hodson hereby covenant and agree with the Council and the County Council to comply with all of the terms set out in clause 7.2 of this Deed that are Negative Planning Obligations and Notification Obligations.

2.10.4 All of the covenants obligations and restrictions made by Hodson CG One Hodson CG Two Chilmington Green Developments and Hodson in clause 7.2 of this Deed that are Negative Planning Obligations and Notification Obligations are made by Hodson CG One Hodson CG Two Chilmington Green Developments and Hodson jointly and severally, and for the avoidance of doubt can be enforced against all of them jointly and each of them, or any combination of them, individually, by both the Council and the County Council.

2.11 Positive Obligations to Pay

2.11.1 The Paying Owners only (and for the avoidance of any doubt not Mr Jarvis, Mrs Jarvis, Jarvis Homes, Pentland Kent, Pentland Homes BDW and Chelmden) hereby agree and covenant with the Council and the County Council to comply with all of the terms set out in the Schedules to this Deed that are Positive Planning Obligations To Pay.

2.11.2 All of the covenants obligations and restrictions made by the Paying Owners hereunder that are Positive Planning Obligations To Pay are made by the Paying Owners jointly and severally, and for the avoidance of doubt can be enforced against all of them jointly and each of them, or any combination of them, individually, by both the Council and the County Council SAVE THAT in the event a person (who is not Hodson Developments (Ashford) Limited, Chilmington Green Developments Limited, Hodson Developments (CG One) or Hodson Developments (CG Two) Limited) acquires the freehold interest in the entirety of the land comprising a Land Parcel only:-

2.11.2.1 that person shall not be jointly and severally liable for 100% of all of the sums of money due under the Positive Planning Obligations To Pay but shall be liable to pay a sum of money being proportion of each sum of money due pursuant to each Positive Obligation To Pay as and when each and every Positive Planning Obligation To Pay falls due pursuant to the terms of this Deed (including any indexation due under clause 28 and any interest due under clause 18) such proportion ('P') to be calculated in accordance with the following formula:-

$$P = A \times ((C \text{ divided by } (B \text{ less the sum of } D \text{ and } E))$$

Where:-

A = 100% of the sum of money having fallen due under the relevant Positive Planning Obligation To Pay under the terms of this Deed including any indexation due under clause 28 and any interest due under clause 18 but for the avoidance of doubt not applying this clause 2.11.2.1

B = the approximate total number of Dwellings capable of being built on the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land being 5178 Dwellings.

C = either i) the approximate total number of Dwellings identified and approved by the Council as being located within the relevant Land Parcel pursuant to condition 17 of the Planning Permission or ii) if a Reserved Matters Application/s has been approved by the Council for the entirety of the land comprising the relevant Land Parcel and works have commenced within the relevant Land Parcel pursuant to such an approved Reserved Matters Approval/s then the total number of Dwellings detailed by such Reserved Matters Approval/s.

D = the total number of all those Dwellings that are located within all those Land Parcels within which all Dwellings have been fully constructed and Occupied at the time the relevant Positive Obligation to Pay falls due under the terms of this Deed.

E = the approximate total number of Dwellings capable of being built on

the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land being 5178 Dwellings multiplied by 0.3 (rounded down to the nearest Dwelling).

AND PROVIDED THAT

a) If when applying the formula above the sum of D and E equals more than B at the time the relevant Positive Planning Obligation To Pay falls due pursuant to the terms of this Deed, P shall be 100% of the sum of money having fallen due under the relevant Positive Planning Obligation To Pay under the terms of this Deed including any indexation due under clause 28 and any interest due under clause 18; and

b) If when applying the formula above C divided by (B less the sum of D and E) is more than 1 at the time the relevant Positive Planning Obligation To Pay falls due pursuant to the terms of this Deed, P shall be 100% of the sum of money having fallen due under the relevant Positive Planning Obligation To Pay under the terms of this Deed including any indexation due under clause 28 and any interest due under clause 18; and

2.11.2.2 all persons deriving title from such a person who has acquired the freehold interest in the entirety of the land comprising a Land Parcel shall be jointly and severally liable to pay a sum of money being a proportion of each sum of money due pursuant to each Positive Planning Obligation To Pay as and when each and every Positive Planning Obligation To Pay falls due pursuant to the terms of this Deed (including any indexation due under clause 28 and any interest due under clause 18) ('P1') such proportion to be calculated in accordance with the following formula:-

$$P1 = A1 \times ((C1 \text{ divided by } (B1 \text{ less the sum of } D1 \text{ and } E1))$$

Where:-

A1 = 100% of the sum of money having fallen due under the relevant Positive Planning Obligation To Pay under the terms of this Deed including any indexation due under clause 28 and any interest due under clause 18 but for the avoidance of doubt not applying clause 2.11.2.1 and this clause 2.11.2.2.

B1 = the approximate total number of Dwellings capable of being built on the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land being 5178 Dwellings.

C1 = either i) the approximate total number of Dwellings identified and approved by the Council as being located within the relevant Land Parcel pursuant to condition 17 of the Planning Permission or ii) if a Reserved Matters Application/s has been approved by the Council for the entirety of the land comprising the relevant Land Parcel and works have commenced within the relevant Land Parcel pursuant to such an approved Reserved Matters Approval/s then the total number of Dwellings detailed by such Reserved Matters Approval/s.

D1 = the total number of all those Dwellings that are located within all those Land Parcels within which all Dwellings have been fully constructed and Occupied at the time the relevant Positive Obligation to Pay falls due under the terms of this Deed.

E1 = the approximate total number of Dwellings capable of being built on the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land being 5178 Dwellings multiplied by 0.3 (rounded down to the nearest Dwelling).

AND PROVIDED THAT:

c) If when applying the formula above the sum of D1 and E1 equals more than B1 at the time the relevant Positive Planning Obligation To Pay falls due pursuant to the terms of this Deed, P1 shall be 100% of the sum of money having fallen due under the relevant Positive Planning Obligation To Pay under the terms of this Deed including any indexation due under clause 28 and any interest due under clause 18; and

d) If when applying the formula above C1 divided by (B1 less the sum of D1 and E1) is more than 1 at the time the relevant Positive Planning Obligation To Pay falls due pursuant to the terms of this Deed, P1 shall be 100% of the sum of money having fallen due under the relevant Positive Planning Obligation To Pay under the terms of this Deed including any indexation due under clause 28 and any interest due under clause 18.

2.11.3 In the event that:-

2.11.3.1 more than 80% of the Land Parcels are Land Parcels within which all Dwellings have been fully constructed and Occupied; and

2.11.3.2 Reserved Matters Applications have been approved for all of the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land including all of that land on which Dwellings and/or other development have not yet been constructed at the date such Reserved Matters Applications have been approved and works have commenced pursuant to all such Reserved Matters Applications; and

2.11.3.3 the Reserved Matters Applications referred to at 2.11.3.2 above detail an aggregate of less or more Dwellings than 5178 Dwellings,

then the approximate total number of Dwellings capable of being built on the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land for the purposes of B and B1 and E and E1 above shall be the new aggregate of all those Dwellings as detailed by all those Reserved Matters Applications and not 5178 Dwellings.

2.11.4 Notwithstanding the provisions of clause 2.11.3 the Council and the County Council (in their absolute discretion) may agree with the Paying Owners to substitute a different number of Dwellings for the the approximate total number of Dwellings capable of being built on the Hodson Land the Hodson CG One Land the Hodson CG Two Land and the Chilmington Green Developments Land for the purposes of B and B1 and E and E1 above above than 5178 Dwellings at any time.

2 11.5 In determining the total number of all those Dwellings that are located within all those Land Parcels within which all Dwellings have been fully constructed and Occupied at the time each Positive Planning Obligation to Pay falls due under the terms of this Deed (D and D1 above) reference shall be made to the notifications to the County and County Council made pursuant to clause 7.2 of this Deed, however if necessary and in the absence of precise reasonable verifiable and up to date (at the relevant time) information from Hodson Hodson CG One Hodson CG Two Chilmington Green Developments as to the total number of all those Dwellings that are located within all those Land Parcels

within which all Dwellings have been fully constructed and Occupied at the time the relevant Positive Planning Obligation to Pay falls due the Council and/or County Council (as appropriate) shall be entitled to estimate what in their reasonable opinion is the total number of all such Dwellings for the purposes of D and D1 above applying clause 2.11.2.1 and clause 2.11.2.2.

2.11.6 For the avoidance of doubt:-

2.11.6.1 In the event a person (who is not Hodson Developments (Ashford) Limited, Chilmington Green Developments Limited, Hodson Developments (CG One) or Hodson Developments (CG Two) Limited) acquires the freehold interest in the entirety of the land comprising more than one Land Parcel, that person shall be liable for the proportions of each sum of money due pursuant to each Positive Planning Obligation To Pay as and when each and every Positive Planning Obligation To Pay falls due under the terms of this Deed attributable to each such Land Parcel as calculated in accordance with clause 2.11.2.1; and

2.11.6.2 In the event a person ("Person B") derives title to any interest or interests in more than one Land Parcel from the person/s who acquired the freehold interest in the entirety of the land comprising those Land Parcels, then Person B shall be jointly and severally liable to pay the proportions of each sum of money due pursuant to each Positive Planning Obligation To Pay as and when each and every Positive Planning Obligation To Pay falls due under the terms of this Deed attributable to each such Land Parcel as calculated in accordance with clause 2.11.2.2; and

2.11.6.3 requirements to pay any sum of money to the Council or to the County Council (including but not limited to the Positive Planning Obligations To Pay and the Schedule Two Positive Planning Obligations To Pay) shall not be deemed discharged unless and until the full amount due (including any indexation due pursuant to clause 28 and interest due pursuant to clause 18) has been received by them in cleared funds.

2.12 Positive Obligations To Provide And/Or Construct

2.12.1 The Owners hereby agree and covenant with the Council to comply with all of the terms set out in the Schedules to this Deed that are Positive Planning Obligations to Provide And/Or Construct.

2.12.2 The covenants and obligations made by the Owners hereunder comprising the Positive Planning Obligations to Provide And/Or Construct are made severally so that each Owner shall be liable to provide and/or construct and/or carry out (as appropriate) all facilities and/or structures and/or buildings and/or works (as appropriate) that are identified as being located on their land pursuant to the provisions of the Schedules of this Deed and are required to be provided/constructed/carried out pursuant to the Positive Planning Obligations To Provide And/or Construct. For the avoidance of any doubt, no Owner shall be liable to provide, construct and carry out (as appropriate) any facility, structure, building and works pursuant to Positive Obligations To Provide And/Or Construct to the extent that such facility, structure, building and works are identified as not being located on land in which they have an interest.

2.13 Affordable Housing Positive Obligations To Provide And/Or Construct

2.13.1 Hodson and Chilmington Green Developments hereby agree and covenant with the Council to comply with the Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 11 of Schedule 1

2.13.2 The Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 1.1 of Schedule 1 are made by Hodson and Chilmington Green Developments joint and severally and for the avoidance of doubt can be enforced against all of them jointly and each of them, or any combination of them, individually, by the Council.

2.13.3 Hodson CG One and Hodson CG Two Hodson and Chilmington Green Developments hereby agree and covenant with the Council to comply with the Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 1.2 of Schedule 1.

2.13.4 The Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 1.2 of Schedule 1 are made by Hodson and Hodson CG One and Hodson CG Two and Chilmington Green Developments jointly and severally and for the avoidance of doubt can be enforced against all of them jointly and each of them, or any combination of them, individually, by the Council.

2.13.5 The Jarvis' hereby agree and covenant with the Council to comply with the Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 1.3 of Schedule 1

The Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 1.3 of Schedule 1 are made by the Jarvis' jointly and severally and for the avoidance of doubt can be enforced against all of them jointly and each of them, or any combination of them, individually, by the Council.

2.13.6 The Owners hereby agree and covenant with the Council to comply with the Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 8 and paragraph 13 of Schedule 1.

2.13.7 The Affordable Housing Positive Obligations To Provide And/Or Construct in paragraph 8 and paragraph 13 of Schedule 1 are made by the Owners severally and are enforceable against each Owner in respect of the Affordable Housing Units to be provided on that Owner's land only.

2.14 Obligations to Provide a Bond

2.14.1 The Paying Owners hereby jointly and severally covenant with the Council and with the County Council to comply with their obligations to Provide a Bond.

2.15 Schedule 2 Planning Obligations

2.15.1 The Owners hereby agree and covenant with the Council to comply with the Schedule 2 Planning Obligations.

2.15.2 The covenants made by the Owners hereunder that comprise of the Schedule 2 Planning Obligations are made severally and are enforceable against the Owner of each and every Building individually.

2.16 All Other Obligations Covenants Restrictions and Requirements

2.16.1 The Owners covenant with the Council and the County Council to comply with all covenants restrictions and requirements in this Deed on the part of the Owners that are not Negative Planning Obligations, Positive Planning Obligations To Pay, Positive Obligations To Provide And/Or Construct, obligations to Provide a Bond, Schedule 2 Planning Obligations and the Affordable Housing Positive Planning Obligations To Provide And/Or Construct.

2.16.2 The covenants obligations and restrictions made by the Owners pursuant

to clause 2.15.1 above are made jointly and severally unless otherwise stated.

2.17 Enforcing Authorities to Whom Obligations are Made

2.17.1 The covenants on behalf of the Owners 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 the County Council or to both of them.

2.18 Enforceability of all Negative Planning Obligations against all Owners

2.18.1 For the avoidance of doubt all Negative Planning Obligations (except those Negative Planning Obligations detailed by clause 7.2 of this Deed and the Schedule 2 Planning Obligations which can be enforced against each and every Owner severally in accordance with clause 2.15) shall be binding and enforceable against each and every Owner (except those persons excluded from and/or released from liability in accordance with the provisions of clause 2.2 to clause 2.9 inclusive)

2.18.2 Without prejudice to the generality of the clause 2.18.1, each and every Owner must cease works or Occupation of Dwellings (as appropriate) so as not to breach Negative Planning Obligations notwithstanding:-

2.18.2.1 that the Positive Planning Obligations To Pay are enforceable against the Paying Owners and persons deriving title to their interests in the Site or part thereof only, in accordance with clause 2.11;

2.18.2.2 that a person has no liability pursuant to a Positive Planning Obligation To Pay that secures the same Contribution as a Negative Planning Obligation at the time the Council or the County Council seek to enforce the relevant Negative Planning Obligation; and

2.18.2.3 that a person who owns an interest in a Land Parcel or part thereof has satisfied their own liability pursuant to a Positive Planning Obligation to Pay that secures the same Contribution as a Negative Planning Obligation at the time the Council or the County Council seek to enforce the relevant Negative Planning Obligation; and

2.18.2.4 that a person has satisfied their own individual liability pursuant to a Positive Planning Obligation to Provide And/Or Construct that secures the same facility building or infrastructure as a Negative Planning Obligation at the time the Council or the County Council seek to enforce the relevant Negative Planning Obligation; and

2.18.2.5 that a person has no liability pursuant to a Positive Planning Obligation To Provide And/Or Construct that secures the same facility building or infrastructure as a Negative Planning Obligation at the time the Council or the County Council seek to enforce the relevant Negative Planning Obligation; and

2.18.2.6 that Hodson and/or Chilmington Green Developments and/or Hodson CG One and/or Hodson CG Two and/or the Jarvis' may have satisfied their liability pursuant to an Affordable Housing Positive Planning Obligation to Provide And/Or Construct that secures the same Affordable Housing Units as a Negative Planning Obligation at the time the Council seek to enforce the relevant Negative Planning Obligation; and

2.18.2.7 that a person has no liability pursuant to an Affordable Housing Positive Planning Obligation To Provide And/Or Construct that secures the same Affordable Housing Units as a Negative Planning Obligation at the time the Council seek to enforce the relevant Negative Planning Obligation; and

2.18.2.8 that, should the Paying Owners have agreed amongst themselves any manner in which an obligation to Provide a Bond is to be financed or otherwise discharged, a given person has complied with their own obligation to Provide a Bond to which a Negative Planning Obligation relates, at the time the Council and/or the County Council seek to enforce the relevant Negative Planning Obligation;

PROVIDED ALWAYS THAT

- (1) once the whole of any sum payable to the Council or to the County Council in accordance with a Positive Planning Obligation to Pay, including related indexation due pursuant to clause 28 of this deed and any interest due pursuant to clause 18 of this Deed, shall have been paid to the Council or the County Council (as the case may be) or into their respective Council Contributions Bank Account or County Council Contributions Bank Account by or on behalf of any of the Owners (whether or not by the Owner who was liable to pay under this Deed); and
- (2) if a Bond in the amount required by any obligation to Provide a Bond shall have been delivered to the County Council (whether or not by the Owner who was liable to Provide the Bond under this Deed); and
- (3) once any Positive Planning Obligation to Provide and/or Construct shall have been fully satisfied; and
- (4) once any Affordable Housing Positive Planning Obligation to Provide And/Or Construct shall have been fully satisfied;

THEN the related Negative Planning Obligation shall be deemed satisfied.

2.18.3 For the avoidance of doubt:-

2.18.3.1 it shall be the responsibility of each and every Owner (excluding for the purposes of this clause a private individual or a joint private individual who has purchased a completed Dwelling or a tenant or occupier of a completed Dwelling or a mortgagee or charge of such person) to ensure that they ascertain whether any Occupation of Dwellings on their own land on the Site will result in a breach of any restriction on the Occupation of a total number of Dwellings on the Site, because each Owner shall be in breach of such a restriction if they continue to Occupy Dwellings in excess of the maximum permitted number regardless of the sequence in which Dwellings were Occupied, and regardless of whether they exercised due diligence in making enquiries of other Owners; and

2.18.3.2 for the purpose of determining whether a given number of Dwellings has been Occupied, a Dwelling shall be deemed to have been Occupied upon its first Occupation whether or not it subsequently remains Occupied; and

2.18.3.3 in the event of any dispute as to the date of Occupation of any Dwelling, evidence of Occupation shall be presumed to be sufficient proof that it was Occupied at any earlier date unless Occupation on that earlier date can be negated by evidence to the contrary

2.18.4 For the avoidance of doubt all Negative Planning Obligations detailed by clause 7.2 of this Deed shall be binding and enforceable against each and every of Chilmington Green Developments Hodson Hodson CG One and Hodson CG Two (except those persons excluded from and/or released from liability in accordance with the provisions of clause 2.2 to clause 2.9 inclusive).

2.19 BDW

2.19.1 BDW acknowledges and agrees with the Council and the County Council that its interest in the Site pursuant to the agreement ~~between~~ between 1) BDW and 2) Hodson CG

22 December 2016

Two and dated 22 December 2016 referred to at Recital L3 shall be bound by the terms restrictions covenants and obligations of this Deed and any other interest it acquires in Site pursuant to that agreement or otherwise shall be bound by the terms restrictions covenants and obligations of this Deed.

THE COUNCIL AND THE COUNTY COUNCIL'S COVENANTS

1 The Council hereby covenants with the Owners to observe and perform the obligations on the part of the Council set out in the Schedules to this Deed.

2 The County Council hereby covenants with the Owners to observe and perform the obligations on the part of the County Council set out in the Schedules to this Deed.

LEGAL FEES

1 The Paying Owners hereby covenant with and undertake to the Council and the County Council that the Paying Owners will on the date hereof pay the Council's reasonable and proper legal costs in respect of this Deed in the sum of £100,000.00 and the County Council's reasonable and proper legal costs in respect of this Deed in the sum of £60,000.00 provided that those legal fees have not been paid already.

5. OWNERS' AGENT

5.1 The Owners hereby covenant with the Council and the County Council not to carry out a Material Operation (Statutory) pursuant to the Planning Permission within each Main Phase unless and until the Owners have notified the Council and the County Council of the identity of the Owners' Agent for the relevant Main Phase including the name of such person, business address of such person, telephone number of such person and e-mail address of such person including reasonable evidence that the owners of the freehold interest of no less than 75% of the land within the relevant Main Phase agree with the identity of such Owners' Agent.

5.2 For the avoidance of doubt the Owners may notify the Council and the County Council of a change of identity of the Owners' Agent for any particular Main Phase and the Council shall accept such person as the new Owners' Agent for the purposes of this clause and clause 17 provided that the Owners provide reasonable evidence that the owners of the freehold interest in no less than 75% of undeveloped land within the relevant Main Phase agree with the identity of such new Owners' Agent.

6. OWNERS' TITLE TO THE SITE

6.1 The Owners (for the purposes of this clause 6.1 excluding those persons deriving title to the Site or part thereof from or under them) hereby warrant and undertake to the Council and the County Council that in respect of each of their respective interests in the Site:-

6.1.1 that the interest of the persons detailed by the recitals to this Deed are accurate as at the date of this Deed; and

6.1.2 that no other person other than the persons detailed by the recitals to this Deed have an interest in the Site at the date of this Deed.

6.2 The Owners in respect of each of their respective interests in the Site (for the purposes of this clause 6.1 excluding those persons deriving title to the Site or part thereof from or under them) hereby covenant with and undertake to the Council and to the County Council that the Owners shall apply to the Chief Land Registrar to register this Deed in the registers of its title to the Site and to furnish the Council forthwith upon registration official copies of such title to show the entry of this Deed in the Charges Register of the same.

7 NOTIFICATION TO THE COUNCIL OF PROGRESS OF THE DEVELOPMENT

7.1 The Owners hereby covenant with and undertake to the Council and the County Council that the Owners will serve notice on the Council and the County Council as follows:-

- 7.1.1 upon Commencement of Development;
- 7.1.2 6 months from Commencement of Development
- 7.1.3 1 year from Commencement of Development;
- 7.1.4 18 months from Commencement of Development;
- 7.1.5 2 years from Commencement of Development;
- 7.1.6 3 years from Commencement of Development;
- 7.1.7 28 months from Commencement of Development;
- 7.1.8 33 months from Commencement of Development;
- 7.1.9 36 months from Commencement of Development;
- 7.1.10 61 months from Commencement of Development;
- 7.1.11 63 months from Commencement of Development;
- 7.1.12 72 months from Commencement of Development;
- 7.1.13 78 months from Commencement of Development;
- 7.1.14 upon Occupation of the following total number of Dwellings on the Site
- 7.1.15 Start of construction of the first Dwelling

7.1.16 The following numbers of Dwelling Occupations:

7.1.16.1	1
7.1.16.2	50
7.1.16.3	75
7.1.16.4	100
7.1.16.5	125
7.1.16.6	150
7.1.16.7	225
7.1.16.8	250
7.1.16.9	300
7.1.16.10	425
7.1.16.11	500
7.1.16.12	525
7.1.16.13	550
7.1.16.14	600
7.1.16.15	675

7 1.16.16	750
7.1 16.17	825
7 1 16.18	850
7.1 16.19	900
7.1 16.20	925
7.1.16.21	926
7 1.16.22	1000
7 1 16.23	1001
7 1.16.24	1025
7 1.16.25	1049
7.1.16.26	1100
7.1.16.27	1150
7.1.16.28	1175
7.1.16.29	1200
7.1.16.30	1250
7.1.16.31	1300
7.1.16.32	1350
7.1.16.33	1425
7.1.16.34	1426
7.1.16.35	1450
7.1.16.36	1500
7.1.16.37	1550
7.1.16.38	1600
7.1.16.39	1675
7.1.16.40	1725
7.1.16.41	1750
7.1.16.42	1800
7.1.16.43	1925
7.1.16.44	1930
7.1.16.45	2000
7.1.16.46	2050
7.1.16.47	2100

7.1.16.48	2150
7.1.16.49	2175
7.1.16.50	2200
7.1.16.51	2250
7.1.16.52	2350
7.1.16.53	2400
7.1.16.54	2425
7.1.16.55	2500
7.1.16.56	2550
7.1.16.57	2600
7.1.16.58	2650
7.1.16.59	2700
7.1.16.60	2750
7.1.16.61	2800
7.1.16.62	2805
7.1.16.63	2880
7.1.16.64	2925
7.1.16.65	2950
7.1.16.66	2975
7.1.16.67	3000
7.1.16.68	3050
7.1.16.69	3250
7.1.16.70	3300
7.1.16.71	3340
7.1.16.72	3350
7.1.16.73	3400
7.1.16.74	3425
7.1.16.75	3500
7.1.16.76	3550
7.1.16.77	3600
7.1.16.78	3800 (if Option A applies)
7.1.16.79	3820

7 1.16.80	3850
7 1.16.81	3900
7.1.16.82	3925
7 1.16.83	3950
7 1.16.84	4000
7.1 16.85	4050
7.1 16.86	4100
7.1.16.87	4150
7.1.16.88	4200
7.1 16.89	4450
7 1.16.90	4500
7 1.16.91	4525
7 1.16.92	4550
7.1.16.93	4600
7 1.16.94	4750
7 1 16.95	4800
7 1 16.96	4925
7.1 16.97	5000
7.1.16.98	5050
7 1.16.99	5060
7 1.16.100	5100
7 1.16.101	5150
7.1 16.102	5200
7.1.16.103	5350
7.1 16.104	5400
7.1 16.105	5400
7 1 16.106	5425
7 1 16.107	5500
7 1.16.108	5550
7 1.16.109	5650
7 1.16.110	5600
7.1.16.111	5700

- 7.2 The Paying Owners hereby covenant with the Council and the County Council not to Occupy more than the total number number of Dwellings in each Land Parcel less one Dwelling unless and until a written notice has been given to the Council and the County Council by the Owners' Agent confirming that all Dwellings within the relevant Land Parcel have been completely constructed and that the Owner of the relevant Land Parcel anticipates that the final Dwelling to be Occupied within such Land Parcel will be Occupied within 15 Working Days of such notice.

8. TERMINATION

If the Planning Permission is quashed or revoked or expires or ceases to have effect by operation of law or lapses:-

- 8.1.1 before the carrying out of Material Operation (Statutory) pursuant to the Planning Permission or which would be pursuant to the Planning Permission but for non-compliance with any condition of the Planning Permission; then

8.1.1.1 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

8.1.1.2 the Owners may make an application in writing to the Council for a certificate that this Deed has so ceased to have effect which shall be accompanied by reasonable proof of such quashing revocation cessation of effect or lapse; and

- 8.1.2 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 8.1.1 1) the Council shall within 10 Working Days issue a certificate that this Deed has ceased to have effect to the applicants for the Planning Permission and cancel all entries in its register of local land charges in respect of this Deed (provided that the Council maintains the function of administering the Local Land Charges register at the time the application for such a certificate is considered by the Council);

- 8.1.3 after the carrying out of a Material Operation (Statutory) which either was pursuant to the Planning Permission or would have been pursuant to the Planning Permission but for non-compliance with any condition to the Planning Permission then no covenant or obligation in this Deed shall be enforced if or to the extent that it would constitute unauthorised or unlawful development to comply with that covenant or obligation by reason of such quashing or revocation or cessation of effect by operation of law or lapse of the Planning Permission.

9. FETTER OF DISCRETION

- 9.1 Nothing contained or implied in this Deed shall fetter prejudice or otherwise affect the rights powers duties and obligations of the Council and the County Council in the exercise of any of their functions and the rights powers duties and obligations under any 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.

10. RIGHT OF INSPECTION

- 10.1 The Owners shall during the period when the Development is being carried out permit any person duly authorised by the Council or the County Council for the express purposes of this clause to enter at reasonable times and on reasonable prior notice any part of the Site which is being or has been developed to ascertain whether there is or has been any breach of the obligations hereunder PROVIDED THAT any person so authorised by the Council or the County Council shall observe all reasonable site security access and health and safety arrangements required by the Owner and notified in writing to the Council or the County Council as the case may be.

10.2 Nothing in this clause 10 shall prevent the Council or the County Council from exercising their statutory rights or take legal proceedings to enforce the obligations covenants and restrictions set out herein.

11. EXPERT DETERMINATION

- 11.1 Where a Relevant Dispute: Expert Determination but for the avoidance of doubt no other dispute or claim 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 referral to an independent expert in accordance with clause 11.2.
- 11.2 In the event of any Relevant Dispute: Expert Determination arising between the parties to this Deed which has been identified in writing on paper by one party to the others and has not been resolved within 20 Working Days such Relevant Dispute: Expert Determination shall be referred to an independent expert (the "Expert").
- 11.3 The Expert shall have at least 10 years' post-qualification experience in the subject matter of the Relevant Dispute: Expert Determination and shall be agreed upon between the parties to the Relevant Dispute: Expert Determination or, if not agreed within 20 Working Days of the Relevant Dispute: Expert Determination having been identified in accordance with clause 11.2, 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 RICS.
- 11.4 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 notwithstanding whether or not his decision on the Relevant Dispute: Expert Determination is in favour of the paying party
- 11.5 For the avoidance of doubt the decision of the Expert shall be binding on the parties to the Relevant Dispute: Expert Determination except in the case of manifest error.
- 11.6 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: Expert Determination and in any event not more than 60 Working Days from the date of his appointment to act.
- 11.7 The Expert shall be required to give notice to each of the parties to the Relevant Dispute: Expert Determination inviting them to submit to him and each other within 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 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 dispute within 20 Working Days thereafter.
- 11.8 Nothing in this clause 11 shall prevent any party from seeking recourse to the High Court or any other court in England of competent jurisdiction at any time, nor from exercising any right to take alternative action in relation to any matter other than a Relevant Dispute: Expert Determination.

12. DISPUTE RESOLUTION

- 12.1 Where a claim or dispute arising out of or in connection with this Deed that is a Relevant Dispute is not settled by negotiation the parties will consider using alternative dispute resolution techniques prior to referral to an independent expert in accordance with clause 12.2
- 12.2 In the event of any Relevant Dispute arising between the parties hereto which has been identified in writing on paper by one party to the others and has not been resolved within 28 days thereafter such Relevant Dispute may be referred to an independent expert ("the Expert") provided that the parties to the Relevant Dispute agree to do so in writing. The Expert shall be agreed upon between the parties hereto or if not agreed within 21 days after expiry of the said 28 days then at the request and option of any of them to be nominated by or on behalf of the President for the time being of the Royal Town Planning Institute and the Expert shall act as an expert and not as an

arbitrator and his costs shall be at his discretion (including those of his nomination) and payable according to his direction notwithstanding whether or not his decision on the Relevant Dispute is accepted by the paying party.

12.3 For the avoidance of doubt (and other than in respect of his costs) the decision of the Expert shall not be binding on the parties hereto but shall instead be given due and proper consideration by the parties to the Relevant Dispute and if not accepted (either in whole or in part) by any such party or parties then such party or parties shall provide to the other such party or parties full written reasons for the non-acceptance of the Expert's decision (or part of his decision) within 20 Working Days of receipt of the Expert's decision.

12.4 The Expert shall have at least 10 years' post-qualification experience in the subject matter of the Relevant Dispute and unless otherwise agreed 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 Working Days from the date of his appointment to act.

12.5 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him and each other within twenty Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further twenty Working Days in respect of any such submission and material and his decision shall be given in writing within twenty Working Days thereafter with reasons.

12.6 Nothing in this clause 12 shall prevent any party from seeking recourse to the High Court or any other Court in England and Wales of competent jurisdiction, nor from exercising any right to take alternative action.

13. WAIVER

13.1 No waiver (whether express or implied) by either the Council or the County Council of any breach or default by the Owners, nor any waiver of any breach by their respective successors in title or assigns or any persons claiming through or under them an interest in the Site, in performing or observing any of the obligations covenants restrictions and requirements in this Deed shall constitute a continuing waiver and no such waiver shall prevent either the Council or the County Council from enforcing any of the said obligations covenants restrictions and requirements, nor from acting upon any subsequent breach or default in respect thereof by the Owners, the Owners' successors in title or assigns or any persons claiming through or under the Owners an interest in the Site unless such waiver is evidenced in writing in accordance with clause 22.2.

14. CHANGE IN OWNERSHIP

14.1 The Owners agree with the Council and the County Council to give them written notice of any change in ownership of any of their interests in the Site or part thereof (but for the avoidance of any doubt excluding any individual Dwelling) occurring before all the obligations under this Deed have been discharged such notice to be served within 28 days following the change and to give 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 purchased by reference to a plan.

15. VAT

15.1 All payments to be made under the terms of this Deed shall be exclusive of any value added tax properly payable which shall where appropriate be paid in addition and upon delivery and receipt of a valid VAT invoice.

16. THIRD PARTIES

16.1 Unless expressly stated in this Deed no third party or other person who is not a party to this Deed other than a successor in title or in the case of the Council or the County Council a successor body may enforce any of the terms of this Deed under the Contracts (Rights of Third Parties) Act 1999.

17 JURISDICTION

The construction validity and performance of this Deed shall be governed by English Law without reference to any other country's system of laws and the parties agree to irrevocably submit to the exclusive jurisdiction of the English courts.

18. LATE PAYMENT

If any payment due by the Owners or their successor/s in title to their interests in the Site or any part thereof or any person/s deriving title to the same from or under the Owner/s 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 the 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 Owners for themselves and their successors in title to their interests in the Site and persons deriving title to their interests in the Site hereby covenant with the Council and the County Council 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.

19. 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).

20. 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.

21. DELIVERY

21.1 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.

21.2 If this Deed is executed in separate parts by the parties the parts so executed constitute a single original.

22. SUBMISSIONS AND APPLICATIONS TO THE COUNCIL

22.1 All submissions and applications to the Council and/or the County Council for the Council and/or the County Council's (as appropriate) approval of documents specifications drawings plans and schemes and all submissions to the Council and/or the County Council of other documents required pursuant to the provisions of this Deed including notifications shall be submitted by the Owners to the Council and/or the County Council (as appropriate) via the Owners' Agent and i) no such applications and submissions for the approval of documents specifications drawings plans and schemes by the Council and/or the County Council (as appropriate) shall be considered by the Council and/or the County Council (as appropriate) to be valid submissions or applications for the purposes of satisfying the provisions covenants and restrictions of this Deed unless they are submitted by the Owners to the Council and/or the County Council (as appropriate) via the Owners' Agent and ii) no other documents submitted to the Council and/or the County Council pursuant to the provisions of this Deed including notifications shall be considered by the Council and/or the County Council to be valid documents/notifications for the purposes of satisfying the requirements of the provisions covenants and restrictions of this Deed unless they are submitted by the Owners to the Council and/or the County Council (as appropriate) via the Owners' Agent.

22.2 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 purposes of the relevant provision of this Deed.

23. NOTICES

23.1 Any notice or written confirmation of approval agreement or consent under this Deed shall be contained in a non-electronic mail communication on headed paper of that company or organisation in 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:

23.1.1 in the case of the Council at Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL (addressed to the Council's Solicitor and quoting reference Legal/DS54/0669);

23.1.2 in the case of the County Council at County Hall, Maidstone, Kent, ME14 1XQ (addressed to the Director of Law and Governance) and also serving notice on Mouchel at 23-29 Albion Place, Maidstone, Kent, ME14 5TS;

23.1.3 in the case of the each of the Owners the address for each such Owner given on pages 1 - 6 of this Deed or such other address as the Owners may notify to the other party from time to time;

23.1.4 in the case of a Chargee marked for the attention of the Company Secretary at the address given in this Deed for the relevant Chargee.

23.2 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 Owner under this Deed such obligation or power may (without limiting any other method agreed in writing with the Owner) be discharged by serving the notice or signifying consent agreement satisfaction or approval only on the party or parties directly affected thereby and the Owners' Agent and in particular the Council or such other party shall not be under any obligation to so serve or signify to any person not bound by virtue of the provisos and exemptions to clause 2.

23.3 Payments to the Council (for the avoidance of doubt excluding those payments into the Council's escrow account under this Deed) shall be made (unless otherwise first agreed in writing by the Council) quoting reference Planning 12/00400/AS by electronic funds transfer to National Westminster Bank Plc Collection account number 74313363 sort code 60-01-21 stating the clause Schedule or paragraph of this Deed to which the payment relates and notifying the Council of such payment using Form P1 at Schedule 50 of this Deed.

23.4 Payments to the County Council (for the avoidance of doubt excluding those payments into the County Council's escrow account under this Deed) shall be made (unless otherwise first agreed in writing by the County Council) quoting reference Planning 12/00400/AS by electronic funds transfer to National Westminster Bank Plc account number 00100013 sort code 60-60-08 stating the clause Schedule or paragraph of this Deed to which the payment relates and notifying the County Council of such payment.

24. THE CHARGEES

24.1 The Chargees acknowledge that this Deed has been entered into by the respective Owners with their consent and that the parts of the Site subject to the Chargees' charges shall be bound by the obligations contained in this Deed and that the security of their respective charges over those parts of the Site shall take effect subject to this Deed PROVIDED THAT each of the Chargees shall otherwise have no liability under this Deed unless they take possession of that part of the Site which is subject to their respective charge in which case that Chargee too will be bound by the obligations as if it were a person deriving title from the relevant Owner

25. BONDS

- 25.1 Where pursuant to this Deed a Bond has been Provided for the benefit of the County Council then once the County Council is satisfied of full compliance by the Owners with the obligations to which the Bond relates and upon receipt of a written request made by the Owners so to do (accompanied by evidence of such compliance), the County Council shall within a reasonable time confirm in writing to the relevant Issuer of the Bond (copied to the Owners) that the Bond has been released.
- 25.2 Any Owner may at any time after execution of a Bond request the County Council to consider accepting a substitute bond (whether in respect of Schedule 15B or Schedule 18A) for the balance of the relevant bond sum on precisely the same terms as the original Bond but with an alternate issuer, then the County Council shall accept such substitute bond if:-
- 25.2.1 it has secured a legally binding commitment to pay for its reasonable costs of considering the request and checking and executing all the documentation related to the proposed substitution;
 - 25.2.2 it then considers in its reasonable judgment (the exercise of which shall not be subject to challenge or question by any person in any legal proceedings whatsoever) that the risk of default by the proposed alternate issuer is not materially greater than the risk of default by the issuer of the existing Bond;
 - 25.2.3 it has confirmed the identity of the alternate issuer and given notice in writing to the person who procured issuance of the existing Bond that expressly refers to this clause and states that the proposed alternate issuer is acceptable; and
 - 25.2.4 its costs of considering the request and checking and executing all the documentation related to the proposed substitution have been paid in full.
- 25.3 Following due execution of the substitute Bond by both the alternate Issuer and the County Council, the original Bond shall be immediately released by the County Council giving notice in writing to its issuer

26. DISBURSEMENT OF EDUCATION CONTRIBUTIONS

- 26.1 The parties to this Deed recognise and consent to the Education Contributions being held by the County Council in a single account and disbursed for the purposes of Primary School 1 Primary School 2 Primary School 3 Primary School 4 and the Secondary School as the need for funding arises and the contributions made under this Deed towards each of those purposes shall for the avoidance of doubt not be held nor treated by the County Council as capable only of being expended on the primary or secondary school for which they were paid but may be spent on whichever of those Education Purposes (always within the terms of this Deed) the County Council as education authority finds necessary acting reasonably

27 COUNCIL'S COVENANTS

- 27.1 The Council hereby covenants with the Owners
- 27.1.1 to use each of the Contributions received directly by it or instalments thereof for their intended purpose as set out in this Deed and for no other purpose; and
 - 27.1.2 to provide a written annual summary of the expenditure of all Contributions and instalments thereof received directly by the Council (excluding all those contributions and instalments thereof paid pursuant to the provisions of Schedule 4 of this Deed except for the CMO Start Up Contribution); and
 - 27.1.3 to repay any unexpended or otherwise uncommitted contribution or instalment thereof received directly by the Council excluding all those contributions paid pursuant to the provisions of Schedule 4 of this Deed (except the CMO Start Up Contribution) to the person from whom it was received if it is not spent or otherwise committed within 10 years of its receipt except in the case of the Contributions paid under Schedule 29

paragraphs 4 and 6 where it shall be within ten years of the date in the second column of the table in Schedule 29B.

28. INDEX LINKING

- 28.1 Where index linking applies, unless otherwise provided in this clause or the Schedules to this Deed the relevant sum shall be adjusted by the percentage change if any between the figure of the Relevant Index for April 2014 or the second quarter of 2014 as the case may be and the most recent figure of the Relevant Index when the relevant sum falls due to be paid ("Final Index Value").
- 28.2 In the case of Schedules 8 and 12, index linking shall be carried out each time a reserved matters approval is granted. The sum to be index linked shall be the relevant proportion of the amount (on a pro rata basis using the area for which approval has been granted) and the percentage change (if any) shall be between the figure of the Relevant Index for the second quarter of 2014 to the quarterly index figure of the Relevant Index for the date when the reserved matters approval is granted.
- 28.3 In the case of the sum referred to in paragraph 17 of schedule 20, index linking shall be carried out annually by using the percentage change if any between the figure of the Relevant Index for April 2014 and the Relevant Index figure for April of that year.
- 28.4 In the case of the amounts referred to in paragraph 2 of Schedule 20 index linking shall be carried out each time a subsidy is paid and in respect of that amount only.
- 28.5 In the case of the budget of £200,000.00 for the CMO's First Operating Premises to be provided pursuant to paragraph 4 of Schedule 5, the budget of £250,000.00 for the CMO's Second Operating Premises to be provided pursuant to paragraph 5 of schedule 5, total capital cost of the Commercial Estate: Basic Provision provided pursuant to paragraph 9 of Schedule 5, total capital cost of the Commercial Estate: Second Tranche provided pursuant to paragraph 11 of Schedule 5 (if the CMO elects "Option A" pursuant to the Endowment Election" and such Commercial Estate is to be provided) and total capital cost of the Commercial Estate: Third Tranche provided pursuant to paragraph 12 of Schedule 5 (if the CMO elects "Option A" pursuant to the Endowment Election" and such Commercial Estate is to be provided), the percentage change (if any) shall be between the figure of the Relevant Index for April 2014 to the monthly index figure of the Relevant Index for the date when the corresponding reserved matters approval is granted.
- 28.6 In the case of "Sum A", the figure of £335.00 (on which the Initial Service Charge Cap for each different type and size of Dwelling shall be based for all those Rentcharge Deeds entered into during the First Service Charge Year relating to the first Rentcharge Deed entered into) shall be adjusted by the percentage change if any between the figure of the Relevant Index for April 2014 and the figure of the Relevant Index for the month in which the Council approves the CMO Operating Business Plan pursuant to paragraph 4 of Schedule 4.
- 28.7 In the case of "Sum B", "Sum B" for each different type and size of Dwelling shall be calculated by adjusting "Sum A" for the relevant type and size of Dwelling as approved by the Council as part of the CMO Operating Business Plan pursuant to paragraph 4 of Schedule 4 by the percentage change if any between the figure of Relevant Index for the month in which the Council approves the CMO Operating Business Plan pursuant to paragraph 4 of Schedule 4 and the figure for the Relevant Index for the month when the relevant Rentcharge Deed for the relevant Dwelling is dated.
- 28.8 In the case of schedule 2, index linking shall be carried out on the date the aggregate of all contributions paid to the Council reaches £2,300,000. In order to retain the value of £2,300,000 as of that date, the amount of the index linking increase shall be deducted from £2,300,000. Contributions shall continue to be paid until they equal the amount of that index linking increase

29. COMPLIANCE PACK

29.1 The Owners covenant to provide to the first purchaser of each Dwelling (or their legal representative acting for them in relation to the purchase of the relevant Dwelling) a written summary of i) the obligations restrictions and covenants in this Deed as they relate to the Land Parcel in which the relevant Dwelling is located and ii) to what extent each such obligation restriction and covenant has been complied with/discharged at the date on which contracts for the purchase of the relevant Dwelling are due to be exchanged. .

IN WITNESS whereof the parties hereunto have executed this Deed the day and year first before written

SCHEDULE 1
Affordable Housing

Construction of Affordable Housing

1 Hodson, Hodson CG One, Hodson CG Two, Chilimington Green Developments and the Jarvis' covenant with the Council as follows:-

1.1. Hodson and Chilimington Green Developments covenant with the Council to construct 70 Dwellings within the Hodson Viability Phase One Land and Chilimington Green Developments Viability Phase One Land as Extra-Care Housing Units prior to the date on which the 850th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 2 and 3 below;

1.2. Hodson CG One, Hodson and Chilimington Green Developments covenant with the Council to construct a further 24 Dwellings within the Hodson Viability Phase One Land the Hodson CG One Viability Phase One Land and the Chilimington Green Developments Viability Phase One Land as Affordable Housing Units prior to the date on which the 650th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 4 and 5 below; and

1.3. The Jarvis' covenant with the Council to construct a further 6 Dwellings within the Jarvis' Viability Phase One Land as Affordable Housing Units prior to the date on which the 650th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 4 and 5 below.

2. 28 of the Extra Care Housing Units referred to at paragraph 1.1 above shall be provided as Shared Ownership Units and 42 of the Extra Care Housing Units referred to at paragraph 1.1 above shall be provided as Affordable Rent Units (or Intermediate Affordable Housing Units if requested by the Owners' Agent and confirmed by the Council to the Owners' Agent as being acceptable to the Council in writing at the Council's absolute discretion).

3. All of the Extra Care Housing Units referred to at paragraph 1.1 above shall be provided as 1 and/or 2 bedroom flats in one or more buildings in a single complex in the District Centre.

4. 12 of the Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above shall be provided as Shared Ownership Units and 18 of the Affordable Housing Units referred to at paragraph 1.2 and 1.3 above shall be provided as Affordable Rent Units (or Intermediate Affordable Housing Units if confirmed by the Council in writing to the Owners' Agent as being acceptable to the Council at the Council's absolute discretion).

5. All of the Affordable Housing Units referred to at paragraph 1.2 and 1.3 above shall be provided as 2 and/or 3 bed houses and one of the Affordable Housing Units referred to at paragraph 1.2 and paragraph 1.3 above shall accommodate Habinteg fixtures and fittings (eg loadings for hoists) and with such fixtures and fittings provided in accordance with reserved matters approvals and in accordance with design standards of the "Habinteg Wheelchair Housing Design Guide" standard.

6. The Owners covenant with the Council not to Occupy more than 850 Dwellings unless and until:-

6.1. All of the 70 Extra Care Housing Units referred to paragraph 1.1 above have been completely constructed in Viability Phase One in compliance with the requirements of paragraph 2 and paragraph 3 above and so that such Extra Care Units have been made ready for Occupation and either:-

6.1 1. The Unencumbered freehold title to Affordable Housing Land on which the building in which those Extra Care Units are located has been transferred to an Registered Provider;
OR

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- 6.1.2. subject always to the prior approval by the Council (such approval being at the Council's absolute discretion to be confirmed by the Council in writing to the Owners' Agent) a duly executed transfer of the freehold title to the Affordable Housing Land on which building in which all of the Extra Care Housing Units referred to in paragraph 1 1 above are located has been delivered to an Registered Provider

7 The Owners covenant with the Council not to Occupy more than 650 Dwellings unless until

7.1. The 30 Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above have been completely constructed and provided in Viability Review Phase One in compliance with the requirements of paragraph 4 and paragraph 5 above and been made ready for Occupation and either:-

- 7 1.1 the Unencumbered freehold title to all of the Affordable Housing Land on which the 30 Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above are located has been transferred to a Registered Provider;

OR

- 7.1.2. subject always to the prior approval by the Council (such approval being at the Council's absolute discretion to be confirmed in writing by the Council to the Owners' Agent) a duly executed transfer of the Unencumbered freehold title to the Affordable Housing Land on which all of the Affordable Housing Units referred to at paragraphs 1.2 and 1.3 above are located has been delivered to a Registered Provider.

8. The Owners covenant with the Council to construct 10% of the Dwellings within each of Viability Review Phase Two, Viability Review Phase Three, Viability Review Phase Four, Viability Review Phase Five, Viability Review Phase Six, Viability Review Phase Seven, Viability Review Phase Eight, Viability Review Phase Nine and Viability Review Phase Ten as Affordable Housing Units prior to the date on which 75% of the Dwellings in each such Viability Review Phase are Occupied.

9. The Affordable Housing Units constructed and provided pursuant to paragraph 8 above shall comprise of a combination of Affordable Rent Units (to be 60% of those Affordable Housing Units except for those Affordable Housing Units constructed and provided pursuant to paragraph 8 in Viability Review Phase Two which shall comprise entirely of Shared Ownership Units) and Shared Ownership Units (to be 40% of those Affordable Housing Units except for those Affordable Housing Units constructed and provided pursuant to paragraph 8 in Viability Review Phase Two which shall comprise entirely of Shared Ownership Units) and/or with the Council's prior written approval (such approval being at the Council's absolute discretion to be confirmed by the Council to the Owners' Agent in writing) Intermediate Housing Units and 5% of those Affordable Housing Units shall accommodate Habinteg fixtures and fittings (e.g. loadings for hoists) and with such fixtures and fittings provided as are in accordance with the relevant reserved matters approval/s and in accordance with design standards of the "Habinteg Wheelchair Housing Design Guide". For the avoidance of doubt the Affordable Housing Units constructed pursuant to paragraph 8 above shall not comprise of or include Extra Care Housing Units and/or other accommodation for older persons and/or accommodation for vulnerable groups of people.

10. The Owners covenant with the Council to construct the Approved Additional Affordable Housing Provision (if any) for each of Viability Review Phase Two, Viability Review Phase Three, Viability Review Phase Four, Viability Review Phase Five, Viability Review Phase Six, Viability Review Phase Seven, Viability Review Phase Eight, Viability Review Phase Nine and Viability Review Phase Ten prior to the date on which 75% of the Dwellings in each such Viability Review Phase are Occupied.

11. The Affordable Housing Units constructed and provided pursuant to paragraph 10 above shall be constructed and provided in accordance with the reserved matters approvals for the Approved Additional Affordable Housing Provision for the relevant Viability Review Phase, including the details of what type and size of Dwelling the Approved Additional Affordable Housing shall comprise of and

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whether such Affordable Housing Units shall comprise of Extra Care Housing Units and/or other accommodation for older persons and/or accommodation for vulnerable groups of people.

12. The Affordable Housing Units constructed and provided pursuant to paragraph 10 shall comprise of a combination of Affordable Rent Units (being 60% of those Affordable Housing Units) and Shared Ownership Units (being 40% of those Affordable Housing Units) and/or with the Council's prior approval (such approval being at the Council's absolute discretion to be confirmed by the Council in writing to the Owners' Agent) Intermediate Housing Units. 5% of the Affordable Housing Units constructed and provided pursuant to paragraph 10 above shall accommodate Habinteg fixtures and fittings (e.g. loadings for hoists) and with such fixtures and fittings as are in accordance with the relevant reserved matters approval/s and in accordance with design standards of the "Habinteg Wheelchair Housing Design Guide" standard.

13. The Owners covenant with the Council to construct all of the Affordable Housing Units within each of the Viability Review Phase Two, Viability Review Phase Three, Viability Review Phase Four, Viability Review Phase Five, Viability Review Phase Six, Viability Review Phase Seven, Viability Review Phase Eight, Viability Review Phase Nine and Viability Review Phase Ten (for the avoidance of doubt including the Affordable Housing Units constructed and provided pursuant to paragraph 8 and paragraph 10 above) apart from flats to Lifetime Home Standards.

14. The Owners covenant with the Council not to Occupy more than 75% of the Dwellings within each of Viability Review Phase Two, Viability Review Phase Three, Viability Review Phase Four, Viability Review Phase Five, Viability Review Phase Six, Viability Review Phase Seven, Viability Review Phase Eight, Viability Review Phase Nine and Viability Review Phase Ten unless and until:-

14.1 all of the Affordable Housing Units to be provided within the relevant Viability Review Phase (for the avoidance of doubt being the minimum provision of 10% of the Dwellings within the relevant Viability Review Phase to be constructed and provided pursuant to paragraph 8 above and the Approved Additional Affordable Housing Provision (if any) for the same Viability Review Phase to be constructed and provided pursuant to paragraph 10 above) have been completely constructed and provided within the relevant Viability Review Phase in accordance with all of the requirements of paragraph 8 to paragraph 13 inclusive and have been made ready for occupation and either:-

14.1.1. the Unencumbered freehold interest in all of the Affordable Housing Land within the relevant Viability Review Phase on which all of the Affordable Housing Unit/s which are houses are located (if any) has been transferred to a Registered Provider; and

14.1.2. the Unencumbered freehold interest in all of the Affordable Housing Land within the relevant Viability Review Phase on which a building/s is located which comprises wholly of Affordable Housing Units that are flats has been transferred to a Registered Provider; and

14.1.3. a Long Leasehold of each and every flat that is an Affordable Housing Unit to be provided within the relevant Viability Review Phase and is located within a building that does not comprise wholly of Affordable Housing Units has been granted to a Registered Provider;

OR

14.1.4. subject always to prior approval of the Council (such approval being at the Council's absolute discretion to be confirmed in writing by the Council to the Owners' Agent) a duly executed transfer of the Unencumbered freehold interest in or Long Leasehold interest in the relevant Affordable Housing Land or flats (as appropriate) has been delivered to a Registered Provider

15. The Council acting through its Head of Housing or other designated officer and the relevant land owner may in their absolute discretions (to be confirmed in writing by the Council to the Owners' Agent and the Council's Head of Housing) agree to one or more of the Owners transferring serviced land within the Site (of an area that is greater than the Affordable Housing Land that such Owner would have otherwise been obliged to transfer to a Registered Provider pursuant to this Schedule) to

Schedule 1

the Council, to a company controlled by the Council which provides affordable housing or a Registered Provider for nil consideration provided that the Council, a company controlled by the Council which provides affordable housing or the Registered Provider would then be able to deliver more Affordable Housing Units on that land than would otherwise be constructed by the Owners under paragraphs 1.2, 1.3, 7, 8, 10 or 14 above as the case may be. For the avoidance of doubt this paragraph shall not apply to the Extra Care Housing Units constructed and provided pursuant to paragraphs 1.2 and 6 above.

15.1 If the Council and the relevant land owner agree to the transfer of such a greater area of land to the entities referred to in paragraph 15 above, the number of Affordable Housing Units which the Owners would have constructed on the Affordable Housing Land that would have otherwise been transferred to an Registered Provider pursuant to the provisions of this Schedule shall count towards the requirements of paragraphs 1.2, 1.3, 6, 7, 8, 10 or 14 above as appropriate.

16. The Owners covenant with the Council to notify the Council of any proposals for the sale on the open market by open tender of serviced housing land parcels for Open Market Dwellings within Viability Phase One to afford the Council or its nominee the opportunity to submit an offer for the purchase of any such land parcels for the provision of further Affordable Housing Units PROVIDED ALWAYS that the disposal of any such land parcels shall remain at the absolute discretion of the Owners. The total number of any Affordable Housing Units constructed on any such purchased land shall not count towards the requirements to provide Affordable Housing Units pursuant to this Deed.

Occupation of Affordable Housing

17 The Owners covenant with the Council as follows:

17.1. Not to Occupy the Affordable Housing Units provided pursuant to this Schedule other than in accordance with the following:

- (a) in the tenure as is required pursuant to paragraphs 1 to 14 inclusive above (except where the Council in its absolute discretion agrees a different tenure when a Registered Provider is unable to provide units as required or in other exceptional circumstances); and
- (b) by a tenant or leaseholder of a Registered Provider; and (and persons living with them); and
- (c) if the Affordable Housing Unit is an Affordable Housing Unit that has been constructed and equipped with fixtures and fittings to "Habinteg Wheelchair Housing Design Guide" standard, by persons in need of housing to such a standard or if no such persons are available to occupy such Affordable Housing Units by persons who do not require housing to be constructed to such a standard but who are in need of an Affordable Housing Unit (and persons living with them); and
- (d) if the Affordable Housing Unit is an Extra Care Housing Unit, by persons aged 55 or over or persons under that age living with them and any such Extra Care Units will be reserved and set aside for those in need of Extra Care Housing (and persons (who may be 55 or under) living with them); and
- (e) if the Affordable Housing Unit is designed and provided for a specific vulnerable group, by persons in that specific vulnerable group (and persons living with them).

17.2. Not to Occupy any Shared Ownership Unit other than under a shared ownership lease which includes the following terms:

- (a) initial purchase in the range of 25%-75% the percentage of the equity; and
- (b) the annual rent (paid weekly or monthly) for the outstanding equity shall accord with HCA guidelines; and

Schedule 1

- (c) the ability but no obligation to purchase additional shares of equity up to 100%.

17.3. Not to lease the Shared Ownership Units unless they have first been marketed through the local "Help to Buy" agent (or the agent for any successor arrangement).

17.4. Not to Occupy any Affordable Rent Unit other than under a tenancy where the rent payable is no more than 80% of the market rent prevailing at the date of completion of the rental agreement relating to the relevant Affordable Rent Unit including any service charges and thereafter increasing in accordance with HCA guidelines.

17.5. Not to let the Affordable Rent Units other than in accordance with the nominations agreement in force from time to time between the Council and the relevant Registered Provider.

17.6. Not to Occupy any Intermediate Affordable Housing Units other than under such arrangements as to rent or lease or sale as the Council may approve in writing to the Owners' Agent in its absolute discretion.

Conditions

18. The Owners' covenants pursuant to this Schedule are conditional on the following:

18.1 In the event that a Registered Provider is unable, after having marketed the property in accordance with its nominations agreement, to lease a Shared Ownership Unit, the Registered Provider being able to let that Dwelling as an Affordable Rent Unit instead and vice-versa as the case may be or failing that subject always to prior approval by the Council (such approval being at the Council's absolute discretion to be confirmed by the Council to the Owners' Agent and the relevant Registered Provider in writing), to let, sell or lease that property as an Intermediate Affordable Housing Unit; and

18.2. The Council not enforcing this Schedule against:

- (a) Any mortgagee or chargee of the Registered Provider (including any receiver appointed) that takes possession of Affordable Housing Land as long as:
- i. the Council is notified that a power of sale has become exercisable;
 - ii. the mortgagee chargee or receiver uses reasonable endeavours over a period of 12 weeks from the date of notification to complete the transfer of the relevant Affordable Housing Land to another Registered Provider or to the Council upon terms reasonably satisfactory to the parties.

Nothing in this clause shall require the mortgagee charge or receiver to act contrary to its legal duties or to sell the relevant Affordable Housing Land for less than the amount due (including all principal monies interest cost and expenses)

- (b) Any mortgagee or chargee of a Shared Ownership Unit leased to an individual occupier or any receiver appointed by such mortgagee or charge and persons deriving title from through or under them; and
- (c) Any person (other than another Registered Provider) deriving title from through or under the mortgagee or chargee who has satisfied the conditions in (a) above
- (d) Any person who has parted with their entire interest in the Site (except for liability for any subsisting breach arising prior to parting with such interest)
- (e) Individual owners and occupiers of a Dwelling (except for paragraph 17)

18.3. The covenants ceasing to apply to an Affordable Rent Unit where the full freehold or leasehold interest (including a sub-lease) in that Dwelling has been purchased by the tenant under a statutory or contractual right to buy or right to acquire the full freehold or leasehold interest (including a sub-lease).

Schedule 1

- 18.4. The covenants ceasing to apply to a Shared Ownership Unit or Intermediate Affordable Housing Unit where that leaseholder has staircased to 100% ownership of the full freehold or leasehold interest (including a sub-lease) in the Dwelling under their lease or any statutory or contractual right to do so.
- 18.5. Wherever in this Schedule there is a reference to a percentage rather than a number of Dwellings or Affordable Housing Units the actual number of Dwellings or Affordable Housing Units shall be rounded up to the nearest whole number

SCHEDULE 2
Carbon Off-setting

1. The Owners covenant with the Council as follows:
 - 1.1. Not to Occupy a Building until the energy performance certificate for that Building has been given to the Council
 - 1.2. To pay to the Council within 21 days of the date each Building is Occupied the carbon off-setting contribution for that Building PROVIDED ALWAYS THAT:
 - (a) The aggregate of all contributions will not exceed £2,300,000.00 (two million three hundred thousand pounds) Index Linked
 - (b) No contributions shall be payable in respect of any of the following Buildings:
 - (i) Schools to be built under Schedules 15
 - (ii) The community hub building to be built under Schedule 12
 - (iii) The local centre hubs to be built under Schedule 13
 - (iv) The community pavilion to be built under Schedule 7
 - (v) The sports hub to be built under Schedule 10
 - (vi) The CHP DHP plant buildings and machinery or any utilities buildings electricity sub stations gas pressure stations or similar buildings
 - (vii) Any Building to be transferred or leased to the CMO under Schedule 4 or otherwise
 - (viii) Any outbuildings or buildings of a temporary nature or constructed of temporary materials or which are not normally to be Occupied residentially or commercially including any grounds maintenance buildings allotment buildings sheds equipment stores carports and/or garaging
 - (c) Payment of the carbon off-setting contribution in respect of any Building leased to the CMO under Schedule 4 or otherwise is not due until that Building is Occupied by someone other than the CMO (if ever)
 - 1.3. To calculate the carbon off-setting contributions using Table 1 below and by following the instructions (by way of illustration a worked example is also included for a building which is first occupied in 2017 the energy certificate for which confirms it has estimated carbon emissions of 1.8 tonnes per year).
2. The Council covenants with the Owners to only use the carbon off-setting contributions for the "Chilmington Green Carbon Reduction Project" and to give credit to the Owners for their contributions in any advertising, signage or promotional and publicity materials relating to the project.

TABLE 1

CARBON OFF-SETTING CONTRIBUTION

Years	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	etc
Tonnes of CO ₂ emissions for the Building																				
Multiply by	30.4	31.0	31.6	32.3	32.9	33.6	34.3	34.9	35.6	36.4	37.1	37.8	38.6	39.4	40.1	40.9	41.8	42.6	43.4	Increasing by 2% every year there-after
Sub-total																				
Add all 10 sub-totals together = Amount to be paid for that Building	£																			

Instructions:

1. Insert the total number of tonnes of carbon dioxide emissions for the Building (from the energy performance certificate) in the column for the year in which that Building was first Occupied;
2. Insert the same number in the columns for the nine subsequent years;
3. Multiply the number by the figure in the row below in each of the 10 columns;
4. Add all 10 sub-totals together;
5. The total is the contribution payable for that Building;

**CARBON OFF-SETTING CONTRIBUTION
WORKED EXAMPLE (illustrative only)
FOR A BUILDING PRODUCING 1.8 TONNES OF CO2 PER YEAR**

Years	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	etc
Tonnes of CO ₂ emissions for the Building			1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8								
Multiply by	30.4	31.0	31.6	32.3	32.9	33.6	34.3	34.9	35.6	36.4	37.1	37.8	38.6	39.4	40.1	40.9	41.8	42.6	43.4	Increasing by 2% every year there-after
Sub-total			56.88	58.14	59.22	60.48	61.74	62.82	64.08	65.52	66.78	68.04								
Add all 10 sub-totals together = Amount to be paid for that Building	£623.70																			

SCHEDULE 3

Combined Heat and Power Plant ("CHP")

- 1 The Owners covenant with the Council as follows:
 - 1.1 Not to Occupy more than 200 Dwellings unless the Owners have submitted to the Council for fact checking and omissions four draft Feasibility/Viability Studies which have been carried out by an Expert CHP/DHP selected and appointed by the Owners for Scenarios 1 2 3 and 4 and in each case using such fuel source(s) justified by the Expert CHP/DHP as most likely to make the CHP or DHP Feasible
 - 1.2 Not to Occupy more than 400 Dwellings unless the Owners have re-submitted to the Council the four Feasibility/Viability Studies with any fact checking and omission amendments which the Council has required
 - 1.3 In the event all of the Feasibility/Viability Studies referred to in paragraph 1.2 conclude that Scenario 1 Scenario 2 Scenario 3 and Scenario 4 would not be Feasible then
 - 1.3.1 Except for paragraph 1.3.2 below, this obligation shall cease to have any further effect as regards the District Centre
 - 1.3.2 not to develop the CHP or DHP site unless reserved matters approvals for development other than a CHP or DHP at that location have been approved whether pursuant to the Planning Permission or otherwise
 - 1.4 In the event that either of the Feasibility/Viability Studies for Scenarios 1 and/or 2 referred to in paragraph 1.2 conclude that a CHP or DHP scheme would be Feasible then a CHP or DHP plant shall be constructed in the District Centre prior to the Occupation of any buildings in the District Centre and prior to the Occupation of more than 999 Dwellings in Viability Review Phase 1 with the intent that suitable buildings within the District Centre may be connected to it as the development of the District Centre progresses
 - 1.5 In the event that either of the Feasibility/Viability Studies for Scenarios 3 or 4 referred to in paragraph 1.2 conclude that a CHP or DHP scheme under scenarios 3 or 4 would be Feasible then (unless previously constructed under Scenario 1 or Scenario 2) a CHP or DHP plant shall be constructed in the District Centre prior to the Occupationⁿ of the 1000th Dwelling to be Occupied in Viability Review Phase 1 with the intent that the remaining Dwellings comprised in the Development may be connected to it and that the hot water ducting connecting to it can be extended on a phased basis as the Development progresses
2. The Council covenants with the Owners to provide its comments on the draft Feasibility/Viability Studies within 28 days of receipt

Schedule 3A

~~SCHEDULE 3A{TC "SCHEDULE 3A" V C V "1"}
"2"}~~

~~Combined Heat and Power Plant ("CHP"){TC "Combined Heat and Power Plant ("CHP")" V C V
"2"}~~

~~Panel of Experts CHP/DHP{TC "Panel of Experts CHP/DHP" V C V "2"}
"2"}~~

- a) Barry Evans MCIBSE – WSP Group Limited, WSP House, 70 Chancery Lane, London, WC2A 1AF
- b) Mark Kirbyshire BEng(Hons) CEng MCIBSE MInstR LCC – Envision Sustainability Limited, 25 Manchester Square, London, W1U 3PY
- c) Jonathan Riggall BSc (Hons), MSc, MEnvSc – Peter Brett Associates, Caversham Bridge House, Waterman Place, Reading, RG1 8DN
- d) Andrew Robertson MSc – Clean Energy Consultancy Limited, Unit 10, The Granary, Silfield Road, Wymondham, NR18 9AU

SCHEDULE 4
Community Management Organisation

1. The Creation of the Chilmington Green Partnership CMO Working Group

1.1. The Consortium Members covenant and agree with the Council and the Council agrees with the Consortium members as follows:-

1.1.1 That the Consortium Members shall within three months of the grant of Planning Permission establish a working group to be known as the Chilmington Green Partnership CMO Working Group in accordance with the following terms of reference:

1.1.1.1. to assist the Consortium Members and the Council in an advisory capacity on the following matters pending creation of the CMO as an entity:-

- a) the production of the CMO Operating Business Plan by the Consortium Members pursuant to paragraph 6 of this Schedule pending creation of the CMO as an entity in accordance with paragraph 3 of this Schedule; and
- b) contributing towards the creation of the CMO as an organisation; and
- c) liaison with the Consortium Members the local community the parish councils within the Site the Council and the County Council pending creation of the CMO as an entity in accordance with paragraph 3 of this Schedule; and
- d) inputting to the detailed design of any non-residential buildings or facilities that are due to be transferred to the CMO pursuant to the terms of this Deed should any design brief and/or Reserved Matters Applications in respect of such buildings and/or facilities be made prior to the creation of the CMO as an entity pursuant to paragraph 3 of this Schedule; and
- e) holding workshops for the local community pending creation of the CMO as an entity in accordance with paragraph 3 of this Schedule;

1.1.2. that pending creation of the CMO as an entity in accordance with paragraph 3 of this Schedule the Consortium Members shall convene and hold monthly meetings of the Chilmington Green Partnership CMO Working Group at the offices of the Council or such other local venues and frequency as may be otherwise unanimously agreed between the Council and the Consortium Members;

1.1.3. that the Consortium Members shall invite the following bodies to send one representative to such meetings and participate at least 10 Working Days prior to such meetings

1.1.3.1. one Council Member (to be nominated by the Council) who may be supported by senior officer/s , and

1.1.3.2. one representative of the County Council (to be nominated by the County Council) who may be supported by senior officers; and

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- 1 1.3.3. one representative for all of the parish councils within the site together (to be nominated by the parish councils within the Site); and
 - 1 1.3.4. and one representative of the Voluntary Sector;
 - 1 1.4 that the Chilmington Green Partnership CMO Working Group shall be advisory only but shall keep and circulate minutes of its meetings and record areas of agreement and disagreement of those attending;
 - 1 1.5 that the meetings of the Chilmington Green Partnership CMO Working Group will be chaired by a representative of the Consortium and are to be held in private, ten Working Days' notice of any meeting will be given by the Consortium Members to those persons nominated by the organisations at paragraph 1 1.3 above to attend such meetings and notes of such meetings will be kept which shall be made available to the public by the Council on receipt of a request to do so subject to such lawful redaction as the Council deems appropriate in accordance with the provisions of the Freedom of Information Act 2000 the Environmental Information Regulations 2004 and any other relevant act or statutory instrument or legal obligation governing the disclosure of information contained in such notes.

2. The CMO Welcome Pack and Marketing Document and CMO Membership Application Form

2.1 The Owners covenant with the Council as follows:-

- 2.1.1. Not to carry out any works of construction whatsoever vertically above foundation level of any Dwelling unless and until the Consortium has prepared and the Council has approved in writing:-
 - a CMO welcome pack document and a marketing document explaining and promoting:-
 - a) the purpose of the CMO; and
 - b) the CMO's functions; and
 - c) the constitutional structure of the CMO; and
 - d) the concept of the estate rent charge the quantum of money payable by the owner of each Dwelling as rent payer and the services provided by the CMO that will be funded by the estate rent charge; and
 - e) that the owner and/or occupier (as appropriate) of each Dwelling may become a member of the CMO the process that confers that status on each such owner and the rights conferred on each such owner by virtue of being a member; and
 - f) the process by which residents can elect/select Directors to the board of the CMO; and
 - g) a CMO Membership Application Form.
- 2.1.2. Not to Occupy each Dwelling unless and until a copy of the CMO welcome pack and marketing document and CMO Membership Application Form in the form approved by the Council pursuant to paragraph 2.1 1 above (or such other form as the Council may approve in writing) has been provided to the first purchaser or tenant/occupier of the relevant Dwelling or in the case of an Affordable Housing Unit the CMO welcome pack and marketing document and CMO Membership Application Form in the form approved by the Council has been provided to the relevant Registered Provider

3. The Creation of the CMO as an Entity

3.1 The Owners covenant with the Council as follows:-

3.1.1. that no Dwelling shall be Occupied unless and until:-

3.1.1.1. the CMO has been created as a company limited by guarantee and registered as such at Company's House using Form IN01 in accordance with the full details of and using the articles of association at Schedule 39 of this Deed; and

3.1.1.2. all of the Consortium Members or their successors in title to their interest in the Site (as appropriate) the Council and the CMO once created in accordance with paragraph 3.1.1.1 above have entered into the Framework Agreement and such agreement has been dated and completed.

4. Provision of the CMO's First Operating Premises to the CMO

4.1 The Owners covenant with the Council as follows:

4.1.1 Not to carry out any works of construction vertically above foundation level of any Dwelling unless and until the CMO First Operating Premises Design Brief and Specification has been approved by the Council with a total capital cost of £200,000.00 (two hundred thousand pounds) Index Linked up to the date on which the Reserved Matters Application for the CMO First Operating Premises is approved by the Council including fees (except the Legal Fees Sum), contingencies, specification and design costs and supervision fees, but excluding the costs of providing access roads and services;

4.1.2. The CMO First Operating Premises Design Brief and Specification submitted to the Council (i) shall, unless otherwise agreed by the Council, include the particulars detailed in the CMO First Operating Premises Design Brief and Specification and details of provision of all of the features detailed by the definition of the "CMO First Operating Premises" and (ii) shall have been subject to consultation with the CMO (the details of the consultation shall have been previously approved by the CMO or by the Chilmington Green CMO Partnership Working Group if the CMO has not yet been created pursuant to paragraph 3 of this Schedule) and (iii) shall include the consultation responses and in particular the CMO's comments on the costings and (iv) shall demonstrate how all of the particulars detailed in the CMO First Operating Premises Design Brief and Specification and details of provision of all of the features detailed by the definition of the "CMO First Operating Premises" can delivered within the budget referred to at paragraph 4.1.1 above;

4.1.3. That no Dwelling shall be Occupied unless and until:-

a) the CMO First Operating Premises have been Completed and provided in accordance with all of the details of any reserved matters approval relating to the CMO First Operating Premises and the CMO First Operating Premises Design Brief and Specification as approved by the Council; and

b) the CMO First Operating Premises Lease has been granted to the CMO with the CMO's consent at nil consideration and at nil cost to the CMO and the Owners have paid a sum to the Council equivalent to any Stamp Duty Land Tax relating to the grant of such lease if any is due; and

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- c) the Owners have paid a Legal Fees Sum to the Council in respect of the lease of the CMO First Operating Premises Lease; and
- d) the health and safety file relating to the Completed CMO First Operating Premises, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties and as built drawings (including all collateral warranties that the CMO may reasonably require) have been assigned /given (as appropriate) to the CMO; and
- e) all conditions to a planning permission or approval of reserved matters that apply to the CMO First Operating Premises and are required to be discharged prior to the occupation and use of the CMO First Operating Premises have been discharged at the Owners' expense;

4.1.4. To repair within 3 months of being notified by the CMO and/or the Council via the Owners' Agent (unless the CMO agrees otherwise) any Defects (including those of a cosmetic nature) which occur within 3 years (for grass surfaced parts of the CMO First Operating Premises) or within 12 months (for everything else) of the CMO First Operating Premises Lease being granted to the CMO PROVIDED ALWAYS THAT

- (a) where the remedy of the Defect/s relates to planting and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season; and
- (b) in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works, if later, the repairs shall be carried out within 1 month of the determination of the said dispute pursuant to clause 11 of this Deed save where paragraph 4.1.4 (a) applies.

4.1.5 To Complete and provide the CMO First Operating Premises in accordance with the requirements of paragraph 4.1.3 a) of this Schedule prior to the Occupation of the first Dwelling to be Occupied.

5. Provision of the CMO Second Operating Premises to the CMO

5.1 The Owners covenant with the Council as follows:

5.1.1. Not to Occupy more than 750 Dwellings unless and until the CMO Second Operating Premises Design Brief and Specification has been approved by the Council with a budget of £250,000.00 (two hundred and fifty thousand pounds) for Fitting Out only (for the avoidance of doubt such budget shall not cover all other costs of providing the premises including fees, contingencies, specification and design costs, supervision fees, construction costs of the premises itself, the costs of installing services to the premises, access roads to the premises) such budget to be Index Linked up to the date on which the Reserved Matters Application for the CMO Second Operating Premises is approved by the Council; and

5.1.2. The CMO Second Operating Premises Design Brief and Specification submitted to the Council (i) shall, unless otherwise agreed by the Council, include the particulars detailed in the CMO Second Operating Premises Design Brief and Specification and details of provision of all of the features detailed by the definition of the "CMO Second Operating Premises" and (ii) shall have been subject to consultation with the CMO and (iii) shall include the consultation responses and in particular the CMO's comments on the costings; and (iv) shall demonstrate how all of the particulars detailed in the CMO Second Operating Premises Design Brief and Specification (in so far as they relate to the Fitting Out of the CMO Second Operating Premises) and details of provision of all of the features detailed by the definition of the "CMO Second Operating Premises" (in so far as they relate to the

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Fitting Out of the CMO Second Operating Premises) can be delivered within the budget referred to at paragraph 5.1.1 above;

5.1.3. That no more than 1,000 Dwellings shall be Occupied unless and until:-

- (a) the CMO Second Operating Premises have been Completed and provided in accordance with all of the details of the reserved matters approval relating to the CMO Second Operating Premises and the CMO Second Operating Premises Design Brief and Specification as approved by the Council pursuant to paragraph 5.1.1 above; and
- (b) the CMO Second Operating Premises Lease has been granted to the CMO with the CMO's consent at nil consideration and at nil cost to the CMO and the Owners have paid a sum of money to the Council equivalent to any Stamp Duty Land Tax due and relating to the grant of such lease if any is due; and
- (c) the health and safety file relating to the Completed CMO Second Operating Premises, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings have been transferred/given (as appropriate) to the CMO; and
- (d) a Legal Fees Sum shall have been paid to the Council in respect of the lease of the CMO Second Operating Premises Lease; and
- (e) all conditions to a planning permission or reserved matters approval that apply to the CMO Second Operating Premises and are required to be discharged prior to the occupation and use of the CMO First Operating Premises have been discharged at the Owners' expense;

5.1.4. To repair within 3 months of being notified by the CMO and/or the Council via the Owners' Agent (unless the CMO agrees otherwise) any Defects (including those of a cosmetic nature) which occur within 3 years (for grass surfaced parts of the CMO Second Operating Premises) or within 12 months (for everything else) of the CMO Second Operating Premises Lease being granted to the CMO PROVIDED ALWAYS THAT

- a) where the remedy of the Defect/s relates to planting and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season; and
- (b) in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works, if later, the repairs shall be carried out within 1 month of the determination of the said dispute pursuant to clause 11 of this Deed save in the case where paragraph 5.1.4 a) applies.

5.1.5 To Complete and provide the CMO Second Operating Premises in accordance with the requirements of paragraph 5.1.3 a) of this Schedule prior to the Occupation of 1000 Dwellings.

6. The submission to and approval by the Council of the CMO Operating Business Plan

6.1 The Owners covenant with the Council as follows:-

- 6.1 1. Not to carry out a Material Operation (CMO) pursuant to the Planning Permission (or would be pursuant to the Planning Permission but for non - compliance with any condition of the Planning Permission) unless and until the CMO Operating Business Plan has been submitted to the Council for the Council's approval;

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- 6.1.2. Not to carry out any works of construction vertically above foundation level of any Dwellings unless and until the CMO Operating Business Plan has been approved by the Council in consultation with the Chilmington Green Partnership CMO Working Group (or the CMO if formed) in writing.

7. Payment of the Deficit Grant to the CMO

7.1. The Paying Owners covenant with the Council to pay to the Council the Deficit Grant Contribution in the following instalments:-

- 7.1.1 the first instalment being £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the the date on which the 125th Dwelling to be Occupied is Occupied; and
- 7.1.2. the second instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the the date on which the 500th Dwelling to be Occupied is Occupied; and
- 7.1.3. the third instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 750th Dwelling to be Occupied is Occupied; and
- 7.1.4. the fourth instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 1000th Dwelling to be Occupied is Occupied; and
- 7.1.5. the fifth instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 1250th Dwelling to be Occupied is Occupied; and
- 7.1.6. the sixth instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 1500th Dwelling to be Occupied is Occupied; and
- 7.1.7. the seventh instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 1750th Dwelling to be Occupied is Occupied; and
- 7.1.8. the eighth instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which 2000th Dwelling to be Occupied is Occupied; and
- 7.1.9. the ninth instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 2250th Dwelling to be Occupied is Occupied; and
- 7.1.10. the tenth and final instalment being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked prior to the date on which the 2500th Dwelling to be Occupied is Occupied; and

7.2. The Owners covenant with the Council not to Occupy:-

- 7.2.1. more than 124 Dwellings unless and until the Owners have paid to the Council the first instalment referred to at paragraph 7.1.1 above being £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
- 7.2.2. more than 499 Dwellings unless and until the Owners have paid to the Council the second instalment referred to at paragraph 7.1.2 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and

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- 7.2.3. more than 749 Dwellings unless and until the Owners have paid to the Council the third instalment referred to at paragraph 7 1.3 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.4. more than 999 Dwellings unless and until the Owners have paid to the Council the fourth instalment referred to at paragraph 7 1.4 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.5. more than 1249 Dwellings unless and until the Owners have paid to the Council the fifth instalment referred to at paragraph 7.1.5 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.6. more than 1499 Dwellings unless and until the Owners have paid to the Council the sixth instalment referred to at paragraph 7.1.6 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.7. more than 1749 Dwellings unless and until the Owners have paid to the Council the seventh instalment referred to at paragraph 7.1.7 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.8. more than 1999 Dwellings unless and until the Owners have paid to the Council the eighth instalment referred to at paragraph 7.1.8 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.9. more than 2249 Dwellings unless and until the Owners have paid to the Council the ninth instalment referred to at paragraph 7.1.9 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked; and
 - 7.2.10. more than 2499 Dwellings unless and until the Owners have paid to the Council the tenth and final instalment referred to at paragraph 7 1 10 above being a further £335,000.00 (three hundred and thirty five thousand pounds) Index Linked.
- 7.3. The Council covenants with the Owners that the Council shall within 20 Working Days of receiving each of the ten instalments of the Deficit Grant Contribution referred to in this paragraph 7 to transfer such instalments to the CMO providing the CMO consents to such transfer and provided that the CMO agrees with the Council to use the Deficit Grant Contribution for the purposes detailed by this Deed.
- 8. Residential Charge Payment Mechanism**
- 8.1. The Owners covenant with the Council in respect of each Dwelling (except those Dwellings in Block/s) and each Block not to Occupy the relevant Dwelling or Block (as the case may be) nor to enter into or permit any Disposal (other than a Permitted Disposal) of such Dwelling or Block unless and until:-
- 8.1 1 the freehold owner of the relevant Dwelling or Block (as appropriate) has entered into a Rentcharge Deed with the CMO in respect of such Dwelling or Block that complies with the requirements of paragraph 8.2 and all sums due to be paid to the CMO on completion of the relevant Rentcharge Deed have been paid; and
 - 8.1.2. the relevant Rentcharge Deed takes effect such that any third party interest affecting such Dwelling or Block (other than the Existing Title Matters) takes subject to the relevant Rentcharge Deed; and
 - 8.1.3. the CMO has received from the Owner's solicitor an undertaking in terms acceptable to the CMO and approved by the Council (acting reasonably) to attend to the registration of the Rentcharge Deed under a new title at the Land Registry and (if required) at Companies House at the cost of the Owners and to procure the noting of the Rentcharge Deed on the relevant freehold title and registration of a

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restriction as required by clause 7 of the Rentcharge Deed and to send the completed registrations to the CMO; and

- 8.1.4. the Owners have paid to the CMO its legal fees in the sum of £175 (Index Linked) with regard to the process of execution, completion and registration of the relevant Rentcharge Deed.

8.2. Each such Rentcharge Deed entered into pursuant to paragraph 8.1 above shall detail:-

- 8.2.1. Sum A as approved by the Council as part of the CMO Operating Business Plan pursuant to paragraph 6 of this Schedule as the Initial Service Charge Cap if the relevant Rentcharge Deed is the first Rentcharge Deed to be entered into or is a Rentcharge Deed entered into during the year which is the First Service Charge Year relating to the first Rentcharge Deed to be entered into; or

- 8.2.2. Sum B as the Initial Service Charge Cap if the Rentcharge Deed is entered into after the First Service Charge Year relating to the First Rentcharge Deed to be entered into has elapsed; or

- 8.2.3. In the event the Rentcharge Deed is entered into before the CMO Operating Business Plan (including Sum A) is approved by the Council pursuant to paragraph 6 of this Schedule such sum as shall be separately approved by the Council in writing as the Initial Service Charge Cap; and

8.3. The Owners (and for the purposes of this clause 8.3 not their successors in title and persons deriving title to the Site from or under them) covenant with the Council that the Owners shall apply to the Land Registrar within 3 Working Days of the date of this Deed for a restriction to be entered in the Proprietorship Register of the title to the Site registered at the Land Registry under the Title Numbers in the following Land Registry standard form:

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of paragraph 8.1 of Schedule 4 an agreement under section 106 of the Town and Country Planning Act 1990 (as amended) dated [] and made between (1) [] and (2) [] [and] (...) [] have been complied with or that they do not apply to the disposition.

8.4. Notwithstanding the provisions of clause 8.3, the Owners covenant with the Council that the Owners shall not Commence (Statutory) the Development unless and until the restriction in the form detailed by clause 8.3 has been entered in the Proprietorship Register of the title to the Site and registered at the Land Registry under the Title Numbers giving effect to the Rentcharge Deed in accordance with paragraph 8.3.

8.5. The Council covenants with the Owners that to the extent that it agrees and is authorised by the CMO to carry out the administration associated with completing the Rentcharge Deed in respect of each Dwelling or Block on behalf of the CMO (but not further or otherwise) it shall in respect of each Dwelling or Block provide to the freehold owner of the relevant Dwelling or Block a release on Land Registry Form RX4 from the restriction referred to in paragraph 8.3 insofar as such restriction relates to the relevant Dwelling or Block, such release to be provided on completion of the Rentcharge Deed for the relevant Dwelling or Block as referred to in paragraph 8.1.1 subject to payment of the sums referred to in paragraphs 8.1.1 and 8.1.4 and subject to provision of the undertaking required by paragraph 8.1.3.

9. Provision of Commercial Estate: Basic Provision

9.1. The Owners covenant with the Council as follows:

- 9.1.1. Not to Occupy more than 750 Dwellings unless and until a Commercial Estate: Basic Provision Design Brief and Specification for the Commercial Estate: Basic Provision has been approved by the Council with a total capital cost of

£2,921,000.00 (two million and nine hundred and twenty one thousand pounds) Index Linked up to the date on which the Reserved Matters Application for the Commercial Estate: Basic Provision is approved by the Council including fees (except the Legal Fees Sum), contingencies, specification and design costs and supervision fees but excluding the costs of providing access roads and services and in particular the Council has approved the proposed quantum of the Commercial Estate: Basic Provision; and

- 9.1.2. The Commercial Estate: Basic Provision Design Brief and Specification submitted to the Council for the Commercial Estate: Basic Provision (i) shall, unless otherwise agreed by the Council, include all the particulars detailed in the Commercial Estate: Basic Provision Design Brief and Specification and all details of provision of all of the features detailed by the definition of the "Commercial Estate: Basic Provision" and (ii) shall have been subject to consultation with the CMO (the details of the consultation shall have been previously approved by the CMO) and (iii) shall include the consultation responses and in particular the CMO's comments on the costings; and

- 9.1.3. That no more than 1500 Dwellings shall be Occupied unless and until:-

- (a) the Commercial Estate: Basic Provision has been Completed and provided in accordance with all of the details of the reserved matters approval relating to the Commercial Estate: Basic Provision and the Commercial Estate: Basic Provision Design and Specification as approved by the Council pursuant to paragraph 9.1.1 above and in particular the details of the quantum of such Commercial Estate: Basic Provision as approved by the Council; and
- (b) either i) if the Commercial Estate: Basic Provision is provided as part of a building a Long Lease of the Commercial Estate: Basic Provision has been granted to the CMO with the CMO's consent at nil consideration and at nil cost to the CMO or ii) if the Commercial Estate: Basic Provision comprises all of a building the freehold interest in the land on which the Commercial Estate: Basic Provision is located such land has been transferred to the CMO with the CMO's consent on the Transfer Terms CMO at nil consideration and at nil cost to the CMO; and
- (c) the Owners have paid a Legal Fees Sum to the Council and a sum of money equivalent to the Stamp Duty Land Tax due (if any) and relating to the grant of the Long Lease or transfer of the freehold interest in the relevant land to the CMO (as appropriate) to the Council; and
- (d) the health and safety file relating to the Completed Commercial Estate: Basic Provision, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings have been assigned /given (as appropriate) to the CMO; and
- (e) all conditions to a planning permission or reserved matters approval that apply to the Commercial Estate: Basic Provision and are required to be discharged prior to the occupation and use of the relevant Commercial Estate: Basic Provision have been discharged at the Owners' expense.

- 9.1.4 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including those of a cosmetic nature) which occur within 3 years (for grass surfaced parts of the Commercial Estate: Basic Provision) or within 12 months (for everything else) of the Long Lease of the Commercial Estate: Basic Provision being granted to the CMO or the freehold interest in the land on which

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the Commercial Estate: Basic Provision is located being transferred to the CMO (as appropriate) PROVIDED ALWAYS THAT:-

- (a) where the remedy of the Defects relates to planting and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season; and
- (b) in the event of a dispute as to the extent or existence or otherwise of a defect or the nature and extent of the works if later, the repairs shall be carried out within 1 month of the determination of the said dispute pursuant to clause 11 of this Deed save where paragraph 9.1.4 a) applies.

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- 9.1.5 To Complete and provide the Commercial Estate: Basic Provision in accordance with the requirements of paragraph 9.1.3 a) of this Schedule prior to the Occupation of 1500 Dwellings.

10. Commercial Estate: Marketing Report and the CMO's Election as to further provision of Commercial Estate or further payment of Cash Endowment

- 10.1. The Owners covenant with the Council not to Occupy more than 2100 Dwellings unless and until they have submitted to the Council via the Owners' Agent a Commercial Estate Marketing Report;
- 10.2. The Council covenants with the Owners that it shall notify the Owners' Agent within 60 Working Days of receiving the Commercial Marketing Report pursuant to paragraph 10.1 of this schedule of the CMO's Endowment Election provided that the CMO inform the Council of its Endowment Election.
- 10.3. In the event the CMO does not make or inform the Council of its Endowment Election and/or the Council does not inform the Owners via the Owners' Agent of the CMO's Endowment Election within 60 Working Days of the receipt by the Council of the Commercial Marketing Report the CMO shall be deemed to have elected "Option B" as set out in the definition of "Endowment Election" (i.e. that it shall be provided with the First Cash Endowment and the Second Cash Endowment).

11. Provision of Commercial Estate: Second Tranche

- 11.1. The Owners covenant with the Council that if the CMO elects Option "A" pursuant to the CMO's Endowment Election and this is notified to the Owners' Agent by the Council pursuant to paragraph 10 above that:-

11.1.1. The Owners shall not Occupy more than 2400 Dwellings unless and until a Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification for the Commercial Estate: Second Tranche has been approved by the Council with a total capital cost of £2,190,750.00 (two million one hundred and ninety thousand seven hundred and fifty pounds) Index Linked up to the date on which the Reserved Matters Application for the Commercial Estate: Second Tranche is approved by the Council including fees (except the Legal Fees Sum), contingencies, specification and design costs and supervision fees but excluding the costs of providing access roads and services and in particular the Council has approved the proposed quantum of the Commercial Estate: Second Tranche; and

11.1.2. The Commercial Estate Provision: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification submitted to the Council for the Commercial Estate: Second Tranche (i) shall, unless otherwise agreed by the Council, include all the particulars detailed in the Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification and all details of provision of all of the features detailed by the definition of the "Commercial Estate: Second Tranche" and (ii) shall have been subject to consultation with the CMO (the details of the consultation shall have been previously approved by the CMO) and (iii) shall include the consultation responses and in particular the CMO's comments on the costings contained therein; and

11.1.3. No more than 3150 Dwellings shall be Occupied unless and until:-

- (a) the Commercial Estate: Second Tranche has been Completed and provided in accordance with all of the details of the reserved matters approval relating to the Commercial Estate: Second Tranche and the Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification for the Commercial Estate: Second Tranche as approved by the

Schedule 4

Council and in particular the details of the quantum of such Commercial Estate: Second Tranche as approved by the Council pursuant to paragraph 11.1 1 above; and

- (b) either i) if the Commercial Estate: Second Tranche is provided as part of a building/s a Long Lease of the Commercial Estate: Second Tranche has been granted to the CMO with the CMO's consent at nil consideration and at nil cost to the CMO or ii) if the Commercial Estate: Second Tranche comprises all of a building/s the freehold interest in the land on which the Commercial Estate: Second Tranche is located has been transferred to the CMO with the CMO's consent on the Transfer Terms CMO at nil consideration and at nil cost to the CMO; and
- (c) a Legal Fees Sum and a sum of money equivalent to the Stamp Duty Land Tax due (if any) and relating to the grant of the Long Lease or transfer of the freehold interest in the relevant land to the CMO (as appropriate) shall have been paid to the Council; and
- (d) the health and safety file relating to the Completed Commercial Estate: Second Tranche, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties that the CMO may reasonably require) and as built drawings have been assigned/given (as appropriate) to the CMO; and
- (e) all conditions to a planning permission or reserved matters approval that apply to the Commercial Estate: Second Tranche and are required to be discharged prior to the occupation and use of the Commercial Estate: Second Tranche have been discharged at the Owner's expense;

11.1.4. The Owners shall repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including those of a cosmetic nature) which occur within 3 years (for grass surfaced parts of the Commercial Estate: Second Tranche) or within 12 months (for everything else) of the Long Lease of the Commercial Estate: Second Tranche being granted to the CMO or the freehold interest in the land on which the Commercial Estate: Second Tranche is located being transferred to the CMO (as appropriate) PROVIDED ALWAYS THAT:-

- (a) where the remedy of the Defects relates to planting and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season:- and
- (b) in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works if later, the repairs shall be carried out within 1 month of the determination of the said dispute pursuant to clause 11 of this Deed save where paragraph 11.1.4 a) applies.

11.1.5 The Owners shall Complete and provide the Commercial Estate: Second Tranche in accordance with the requirements of paragraph 11.1.3 a) of this Schedule prior to the Occupation of 3150 Dwellings.

12. Provision of Commercial Estate: Third Tranche

12.1. The Owners covenant with the Council that if the CMO elects Option "A" pursuant to the CMO's Endowment Election and this is notified to the Owners' Agent by the Council pursuant to paragraph 10 above that:

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- 12.1 1. The Owners shall not Occupy more than 3450 Dwellings unless and until a Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification for the Commercial Estate: Third Tranche has been approved by the Council with a total capital cost of £2,190,750.00 (two million one hundred and ninety thousand seven hundred and fifty pounds) Index Linked up to the date on which the Reserved Matters Application for the Commercial Estate: Third Tranche is approved by the Council including fees (except the Legal Fees Sum), contingencies, specification and design costs and supervision fees, but excluding the costs of providing access roads and services and in particular the Council has approved the proposed quantum of the Commercial Estate: Third Tranche; and
- 12.1.2. The Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification submitted to the Council for the Commercial Estate: Third Endowment (i) shall, unless otherwise agreed by the Council, include all the particulars detailed in the Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification and all of details of provision of all of the features detailed by the definition of the "Commercial Estate: Third Tranche" and (ii) shall have been subject to consultation with the CMO (the details of the consultation shall have been previously approved by the CMO) and (iii) shall include the consultation responses and in particular the CMO's comments on the costings; and
- 12.1.3. No more than 4200 Dwellings shall be Occupied unless and until:-
- (a) the Commercial Estate: Third Tranche has been Completed and provided in accordance with all of the details of the reserved matters approval relating to the Commercial Estate: Third Tranche and the Commercial Estate: Second Tranche/Third Tranche (As Appropriate) Design Brief and Specification for the Commercial Estate: Third Tranche as approved by the Council and in particular the details of the quantum of such Commercial Estate: Third Tranche as approved by the Council pursuant to paragraph 12.1.1 above; and
 - (b) either i) if the Commercial Estate: Third Tranche is provided as part of a building/s a Long Lease of the Commercial Estate: Third Tranche has been granted to the CMO with the CMO's consent at nil consideration and at nil cost to the CMO or ii) if the Commercial Estate: Third Tranche comprises all of a building/s the freehold interest in the land on which the Commercial Estate: Third Endowment is located has been transferred to the CMO with the CMO's consent on the Transfer Terms CMO at nil consideration to the CMO; and
 - (c) a Legal Fees Sum and a sum of money equivalent to any Stamp Duty Land Tax due and relating to the grant of the Long Lease or transfer of the freehold interest in the relevant land to the CMO (as appropriate) shall have been paid to the Council; and
 - (d) the health and safety file relating to the Completed Commercial Estate: Third Tranche, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings have been assigned /given (as appropriate) to the CMO; and
 - (e) all conditions to a planning permission or reserved matters approval that apply to the Commercial Estate: Third Tranche and are required to be discharged prior to the occupation and use of the Commercial Estate: Third Tranche have been discharged at the Owners' expense;

Schedule 4

- 12.1.4. The Owners shall repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including those of a cosmetic nature) which occur within 3 years (for grass surfaced parts of the Commercial Estate: Third Tranche) or within 12 months (for everything else) of the Long Lease of the Commercial Estate: Third Tranche being granted to the CMO or the freehold interest in the land on which the Commercial Estate: Third Tranche is located being transferred to the CMO (as appropriate) PROVIDED ALWAYS THAT

- (a) where the remedy of the Defects relates to planting and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season; and
- (b) in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works, if later, the repairs shall be carried out within 1 month of the determination of the said dispute pursuant to clause 11 of this Deed save where paragraph 12.1.4 a) applies.

- 12.1.5 The Owners shall Complete and provide the Commercial Estate: Third Tranche in accordance with the requirements of paragraph 12.1.3 a) of this Schedule prior to the Occupation of 4200 Dwellings.

13. Payment of Cash Endowment

- 13.1 The Owners covenant with the Council that if the CMO elects Option "B" pursuant to the CMO's Endowment Election and this is notified to the Owners' Agent by the Council pursuant to paragraph 10 or the CMO is deemed to have elected Option "B" by operation of paragraph 10 above that the Owners shall:

- 13.1.1. Notify the Council that the 2400th Dwelling to be Occupied is Occupied within 10 Working Days of such Dwelling being Occupied via the Owners' Agent; and
- 13.1.2. Not Occupy more than 2425 Dwellings unless and until the First Cash Endowment has been paid to the Council; and
- 13.1.3. Notify the Council that the 3900th Dwelling to be Occupied is Occupied within 10 Working Days of such Dwelling being Occupied via the Owners' Agent; and
- 13.1.4. Not Occupy more than 3925 Dwellings unless and until the Second Cash Endowment has been paid to the Council

- 13.2. The Paying Owners covenant with the Council to pay to the Council:-

- 13.2.1 the First Cash Endowment prior to the date on which the 2425th Dwelling to be Occupied is Occupied; and
- 13.2.2. the Second Cash Endowment prior to the date on which the 3925th Dwelling to be Occupied is Occupied.

- 13.3. The Council covenants with the Paying Owners that the Council shall within 20 Working Days of receiving the First Cash Endowment and the Second Cash Endowment that it shall transfer such sums to the CMO providing the CMO consents to such transfer and agrees with the Council to use sums for the purposes detailed by the terms of this Deed.

14. Payment of the CMO Start up Contribution

- 14.1 The Paying Owners covenant with the Council to pay to the Council:-

Schedule 4

- 14.1.1. The first instalment of the of CMO Start Up Contribution being £75,000.00 (seventy five thousand pounds) Index Linked prior to the date on which Commencement (Statutory) of the Development occurs; and
 - 14.1.2. The second instalment of the of CMO Start Up Contribution being a further £75,000.00 (seventy five thousand pounds) Index Linked prior to the date on which the first Dwelling to be Occupied is Occupied.
- 14.2. The Owners covenant with the Council:-
- 14.2.1 not to Commence (Statutory) the Development unless and until the first instalment of CMO Start Up Contribution being £75,000.00 (seventy five thousand pounds) Index Linked has been paid to the Council; and
 - 14.2.2. not to Occupy any and all Dwellings unless and until the second instalment of the of CMO Start Up Contribution being a further £75,000.00 (seventy five thousand pounds) Index Linked has been paid to the Council.
- 14.3. The Council covenants with the Paying Owners to use the CMO Start Up Contribution for the purposes of covering the costs incurred by the Council and/or the CMO in creating the CMO and establishing the CMO as a working organisation including but not limited to paying for the provision and recruitment of staff and provision and purchase of equipment.

15. **Declarations**

- 15.1. It is hereby agreed and declared between the parties hereto that:

Upon creation of the CMO the Chilmington Green Partnership Working Group shall cease to function.

Schedule 5

SCHEDULE 5

Early Community Development

- 1 The Paying Owners covenant with the Council to pay the total sum of £250,000.00 (two hundred and fifty thousand pounds) Index Linked to the Council in the following instalments:
 - 1.1 £50,000.00 (fifty thousand pounds) Index Linked within 6 months of the Commencement of Development
 - 1.2 A further £50,000.00 (fifty thousand pounds) Index Linked on each of the first, second, third, and fourth anniversaries of the date of the first such payment
2. The Council covenants with the Paying Owners to only use the monies received for the purpose of (a) community development programme(s) for the residents and future residents of the Development, which may include the cost of dedicated staff and consultants and setting up and running a community website

SCHEDULE 6
Informal/Natural Green Space

1 The Owners covenant with the Council as follows:

1.1 Unless the Council agrees otherwise, not to Occupy more than the following:

- 1 1 1 1450 Dwellings in Main Phase 1
- 1.1.2 1100 Dwellings in Main Phase 2
- 1.1.3 1550 Dwellings in Main Phase 3, and
- 1.1.4 1550 Dwellings in Main Phase 4:

unless:

1 1.5 the Informal/Natural Green Space Facilities within the relevant Main Phase have been provided in accordance with the reserved matters approvals and are free from any Defects identified by the CMO (other than those of a cosmetic nature);

1 1.6 all necessary actions have been taken to ensure that the land on which the Informal/Natural Green Space Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Informal/Natural Green Space Facilities' intended use pursuant to this Deed at the Owners' expense;

1.1.7 all conditions to a planning permission or approval of reserved matters that apply to the Informal/Natural Green Space Facilities and are required to be discharged prior to the occupation/use of the relevant Informal/Natural Green Space Facilities have been discharged at the Owners' expense;

1.1.8 the Owners have paid to the Council a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s;

and either

1 1.9 the Informal/Natural Green Space Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO;

or

1 1.10 the Owners have served the CMO with an engrossed transfer/s (as appropriate) of the land on which the Informal/Natural Green Space Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

Schedule 6

- 1.2 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of each of the Informal/Natural Green Space Facilities being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to each of the Informal/Natural Green Space Facilities being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT
 - 1.2.1 where the remedy of the defects relates to planting or repairs to areas of grass and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season
 - 1.2.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.2.1 applies
- 1.3 to provide and construct the Informal/Natural Green Space Facilities within:-
 - 1.3.1 Main Phase 1 prior to the Occupation of 1450 Dwellings within that Main Phase; and
 - 1.3.2 Main Phase 2 prior to the Occupation of 1100 Dwellings within that Main Phase; and
 - 1.3.3 Main Phase 3 prior to the Occupation of 1550 Dwellings within that Main Phase;
 - 1.3.4 Main Phase 4 prior to the Occupation of 1550 Dwellings within that Main Phase;

in accordance with the requirements of paragraph 1.1.5 of this schedule.
2. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under subparagraph 1.1.10 £1000 Index Linked as a contribution towards the Council's legal costs in considering the draft.
3. The Council covenants with Owners as follows:-
 - 3.1 to pay any sum received by it pursuant to paragraph 1.1.8 above to the CMO within 20 Working Days of receiving it.

SCHEDULE 7
Chilmington Hamlet

1. The Owners covenant with the Council as follows:

- 1.1 Not to Occupy more than 1000 Dwellings unless a design brief and specification for the following indicative facilities and/or other facilities of no significantly greater environmental impact as may be approved by the Council

1 x cricket pitch	-	1.42 ha;
1 x community pavilion (to comprise 297 m2 of floorspace of which 250 m2 to be designed to be usable as community space),	-	0.029 ha;
1 x batting cage,	-	0.019 ha;
1 x bowling green,	-	0.16 ha;
2 x tennis courts,	-	0.13 ha;
1 x car park	-	0.025 ha; and
1 x equipment storage facility	-	0.005 ha

and the particulars (unless otherwise agreed by the Council) detailed in the "list of matters to be included in the design brief and specification" at Schedule 7A.

to be provided in Chilmington Hamlet has been approved by the Council with a total capital cost of £1,266,000.00 (one million two hundred and sixty six thousand pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs ("the Facilities").

1.2 The submitted design and specification of the Facilities

- 1.2.1 shall have been subject to consultation with the CMO and other relevant stakeholders and the public
- 1.2.2 (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and
- 1.2.3 shall include the consultation responses and in particular the CMO's comments on the costings

1.3 Unless the Council agrees otherwise, not to Occupy more than 1400 Dwellings unless

- 1.3.1 the Facilities have been provided in accordance with the reserved matters approval and the approved design brief and specification and are free from any Defects identified by the CMO (other than those of a cosmetic nature);

Schedule 7

- 1.3.2 all necessary actions have been taken to ensure that the land on which the Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Facilities' intended use pursuant to this Deed at the Owners' expense;
- 1.3.3 all conditions to a planning permission or approval of reserved matters that apply to the Facilities and are required to be discharged prior to the occupation/use of the relevant Facilities have been discharged at the Owners' expense;
- 1.3.4 a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s has been paid to the Council;

and either

- 1.3.5 the Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO;

or

- 1.3.6 the Owners have served the CMO with an engrossed transfer/s (as appropriate) of the land on which the Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

- 1.4 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within (for grass surfaced parts of the Facilities) 3 years or (for everything else) 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility it is intended to fulfil PROVIDED ALWAYS THAT

- 1.4.1 where the remedy of the defects relates to planting or repairs to grass pitches, courts or greens and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season

- 1.4.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.4.1 applies

- 1.5 To construct and provide the Facilities in accordance with the requirements of paragraph 1.3.1 of this Schedule prior to the Occupation of more than 1400 Dwellings.

- 2. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under paragraph

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1.3.6 £1000.00 (one thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft.

3. The Council covenants with the Owners as follows:-

- 3.1 to pay any sum received by it pursuant to paragraph 1.3.4 above to the CMO within 20 Working Days of receiving it; and
- 3.2 following approval of the design brief and specification under paragraph 1 1, to notify the director appointed to the CMO by the Council of the approval and the reasons for it

Schedule 7A

Schedule 7A{ TC "Schedule 7A" \f C \l "1" }

List of matters to be included in design brief and specification for Schedule 7{ TC "List of matters to be included in design brief and specification for Schedule 7" \f C \l "2" }

1 Introduction

- a. Purpose of the particular facility in question.
- b. This brief (who it is prepared by and who for, its purpose and a summary of inclusions)
- c. Location (of the site in question).
- d. Budget.
- e. Scope of design.

2. Community consultation

The Brief shall summarise the conclusions of the community consultation (the details of how this was conducted, who was engaged, etc should be in a separate report in the appendix) and how its outcomes have influenced this brief.

3. The site and its uses

The Brief shall identify the following:-

a. Context of the site

Who are its neighbours (now or planned), how it relates to the overall development and to other CMO facilities)

b. Context of the building

Context of this community facility (ie. a community building, typical uses, etc)

c. Requirements for the site around the building

- (i) What Parking is to be provided
- (ii) Any specific features e.g. open square, seating, play space, planting, games areas etc.
- (iii) Physical links to other features e.g. to parking, to other CMO facilities, surrounding housing- and what form this link should take e.g. footpath
- (iv) Means of access and egress to the facility (in so far as this isn't covered by (iii) above) which must include pedestrian and vehicular access to a highway adopted by the highways authority or a highway that is in the process of being adopted by the Highways Authority.
- (v) The Brief shall define the proposed extent of the site on which the facility is to be located and the land which is proposed to be transferred to the CMO pursuant to this Deed by reference to a HM Land Registry compliant plan.

4. The building

The brief shall provide the following:-

Detailed requirements; spaces to be included (community rooms, sport and physical recreation, specialist facilities, core spaces (reception, toilets, offices, etc)). This must also give reference to those spaces which require specific locations within the building and their specific requirements e.g. family and social care on the ground floor. This must also consider where spaces need to be co-located to ensure efficient use e.g. changing rooms next to sports hall, etc. It should include room sizes where there are particular requirements, otherwise adequate information, such as specific detail of the use(s) a space is to accommodate, to enable the designer to determine room space requirements e.g. hall to accommodate badminton court, meeting room for 12 people including projector and screen.

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Details of the internal layout of the building (e.g. offices, meeting room and reception), room sizes, internal fittings and fixtures (e.g. of toilet and kitchenette facilities), confirmation and details of the disabled access to the building and internal layout enabling disabled use of the building and confirmation and details of the services including potable water supply, electricity supply, gas supply, sewage disposal, internet and telephone access and connections to the main networks for the supply or disposal (as appropriate) of such services

5. Planning requirements

- a. The Brief shall identify those design elements to give overall compliance with overall the Chilmington Design Code or such successor document that may replace or amend the Chilmington Design Code and is adopted by the Council.
- b. The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan.
- c. The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area
- d. The Brief shall identify relevant planning requirements including those of the Planning Permission and the development plan and shall demonstrate how the brief complies with such requirements.

6. Design and materials standards

The brief shall comply with the following:

- a. The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.
- b. The brief shall identify the most appropriate collateral policy to cover latent defects that should be applied.
- c. The facility's design and specification shall meet best practice guidelines for the given facility at the time of construction in so far as can be afforded within the cost cap for the relevant facility provided by this Deed.
- d. The Brief shall give details of the facilities' appearance
- e. The Brief shall give details of the materials to be used in the construction of the facility (including all fixtures, fittings and equipment) - performance and durability, and to be to all current British/European Standards and Codes of Practice.
- f. The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.
- g. The brief shall detail the design of and materials used in the construction of the pedestrian and vehicular routes within the site of the facility;
- h. The Brief shall give details of the design of and materials used in the construction of boundaries of the site on which the facility is located and car parking;
- i. The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)
- j. Sustainability Considerations and Inclusions

7. The brief shall include a budget with full costings which shall be calculated and compiled by a quantity surveyor who has qualified with the Royal Institute of Quantity Surveyors for all internals and externals (including drainage, service connections, parking, external storage, landscaping, paths, other external facilities).

8. Summary of key considerations

Also to be included (potentially as appendices) should be:

- a. Site plan (contextual and of specific location)
- b. Consultation findings report, including views and opinions of the community, key stakeholders, particularly those of the CMO Board.

SCHEDULE 8
Children's and Young People's Play Space

1. The Owners covenant with the Council as follows:

1.1 Not to Occupy more than:-

50 Dwellings in Main Phase 1 in relation to a 0.5 ha play space marked "PS1" on the attached plan numbered OPA06R rev. P2 (or in such other location as may have been approved by the Council);

50 Dwellings in Main Phase 2 in relation to a 1.5 ha play space marked "PS2" on the attached plan numbered OPA06R rev. P2 (or in such other locations as may have been approved by the Council);

750 Dwellings in Main Phase 3 in relation to a 1.5 ha play space marked "PS4" on the attached plan numbered OPA06R rev. P2 (or in such other location as may have been approved by the Council);

650 Dwellings in Main Phase 4 in relation to a 1.5 ha play space marked "PS5" on the attached plan numbered OPA06R rev. P2 (or in such other locations as may have been approved by the Council);

1150 Dwellings in Main Phase 4 in relation to a 0.5 ha play space marked "PS7" on the attached plan numbered OPA06R rev. P2 (or in such other locations as may have been approved by the Council);

unless:

1.1.1 a design brief and specification for the children's and young people's play spaces and/or other facilities of no significantly greater environmental impact as may be approved by the Council in the relevant Main Phases and the particulars (unless otherwise agreed by the Council) detailed in the attached list of matters to be included in the design brief and specification at Schedule 8A have been approved by the Council with the total capital cost of each play space as follows:-

PS1 - £235,013.00 (two hundred and thirty five thousand and thirteen pounds);

PS2 - £705,039.00 (seven hundred and five thousand and thirty nine pounds);

PS4 - £705,039.00 (seven hundred and five thousand and thirty nine pounds);

PS5 - £705,039.00 (seven hundred and five thousand and thirty nine pounds); and

PS7 - £235,013.00 (two hundred and thirty five thousand and thirteen pounds);

and not exceeding a total of £2,585,143.00 (two million five hundred and eighty five thousand one hundred and forty three pounds) Index Linked up to the date of each reserved matters approval for the play space but excluding fees, contingencies, specification and design costs, supervision fees, access roads, service costs and costs for any landscaped buffers or screening around play areas ("the Facilities");

- 1.1.2 the submitted design brief and specification of the Facilities (i) shall have been subject to consultation with the CMO and other relevant stakeholders and the public (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and (ii) shall include the consultation responses and in particular the CMO's comments on the costings;

1.2 Unless the Council agrees otherwise, not to Occupy more than:

500 Dwellings in Main Phase 1 in relation to play space "PS1"

500 Dwellings in Main Phase 2 in relation to play space "PS2"

1100 Dwellings in Main Phase 3 in relation to play space "PS4"

1100 Dwellings in Main Phase 4 in relation to play space "PS5"

1500 Dwellings in Main Phase 4 in relation to play space "PS7"

unless

- 1.2.1 the relevant Facilities have been provided in accordance with the reserved matters approvals and the approved design brief and specification and are free from any Defects identified by the CMO (other than those of a cosmetic nature);

- 1.2.2 all necessary actions have been taken to ensure that the land on which the Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Facilities' intended use pursuant to this Deed at the Owners' expense;

- 1.2.3 all conditions to a planning permission or approval of reserved matters that apply to the Facilities and are required to be discharged prior to the occupation/use of the relevant Facilities have been discharged at the Owners' expense;

- 1.2.4 the Owners have paid to the Council a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s;

and either

- 1.2.5 the Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO;

or

- 1.2.6 the Owners have served the CMO with an engrossed transfer/s (as appropriate) of the land on which the Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance

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manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

- 1.3 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT

1.3.1 where the remedy of the defects relates to planting or repairs to areas of grass and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season

1.3.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.3.1 applies

- 1.4 to construct and provide:-

1.4.1 play space "PS1" in Main Phase 1 prior to the Occupation of more than 500 Dwellings in Main Phase 1;

1.4.2 play space "PS2" in Main Phase 2 prior to the occupation of more than 500 Dwellings in Main Phase 2;

1.4.3 play space "PS4" in Main Phase 3 prior to the occupation of more than 1100 Dwellings in Main Phase 3;

1.4.4 play space PS5 in Main Phase 4 prior to the occupation of more than 1100 Dwellings in Main Phase 4;

1.4.5 play space PS7 in Main Phase 4 prior to the occupation of more than 1500 Dwellings in Main Phase 4

in accordance with the requirements of paragraph 1.2.1 of this Schedule.

2. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under subparagraph 1.2.6 £1000.00 (one thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft

3. The Council covenants with Owners as follows:-

3.1 to pay any sum received by it pursuant to paragraph 1.2.4 above to the CMO within 20 Working Days of receiving it; and

3.2 following approval of the design brief and specification under paragraph 1 to notify the director appointed to the CMO by the Council of the approval and the reasons for it

~~Schedule 8A (TC "Schedule 8A" (C.V.1.1))~~

~~List of Matters to be Included In Design Brief and Specification for Schedule 8 (TC "List of Matters to be included in Design Brief and Specification for Schedule 8" (C.V.1.2))~~

1. Introduction

- a. Purpose of the particular facility in question.
- b. This brief (who it is prepared by and who for, its purpose and a summary of inclusions).
- c. Location (of the site in question).
- d. Budget.
- e. Scope of design.

2. Community consultation

The Brief shall summarise the conclusions of the community consultation (the details of how this was conducted, who was engaged, etc should be in a separate report in the appendix) and how its outcomes have influenced this brief.

3. The site and its uses

The Brief shall identify the following:-

a. Context of the site

Who are its neighbours (now or planned), how it relates to the overall development and to other CMO facilities), location of SUDS on the site

b. Requirements for the site

- (i) What (if any) Parking is required to be provided
- (ii) Any specific features e.g. open square, seating, play space, planting, games areas etc.
- (iii) Physical links to other features e.g. to parking, to other CMO facilities, surrounding housing - and what form this link should take e.g. footpath
- (iv) Means of access and egress to the facility (in so far as this isn't covered by (iii) above) which must include pedestrian and vehicular access to a highway adopted by the highways authority or a highway that is in the process of being adopted by the Highway Authority.
- (v) The Brief shall define the proposed extent of the site on which the facility is to be located and the land which is proposed to be transferred to the CMO pursuant to this Deed by reference to a HM Land Registry compliant plan.
- (vi) Facilitating year-round access (e.g. drainage in order to prevent surface water accumulating and drought resistant grass)

4. The site

The brief shall provide the following:-

Details of the design and specification of equipment, maintenance and management implications for the materials (including lifespan of the materials), layout of the site (in particular taking into account health and safety implications), confirmation and details of the disabled access to the site enabling disabled use and details of any necessary services

5. Planning requirements

- a. The Brief shall identify those design elements to give overall compliance with overall the Chilmington Design Code or such successor document that may replace or amend the Chilmington Design Code and is adopted by the Council.

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- b. The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area
- c. The Brief shall identify relevant planning requirements including those of the Planning Permission and the development plan and shall demonstrate how the brief complies with such requirements.

6. Design and materials standards

The brief shall comply with the following:-

- a. The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.
 - b. The facility's design and specification shall meet best practice guidelines for the given facility at the time of construction in so far as can be afforded within the cost cap for the relevant facility provided by this Deed.
 - c. The Brief shall give details of the facilities' appearance
 - d. The Brief shall give details of the materials to be used in the construction of the facility (including all fixtures, fittings and equipment) - performance and durability, and to be to all current British/European Standards and Codes of Practice.
 - e. The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.
 - f. The brief shall detail the design of and materials used in the construction of the pedestrian and vehicular routes within the site of the facility;
 - g. The Brief shall give details of the design of and materials used in the construction of boundaries of the site on which the facility is located and car parking;
 - h. The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)
 - i. Sustainability Considerations and Inclusions
7. The brief shall include a budget with full costings which shall be calculated and compiled by a quantity surveyor who has qualified with the Royal Institute of Quantity Surveyors for the site (including any drainage, service connections, parking, external storage, landscaping, paths, other external facilities).
8. Summary of key considerations

Also to be included (potentially as appendices) should be:

- a. Site plan (contextual and of specific location)
- b. Consultation findings report, including views and opinions of the community, key stakeholders, particularly those of the CMO Board.

SCHEDULE 9
Allotments

1 The Owners covenant with the Council as follows:

1.1 Unless the Council agrees otherwise, not to Occupy more than 1000 Dwellings in Main Phase 1 or more than 1000 Dwellings in Main Phase 2 or more than 1400 Dwellings in Main Phase 3 or more than 1400 Dwellings in Main Phase 4 respectively unless:

1.1.1 the Main Phase 1 Allotment or the Main Phase 2 Allotment or the Main Phase 3 Allotment or the Main Phase 4 Allotment ("the Allotment Facilities") have been provided in accordance with the relevant reserved matters approval;

1.1.2 all necessary actions have been taken to ensure that the land on which the Allotment Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Allotment Facilities' intended use pursuant to this Deed at the Owners' expense;

1.1.3 all conditions to a planning permission or reserved matters approval that apply to the Allotment Facilities and are required to be discharged prior to the occupation/use of the relevant Allotment Facilities have been discharged at the Owners' expense;

1.1.4 a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (fifteen hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s;

and either

1.1.5 the Allotment Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO;

or

1.1.6 the Owners have served the CMO with an engrossed transfer/s (as appropriate) of the land on which the Allotment Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

1.2 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil

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1.2.1 where the remedy of the defects relates to planting or repairs to areas of grass and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season

1.2.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.2.1 applies

1.3 to construct and provide:-

1.3.1 the Main Phase 1 Allotment in Main Phase 1 prior to the Occupation of more than 1000 Dwellings in Main Phase 1;

1.3.2 the Main Phase 2 Allotment in Main Phase 2 prior to the occupation of more than 1000 Dwellings in Main Phase 2;

1.3.3 the Main Phase 3 Allotment in Main Phase 3 prior to the occupation of more than 1400 Dwellings in Main Phase 3;

1.3.4 the Main Phase 4 Allotment in Main Phase 4 prior to the occupation of more than 1400 Dwellings in Main Phase 4;

in accordance with the requirements of paragraph 1.1 of this schedule.

2. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under paragraph 1.1.6 £1000.00 (one thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft

3. The Council covenants with Owners as follows.

3.1 to pay any sum received by it pursuant to paragraph 1.4 above to the CMO within 20 Working Days of receiving it.

SCHEDULE 10
DP3 and Discovery Park Sports Hub and Discovery Park Sports Pitches

1. The Paying Owners covenant with the Council as follows:
 - 1.1 Prior to Occupation of any Dwellings to pay the sum of £20,000.00 (twenty thousand pounds) Index Linked to the Council for the purpose of masterplanning Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Owners and such others as the Council may decide; and
 - 1.2 To pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under sub-paragraph 2.2.6, 2.3.6 or 2.6.10 £1000.00 (one thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft.

Discovery Park Sports Pitches and Discovery Park Sports Hub

2. The Owners covenant with the Council as follows:
 - 2.1 Unless the Council agrees otherwise not to Occupy more than 1000 Dwellings unless;
 - 2.1.1 design briefs and specifications for the Discovery Park Sports Pitches and for the Discovery Park Sports Hub and/or other facilities of no significantly greater environmental impact as may be approved by the Council and the particulars (unless otherwise agreed by the Council) detailed in the list of matters to be included in the design brief and specification at Schedule 10A have been approved by the Council with a total capital cost of the Discovery Park Sports Pitches not exceeding £2,782,000.00 (two million seven hundred and eighty two thousand pounds) Index Linked but excluding fees, contingencies, specification and design costs, supervision fees, access costs and service costs and with a total capital cost of the Discovery Park Sports Hub not exceeding £4,976,157.00 (four million nine hundred seventy six thousand one hundred and fifty seven pounds) Index Linked but excluding fees, contingencies, specification and design costs, supervision fees, access costs and service costs) (together "the Sports Facilities");
 - 2.1.2 the submitted design briefs and specifications of the Sports Facilities (i) shall have been subject to consultation with the CMO and other relevant stakeholders and the public (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and (ii) shall include the consultation responses and in particular the CMO's comments on the costings;
 - 2.2 Not to Occupy more than 3200 Dwellings unless:
 - 2.2.1 the first phase of the Sports Facilities have been provided in accordance with the reserved matters approvals and the approved design briefs and specifications;
 - 2.2.2 all necessary actions have been taken to ensure that the land on which the Sports Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Sports Facilities' intended use pursuant to this Deed at the Owner's expense;
 - 2.2.3 all conditions to a planning permission or reserved matters approval that

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apply to the Sports Facilities and are required to be discharged prior to the occupation/use of the relevant Sports Facilities have been discharged at the Owner's expense;

- 2.2.4 a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s has been paid to the Council;

and either

- 2.2.5 the first phase of the Sports Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO

or

- 2.2.6 the Owners have served the CMO with an engrossed transfer/s (as appropriate) of the land on which the first phase of the Sports Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

2.3 Not to Occupy more than 5000 Dwellings unless:

- 2.3.1 the second phase of the Sports Facilities have been provided in accordance with the reserved matters approvals and the approved design briefs and specifications;

- 2.3.2 all necessary actions have been taken to ensure that the land on which the Sports Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Sports Facilities' intended use pursuant to this Deed at the Owners' expense;

- 2.3.3 all conditions to a planning permission or reserved matters approval that apply to the Sports Facilities and are required to be discharged prior to the occupation/use of the relevant Sports Facilities have been discharged at the Owners' expense;

- 2.3.4 a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s has been paid to the Council;

and either

- 2.3.5 the second phase of the Sports Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO

or

- 2.3.6 the Owners have served the CMO with an engrossed transfer/s (as

appropriate) of the land on which the second phase of the Sports Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

- 2.4 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within (for grass surfaced parts of the Facilities) 3 years or (for everything else) 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT

2.4.1 where the remedy of the defects relates to planting or repairs to areas of grass and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season

2.4.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.6.1 applies

DP3

- 2.5 Not to Occupy more than 1000 Dwellings unless:

2.5.1 a design brief and specification for DP3 and PS6 and/or other facilities of no significantly greater environmental impact as may be approved by the Council (but excluding DP1 and DP2 as identified on the attached plan numbered OPA06R rev P2 which shall be a matter for the Council) and the particulars (unless otherwise agreed by the Council) detailed in the list of matters to be included in the design brief and specification at Schedule 10B have been approved by the Council with a total capital cost of the DP3 not exceeding £2,056,813.00 (two million and fifty six thousand eight hundred and thirteen pounds) Index Linked but excluding PS6, fees, contingencies, specification and design costs, supervision fees, access costs and service costs ("the Facilities")

2.5.2 the submitted design brief and specification for DP3 and PS6 (i) shall have been subject to consultation with the CMO and other relevant stakeholders and the public (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and (ii) shall include the consultation responses and in particular the CMO's comments on the costings;

- 2.6 Not to Occupy more than:

2.6.1 1500 Dwellings unless 1 ha of DP3 has been provided

2.6.2 2500 Dwellings unless 0.86 ha of DP3 has been provided

Schedule 10

2.6.3 4000 Dwellings unless PS6 and 1.08 ha of DP3 have been provided

2.6.4 5500 Dwellings unless 4.42 ha of DP3 has been provided

and in each case

2.6.5 the provision is in accordance with the reserved matters approvals and the approved design brief and specification;

2.6.6 all necessary actions have been taken to ensure that the land on which the Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Facilities' intended use pursuant to this Deed at the Owners' expense;

2.6.7 all conditions to a planning permission or reserved matters approval that apply to the Facilities and are required to be discharged prior to the occupation/use of the relevant Facilities have been discharged at the Owners' expense;

2.6.8 a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand and five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s has been paid to the Council;

and either

2.6.9 the Facilities have been transferred to the CMO by way of a transfer in a form acceptable to the CMO;

or

2.6.10 the Owners have served the CMO with an engrossed transfer/s (as appropriate) of the land on which the Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with a form of transfer) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

2.7 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within (for grass surfaced parts of the Facilities) 3 years or (for everything else) 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT

2.7.1 where the remedy of the defects relates to planting or repairs to areas of grass and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season

2.7.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same,

Schedule 10

If later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 2.7.1 applies

Discovery Park Sports Pitches and Discovery Park Sports Hub and DP3

2.8 To construct and provide:-

- 2.8.1 The first phase of the Sports Facilities before the Occupation of more than 3200 Dwellings in accordance with the requirements of paragraph 2.2.1 of this schedule; and
- 2.8.2 The second phase of the Sports Facilities prior to the Occupation of more than 5000 Dwellings in accordance with the requirements of paragraph 2.3.1 of this schedule; and
- 2.8.3 1 ha of DP3 before the Occupation of more than 1500 Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and
- 2.8.4 0.86 ha of DP3 before the Occupation of more than 2500 Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and
- 2.8.5 ~~1.08 ha of DP3~~ ^{PS6 and 1.08 ha of DP3} before the Occupation of more than 4000 Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule; and
- 2.8.6 4.42 ha of DP3 before the Occupation of more than 5500 Dwellings in accordance with the requirements of paragraph 2.6.5 of this schedule.

3. The Council covenants with Owners as follows:-

- 3.1 to pay any sum received by it pursuant to paragraph 2.2.4, 2.3.4 and 2.6.8 above to the CMO within 20 Working Days of receiving it; and
- 3.2 following approval of the design brief and specification under paragraph 2.1 1 and 2.5.1 to notify the director appointed to the CMO by the Council of the approval and the reasons for it
- 3.3 to only use the money received under paragraph 1 1 for the purpose of masterplanning Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches
- 3.4 to publish the completed masterplan of Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches by no later than the Occupation of 400th Dwelling.

Schedule 10A ~~TC "Schedule 10A" "10A" "1"~~

List of matters to be included in Design Brief and Specification for Sports Hub and Sports Pitches under schedule 10 ~~TC "List of matters to be included in Design Brief and Specification for Sports Hub and Sports Pitches under schedule 10" "10A" "2"~~

1. Introduction

- a. Purpose of the particular facility in question.
- b. This brief (who it is prepared by and who for, its purpose and a summary of inclusions).
- c. Location (of the site in question).
- d. Budget.
- e. Scope of design.

2. Community consultation

The Brief shall summarise the conclusions of the community consultation (the details of how this was conducted, who was engaged, etc should be in a separate report in the appendix) and how its outcomes have influenced this brief.

3. The site and its uses

The Brief shall identify the following:-

3.1. Context of the site

Who are its neighbours (now or planned), how it relates to the overall development and to other CMO facilities), location of SUDS on the site

3.2. Context of the hub and pitches

Context of this community facility (ie. a community building, typical uses, wide range of different users, etc)

3.3. Requirements for the site around the hub and pitches

- (i) What Parking is to be provided
- (ii) Any specific features e.g. open square, seating, play space, planting, games areas etc.
- (iii) Physical links to other features e.g. to parking, to other CMO facilities, surrounding housing- and what form this link should take e.g. footpath
- (iv) Means of access and egress to the facility (in so far as this isn't covered by (iii) above) which must include pedestrian and vehicular access to a highway adopted by the highways authority or a highway that is in the process of being adopted by the Highway Authority
- (v) The Brief shall define the proposed extent of the site on which the facility is to be located and the land which is proposed to be transferred to the CMO pursuant to this Deed by reference to a HM Land Registry compliant plan.
- (vi) Facilitating year-round access (e.g. drainage in order to prevent surface water accumulating and drought resistant grass)

4. The hub

4.1. The brief shall provide the following:-

Detailed requirements; spaces to be included (community rooms, sport and physical recreation, specialist facilities, core spaces (reception, toilets, offices, etc)). This must also give reference to those spaces which require specific locations within the building and their specific requirements. This must also consider where spaces need to be co-located to

ensure efficient use e.g. changing rooms next to sports hall, etc. It should include room sizes where there are particular requirements, otherwise adequate information, such as specific detail of the use(s) a space is to accommodate, to enable the designer to determine room space requirements e.g. hall to accommodate badminton court.

Details of the internal layout of the building (e.g. offices, meeting room and reception), room sizes, internal fittings and fixtures (e.g. of toilet and kitchenette facilities), confirmation and details of the disabled access to the building and internal layout enabling disabled use of the building and confirmation and details of the services including potable water supply, electricity supply, gas supply, sewage disposal, internet and telephone access and connections to the main networks for the supply or disposal (as appropriate) of such services

5. The pitches

Details of the design and specification of equipment, maintenance and management implications for the materials (including lifespan of the materials), layout of the site, confirmation and details of the disabled access to the site enabling disabled use and confirmation and details of any necessary services

6. Planning requirements

- 6.1. The Brief shall identify those design elements to give overall compliance with overall the Chilmington Design Code or such successor document that may replace or amend the Chilmington Design Code and is adopted by the Council.
- 6.2. The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan
- 6.3. The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area
- 6.4. The Brief shall identify relevant planning requirements including those of the Planning Permission and the development plan and shall demonstrate how the brief complies with such requirements.
- 6.5. In particular the brief shall explain how the hub and pitches will be delivered in phases, with costs split proportionately between the phases

7. Design and materials standards

The brief shall comply with the following: _

- 7.1 The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.
- 7.2. The brief shall identify the most appropriate collateral policy to cover latent defects that should be applied.
- 7.3. The facility's design and specification shall meet best practice guidelines for the given facility at the time of construction in so far as can be afforded within the cost cap for the relevant facility provided by this Deed.
- 7.4. The Brief shall give details of the facilities' appearance
- 7.5. The Brief shall give details of the materials to be used in the construction of the facility (including all fixtures, fittings and equipment) - performance and durability, and to be to all current British/European Standards and Codes of Practice.
- 7.6. The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.
- 7.7 The brief shall detail the design of and materials used in the construction of the pedestrian and vehicular routes within the site of the facility;
- 7.8. The Brief shall give details of the design of and materials used in the construction of boundaries of the site on which the facility is located and car parking;
- 7.9. The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)
- 7.10. Sustainability Considerations and Inclusions

Schedule 10A

8. The brief shall include a budget with full costings which shall be calculated and compiled by a quantity surveyor who has qualified with the Royal Institute of Quantity Surveyors for all internals and externals (including drainage, service connections, parking, external storage, landscaping, paths, other external facilities).

9. Summary of key considerations

Also to be included (potentially as appendices) should be:

1.1 a. Site plan (contextual and of specific location)

1.2 b. Consultation findings report, including views and opinions of the community, key stakeholders, particularly those of the CMO Board

Schedule 10B

List of Matters to be Included in Design Brief and Specification for DP3 under Schedule 10

1 Introduction

- a) Purpose of the particular facility in question.
- b) This brief (who it is prepared by and who for, its purpose and a summary of inclusions).
- c) Location (of the site in question).
- d) Budget.
- e) Scope of design.

1 Community consultation

The Brief shall summarise the conclusions of the community consultation (the details of how this was conducted, who was engaged, etc should be in a separate report in the appendix) and how its outcomes have influenced this brief

2 The site and its uses

The Brief shall identify the following:-

1.1 Context of the site

Who are its neighbours (now or planned), how it relates to the overall development and to other CMO facilities), location of SUDS on the site

1.2 Context of the facility

Context of this community facility (i.e. a community building, typical uses, wide range of different users, etc)

1.3 Requirements for the facility

- (i) What Parking is to be provided
- (ii) Any specific features e.g. open square, seating, play space, planting, games areas etc.
- (iii) Physical links to other features e.g. to parking, to other CMO facilities, surrounding housing- and what form this link should take e.g. footpath
- (iv) Means of access and egress to the facility (in so far as this isn't covered by (iii) above) which must include pedestrian and vehicular access to a highway adopted by the highways authority or a highway that is in the process of being adopted by the Highway Authority.
- (v) The Brief shall define the proposed extent of the site on which the facility is to be located and the land which is proposed to be transferred to the CMO pursuant to this Deed by reference to a HM Land Registry compliant plan.
- (vi) Facilitating year-round access (e.g. drainage in order to prevent surface water accumulating and drought resistant grass)

3 The site

3.1 The brief shall provide the following:-

Details of the design and specification of equipment, maintenance and management implications for the materials (including lifespan of the materials), layout of the site, confirmation and details of the disabled access to the site enabling disabled use and details of any necessary services

4 Planning requirements

Schedule 10B

- 4.1 The Brief shall identify those design elements to give overall compliance with overall the Chilmington Design Code or such successor document that may replace or amend the Chilmington Design Code and is adopted by the Council.
- 4.2 The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan .
- 4.3 The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area
- 4.4 The Brief shall identify relevant planning requirements including those of the Planning Permission and the development plan and shall demonstrate how the brief complies with such requirements.
- 4.5 In particular the brief shall explain how the facility will be delivered in phases, with costs split proportionately between the phases

5 Design and materials standards

The brief shall comply with the following:-

- 1.1 The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.
 - 1.2 The facility's design and specification shall meet best practice guidelines for the given facility at the time of construction in so far as can be afforded within the cost cap for the relevant facility provided by this Deed.
 - 1.3 The Brief shall give details of the facilities' appearance
 - 1.4 The Brief shall give details of the materials to be used in the construction of the facility (including all fixtures, fittings and equipment) - performance and durability, and to be to all current British/European Standards and Codes of Practice.
 - 1.5 The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.
 - 1.6 The brief shall detail the design of and materials used in the construction of the pedestrian and vehicular routes within the site of the facility;
 - 1.7 The Brief shall give details of the design of and materials used in the construction of boundaries of the site on which the facility is located and car parking;
 - 1.8 The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)
 - 1.9 Sustainability Considerations and Inclusions
- 6 The brief shall include a budget with full costings which shall be calculated and compiled by a quantity surveyor who has qualified with the Royal Institute of Quantity Surveyors for the site (including drainage, service connections, parking, landscaping, paths, other external facilities).
- 7 Summary of key considerations

Also to be included (potentially as appendices) should be:

- 1.3 a. Site plan (contextual and of specific location)
- 1.4 b. Consultation findings report, including views and opinions of the community, key stakeholders, particularly those of the CMO Board.

SCHEDULE 11

Cemeteries

1. The Owners covenant with the Council as follows:
 - 1.1 Not to occupy more than 1599 Dwellings until £250,000.00 (two hundred and fifty thousand pounds) Index Linked has been paid to the Council;
 - 1.2 Not to occupy more than 2199 Dwellings until £250,000.00 (two hundred and fifty thousand pounds) Index Linked has been paid to the Council;
 - 1.3 Not to occupy more than 2799 Dwellings until £100,000.00 (one hundred thousand pounds) Index Linked has been paid to the Council;
 - 1.4 Not to occupy more than 3399 Dwellings until £100,000.00 (one hundred thousand pounds) Index Linked has been paid to the Council;
 - 1.5 Not to occupy more than 5199 Dwellings until £100,000.00 (one hundred thousand pounds) Index Linked has been paid to the Council;
2. The Paying Owners covenant with the Council to pay the total sum of £800,000.00 (eight hundred thousand pounds) Index Linked to the Council in the following instalments:
 - 2.1 £250,000.00 (two hundred and fifty thousand pounds) Index Linked upon Occupation of the 1600th Dwelling;
 - 2.2 £250,000.00 (two hundred and fifty thousand pounds) Index Linked upon Occupation of the 2200th Dwelling;
 - 2.3 £100,000.00 (one hundred thousand pounds) Index Linked upon Occupation of the 2800th Dwelling;
 - 2.4 £100,000.00 (one hundred thousand pounds) Index Linked upon Occupation of the 3400th Dwelling;
 - 2.5 £100,000.00 (one hundred thousand pounds) Index Linked upon Occupation of the 5200th Dwelling;
3. The Council covenants with the Paying Owners to spend the monies received pursuant this Schedule only on the provision of a new cemetery in south Ashford.

SCHEDULE 12

Community Hub Building

1 The Owners covenant with the Council as follows:

1.1 Not to Occupy more than 1400 Dwellings unless:

1.1.1 a design brief and specification for the following indicative facilities and/or other facilities of no significantly greater environmental impact as may be approved by the Council:

- the multi-purpose community leisure building (0.1 ha) with associated hub space (i.e. lobby, extra toilets, toilets including an 18 m2 changing place, wheelchair accessible kitchen, reception, café and CMO trust office (0.034 ha));
- family and social care facility (0.034 ha);
- youth facility (0.016 ha);
- library access point (0.0012 ha);
- community learning facility (0.01ha);
- police space (0.005 ha);
- outdoor multi-use games area (0.08 ha);
- car parking (0.092 ha);
- a health centre comprising a GP surgery for 8 doctors (0.1 ha);

and the particulars (unless otherwise agreed by the Council) detailed in the list of matters to be included in the design brief and specification at Schedule 12A

to be provided in the District Centre has been approved by the Council with a total capital cost not exceeding £5,152,127.00 (five million one hundred and fifty two thousand one hundred and twenty seven pounds) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs ("the Facilities");

1.1.2 the submitted design brief and specification of the Facilities (i) shall have been subject to consultation with the CMO and other relevant stakeholders and the public (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and (ii) shall include the consultation responses and in particular the CMO's comments on the costings;

1.2 Unless the Council agrees otherwise, not to Occupy more than 1800 Dwellings unless:

1.2.1 the Facilities have been provided in accordance with the reserved matters approval and the approved design brief and specification;

1.2.2 all necessary actions have been taken to ensure that the land on which the Facilities are located is free from contamination and pollution and

protected species that would prevent or limit the Facilities' intended use pursuant to this Deed at the Owners' expense;

- 1.2.3 all conditions to a planning permission or reserved matters approval that apply to the Facilities and are required to be discharged prior to the occupation/use of the relevant Facilities have been discharged at the Owners' expense;
- 1.2.4 the Owners have paid to the Council a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s;

and either

- 1.2.5 the Facilities have been transferred to the CMO either by way of a transfer of the freehold or the grant of a Long Leasehold Interest in the Facilities in a form acceptable to the CMO;

or

- 1.2.6 the Owners have served the CMO with either an engrossed transfer/s of the freehold or the grant of a Long Leasehold Interest (as appropriate) of the land on which the Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with either a form of transfer of the freehold or the grant of a Long Leasehold Interest) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

- 1.3 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT

- 1.3.1 where the remedy of the defects relates to planting or repairs to grass pitches, courts or greens and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season
- 1.3.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.3.1 applies

- 1.4 Upon transfer to the CMO, (i) to make the designated parts of the Community Hub Building available for use by the County Council or an approved County Council nominee as a family and social care facility, youth facility, library access point and community learning facility respectively in accordance with the booking system agreed between the CMO and the County Council or its nominee (which system shall aim to identify all bookings on a yearly basis and may include a minimum and maximum number of booked hours) and (ii) not to make those designated parts

Schedule 12

available for use to any user which the County Council or its nominee has objected to in writing

- 1.5 To construct and provide the Facilities in accordance with the requirements of paragraph 1.2.1 of this schedule prior to the Occupation of more than 1800 Dwellings.
2. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under paragraph 1.2.6 £1000.00 (one thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft.
3. The Council covenants with Owners as follows:-
 - 3.1 to pay any sum received by it pursuant to paragraph 1.2.4 above to the CMO within 20 Working Days of receiving it; and
 - 3.2 following approval of the design brief and specification under paragraph 1 1 to notify the director appointed to the CMO by the Council of the approval and the reasons for it.

Schedule 12A~~(TC "Schedule 12A" (C.V.1.1))~~

List of Matters to be included in Design Brief and Specification for Schedule 12~~(TC "List of Matters to be included in Design Brief and Specification for Schedule 12" (C.V.2))~~

Introduction

- a. Purpose of the particular facility in question.
- b. This brief (who it is prepared by and who for, its purpose and a summary of inclusions).
- c. Location (of the site in question).
- d. Budget.
- e. Scope of design.

Community consultation

The Brief shall summarise the conclusions of the community consultation (the details of how this was conducted, who was engaged, etc should be in a separate report in the appendix) and how its outcomes have influenced this brief.

The site and its uses

The Brief shall identify the following:-

- a. Context of the site
Who are its neighbours (now or planned), how it relates to the overall development and to other CMO facilities)
- b. Context of the building
Context of this community facility (ie. a community building, typical uses, wide range of different users, etc)
- c. Requirements for the site around the building
 - i) What parking is to be provided
 - ii) Any specific features e.g. open square, seating, play space, planting, games areas etc.
 - iii) Physical links to other features e.g. to parking, to other CMO facilities, surrounding housing- and what form this link should take e.g. footpath
 - iv) Means of access and egress to the facility (in so far as this isn't covered by (iii) above) which must include pedestrian and vehicular access to a highway adopted by the highways authority or a highway that is in the process of being adopted by the Highway Authority.
 - (v) The Brief shall define the proposed extent of the site on which the facility is to be located and the land which is proposed to be transferred to the CMO pursuant to this Deed by reference to a HM Land Registry compliant plan.

4 The building

The brief shall provide the following:-

Detailed requirements; spaces to be included (community rooms, sport and physical recreation, specialist facilities, core spaces (reception, toilets, offices, etc)). This must also give reference to those spaces which require specific locations within the building and their specific requirements e.g. family and social care on the ground floor This must also consider where spaces need to be co-located to ensure efficient use e.g. changing rooms

Schedule 12A

next to sports hall, etc. It should include room sizes where there are particular requirements, otherwise adequate information, such as specific detail of the use(s) a space is to accommodate, to enable the designer to determine room space requirements e.g. hall to accommodate badminton court, meeting room for 12 people including projector and screen.

Details of the internal layout of the building (e.g. offices, meeting room and reception), room sizes, internal fittings and fixtures (e.g. of toilet and kitchenette facilities), confirmation and details of the disabled access to the building and internal layout enabling disabled use of the building and confirmation and details of the services including potable water supply, electricity supply, gas supply, sewage disposal, internet and telephone access and connections to the main networks for the supply or disposal (as appropriate) of such services

5 Planning requirements

- a. The Brief shall identify those design elements to give overall compliance with overall the Chilmington Design Code or such successor document that may replace or amend the Chilmington Design Code and is adopted by the Council.
- b. The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan .
- c. The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area
- d. The Brief shall identify relevant planning requirements including those of the Planning Permission and the development plan and shall demonstrate how the brief complies with such requirements.

6 Design and materials standards

The brief shall comply with the following: _

- a. The design of the facility as detailed by the Brief shall meet all relevant statutory requirements
- b. The brief shall identify the most appropriate collateral policy to cover latent defects that should be applied.
- c. The facility's design and specification shall meet best practice guidelines for the given facility at the time of construction in so far as can be afforded within the cost cap for the relevant facility provided by this Deed.
- d. The Brief shall give details of the facilities' appearance
- e. The Brief shall give details of the materials to be used in the construction of the facility (including all fixtures, fittings and equipment) - performance and durability, and to be to all current British/European Standards and Codes of Practice.
- f. The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.
- g. The brief shall detail the design of and materials used in the construction of the pedestrian and vehicular routes within the site of the facility;
- h. The Brief shall give details of the design of and materials used in the construction of boundaries of the site on which the facility is located and car parking;
- i. The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)
- j. Sustainability Considerations and Inclusions

- 7 The brief shall include a budget with full costings which shall be calculated and compiled by a quantity surveyor who has qualified with the Royal Institute of Quantity Surveyors for all internals and externals (including drainage, service connections, parking, external storage, landscaping, paths, other external facilities).

8 Summary of key considerations

Also to be included (potentially as appendices) should be:

Schedule 12A

- a. Site plan (contextual and of specific location)
- b. Consultation findings report, including views and opinions of the community, key stakeholders, particularly those of the CMO Board.

SCHEDULE 13

Local Centre Hubs

- 1 The Owners covenant with the Council as follows:

Orchard Village

- 1.1 Not to Occupy more than 600 Dwellings in Main Phase 3 unless:

1.1.1 a design brief and specification for the local hub building on a site of 0.06 ha and with car parking of 0.0115 ha in the approximate location marked "Local Centre 1" on the attached plan Strategic Diagram 1 and/or other facilities of no significantly greater environmental impact as may be approved by the Council in the relevant Main Phase and the particulars (unless otherwise agreed by the Council) detailed in the list of matters to be included in the design brief and specification at Schedule 13A has been approved by the Council with a total capital cost not exceeding £733,971.35 (seven hundred and thirty three thousand nine hundred and seventy one pounds and thirty five pence) Index Linked up to the date of the reserved matters approval for the local hub building but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs ("the Orchard Village Facilities")

1.1.2 the submitted design brief and specification of the Orchard Village Facilities (i) shall have been subject to consultation with the CMO and other relevant stakeholders and the public (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and (ii) shall include the consultation responses and in particular the CMO's comments on the costings

- 1.2 Unless the Council agrees otherwise, not to Occupy more than 1000 Dwellings in Main Phase 3 unless:

1.2.1 the Orchard Village Facilities have been provided in accordance with the reserved matters approval and the approved design brief and specification;

1.2.2 all necessary actions have been taken to ensure that the land on which the Orchard Village Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Orchard Village Facilities' intended use pursuant to this Agreement at the Owners' expense;

1.2.3 all conditions to a planning permission or reserved matters approval that apply to the Orchard Village Facilities and are required to be discharged prior to the occupation/use of the Orchard Village Facilities have been discharged at the Owners' expense;

1.2.4 a sum equivalent to their any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand and five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s has been paid to the Council;

and either

1.2.5 the Orchard Village Facilities have been transferred to the CMO either by

way of a transfer of the freehold or the grant of a Long Leasehold Interest in the Orchard Village Facilities in a form acceptable to the CMO;

or

1.2.6 the Owners have served the CMO with either an engrossed transfer/s of the freehold or the grant of a Long Leasehold Interest (as appropriate) of the land on which the Orchard Village Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with either a form of transfer of the freehold or the grant of a Long Leasehold Interest) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

1.3 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT

1.3.1 where the remedy of the defects relates to planting or repairs to grass pitches, courts or greens and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season

1.3.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.3.1 applies

1.4 To construct and provide the Orchard Village Facilities in accordance with the requirements of paragraph 1.2.1 of this schedule prior to the Occupation of more than 1000 Dwellings in Main Phase 3.

2. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under paragraph 1.2.6 £1000.00 (One thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft.

3. The Council covenants with the Owners as follows:-

3.1 to pay any sum received by it pursuant to paragraph 1.2.4 above to the CMO within 20 Working Days of receiving it; and

3.2 following approval of the design brief and specification under paragraph 1.1.1 to notify the director appointed to the CMO by the Council of the approval and the reasons for it.

Chilmington Brook

4. The Owners covenant with the Council as follows:

4.1 Not to Occupy more than 600 Dwellings in Main Phase 4 unless:

Schedule 13

- 4.1.1 a design brief and specification for the local hub building on a site of 0.07 ha and with car parking of 0.0115 ha in the approximate location marked "Local Centre 2" on the attached plan Strategic Diagram 1 and/or other facilities of no significantly greater environmental impact as may be approved by the Council in the relevant Main Phase and the particulars (unless otherwise agreed by the Council) detailed in the attached list of matters to be included in the design brief and specification has been approved by the Council with a total capital cost not exceeding £748,190.10 (seven hundred and forty eight thousand one hundred and ninety pounds and ten pence) Index Linked up to the date of the reserved matters approval but excluding fees, contingencies, specification and design costs, supervision fees, access roads and service costs ("the Chilmington Brook Facilities")
- 4.1.2 the submitted design brief and specification of the Chilmington Brook Facilities (i) shall have been subject to consultation with the CMO and other relevant stakeholders and the public (the details of the consultation shall have been previously approved by the CMO or in the event the CMO does not approve such details within 6 weeks of receiving them the details of such consultation with stakeholders shall have been approved by the Council on application to the Council by the Owners) and (ii) shall include the consultation responses and in particular the CMO's comments on the costings;
- 4.2 Unless the Council agrees otherwise, not to Occupy more than 1000 Dwellings in Main Phase 4 unless:
 - 4.2.1 the Chilmington Brook Facilities have been provided in accordance with the reserved matters approval and the approved design brief and specification ;
 - 4.2.2 all necessary actions have been taken to ensure that the land on which the Chilmington Brook Facilities are located is free from contamination and pollution and protected species that would prevent or limit the Chilmington Brook Facilities' intended use pursuant to this Deed at the Owners' expense;
 - 4.2.3 all conditions to a planning permission that apply to the Chilmington Brook Facilities and are required to be discharged prior to the occupation/use of the Chilmington Brook Facilities have been discharged at the Owners' expense;
 - 4.2.4 a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer/s at HM Land Registry and the sum of £1500.00 (one thousand and five hundred pounds) Index Linked in respect legal fees incurred by the CMO in accepting the transfer/s has been paid to the Council;
- and either
- 4.2.5 the Chilmington Brook Facilities have been transferred to the CMO either by way of a transfer of the freehold or the grant of a Long Leasehold Interest in the Chilmington Brook Facilities in a form acceptable to the CMO;
- or
- 4.2.6 the Owners have served the CMO with either an engrossed transfer/s of the freehold or the grant of a Long Leasehold Interest (as appropriate) of the land on which the Chilmington Brook Facilities are located in counterparts incorporating the Transfer Terms and in a form previously approved by the CMO or (in the event that the CMO has still not approved

the same within 6 weeks of the relevant Owner having deduced title to the CMO and served them with either a form of transfer of the freehold or the grant of a Long Leasehold Interest) in a form previously approved by the Council that is executed by the owner/s (as appropriate) of the relevant land with appropriate authority from them for the CMO to execute and complete the transfer/s together with any documentation that may be necessary for the CMO to register such transfers at HM Land Registry together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings

- 4.3 To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of the property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the facility is intended to fulfil PROVIDED ALWAYS THAT
 - 4.3.1 where the remedy of the defects relates to planting or repairs to grass pitches, courts or greens and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season
 - 4.3.2 in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 4.3.1 applies
- 4.4 To construct and provide the Chilmington Brook Facilities in accordance with the requirements of paragraph 4.2.1 of this schedule prior to the Occupation of more than 1000 Dwellings in Main Phase 4.
5. The Paying Owners covenant with the Council to pay to the Council within 14 days of submitting to the Council the draft of any transfer which it seeks approval of under paragraph 4.2.6 £1000.00 (one thousand pounds) Index Linked as a contribution towards the Council's legal costs in considering the draft
6. The Council covenants with Owners as follows:-
 - 6.1 to pay any sum received by it pursuant to paragraph 4.2.4 above to the CMO within 20 Working Days of receiving it; and
 - 6.2 following approval of the design brief and specification under paragraph 4.1.1 above to notify the director appointed to the CMO by the Council of the approval and the reasons for it.

Schedule 13A{TC "~~Schedule 13A~~"f C.V."1"}~~}~~

List of Matters to be Included in Design Brief and Specification for Schedule 13{TC "~~List of Matters to be Included in Design Brief and Specification for Schedule 13~~"f C.V."2"}~~}~~

1 Introduction

- a. Purpose of the particular facility in question.
- b. This brief (who it is prepared by and who for, its purpose and a summary of inclusions).
- c. Location (of the site in question).
- d. Budget.
- e. Scope of design.

2 Community consultation

The Brief shall summarise the conclusions of the community consultation (the details of how this was conducted, who was engaged, etc should be in a separate report in the appendix) and how its outcomes have influenced this brief.

3 The site and its uses

The Brief shall identify the following:-

- e) Context of the site
Who are its neighbours (now or planned), how it relates to the overall development and to other CMO facilities)
- f) Context of the building
Context of this community facility (ie. a community building, typical uses, wide range of different users, etc)
- g) Requirements for the site around the building
 - 1 What parking is to be provided
 2. Any specific features e.g. open square, seating, play space, planting, games areas etc.
 3. Physical links to other features e.g. to parking, to other CMO facilities, surrounding housing- and what form this link should take e.g. footpath
 4. Means of access and egress to the facility (in so far as this isn't covered by (iii) above) which must include pedestrian and vehicular access to a highway adopted by the highways authority or a highway that is in the process of being adopted by the Highway Authority.
 5. e)The Brief shall define the proposed extent of the site on which the facility is to be located and the land which is proposed to be transferred to the CMO pursuant to this Deed by reference to a HM Land Registry compliant plan

4 The building

The brief shall provide the following:-

Detailed requirements; spaces to be included (community rooms, sport and physical recreation, specialist facilities, core spaces (reception, toilets, offices, etc)). This must also give reference to those spaces which require specific locations within the building and their specific requirements e.g. family and social care on the ground floor. This must also consider where spaces need to be co-located to ensure efficient use e.g. changing rooms next to sports hall, etc. It should include room sizes where there are particular requirements, otherwise adequate information, such as specific detail of the use(s) a space is to accommodate, to enable the designer to determine room space requirements e.g. hall to accommodate badminton court, meeting room for 12 people including projector and screen.

Details of the internal layout of the building (e.g, offices, meeting room and reception), room sizes, internal fittings and fixtures (e.g. of toilet and kitchenette facilities), confirmation and details of the disabled access to the building and internal layout enabling disabled use of the building and confirmation and details of the services including potable water supply, electricity supply, gas supply, sewage disposal, internet and telephone access and connections to the main networks for the supply or disposal (as appropriate) of such services

5 Planning requirements

- a. The Brief shall identify those design elements to give overall compliance with overall the Chilmington Design Code or such successor document that may replace or amend the Chilmington Design Code and is adopted by the Council.
- b. The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan
- c. The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area
- d. The Brief shall identify relevant planning requirements including those of the Planning Permission and the development plan and shall demonstrate how the brief complies with such requirements.

6 Design and materials standards

The brief shall comply with the following:-

- a. The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.
- b. The brief shall identify the most appropriate collateral policy to cover latent defects that should be applied.
- c. The facility's design and specification shall meet best practice guidelines for the given facility at the time of construction in so far as can be afforded within the cost cap for the relevant facility provided by this Deed.
- d. The Brief shall give details of the facilities' appearance
- e. The Brief shall give details of the materials to be used in the construction of the facility (including all fixtures, fittings and equipment) - performance and durability, and to be to all current British/European Standards and Codes of Practice.
- f. The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.
- g. The brief shall detail the design of and materials used in the construction of the pedestrian and vehicular routes within the site of the facility;
- h. The Brief shall give details of the design of and materials used in the construction of boundaries of the site on which the facility is located and car parking;
- i. The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)
- j. Sustainability Considerations and Inclusions

7 The brief shall include a budget with full costings which shall be calculated and compiled by a quantity surveyor who has qualified with the Royal Institute of Quantity

Schedule 13A

Surveyors for all internals and externals (including drainage, service connections, parking, external storage, landscaping, paths, other external facilities).

8 Summary of key considerations

Also to be included (potentially as appendices) should be:

- a. Site plan (contextual and of specific location)**
- b. Consultation findings report, including views and opinions of the community, key stakeholders, particularly those of the CMO Board.**

SCHEDULE 14

District and Local Centres

- 1 The Owners covenant with the Council as follows:

District Centre

- 1.1 Not to Occupy more than 950 Dwellings in Main Phase 1 unless:

- 1.1.1 a design brief and specification for the following indicative facilities and/or other facilities of no significantly greater environmental impact as may be approved by the Council:-

1.1.1.1 a supermarket with 3100 m² floorspace,

1.1.1.2 other retail units with a total floorspace of 4595 m² (specifying at least 5 units to be constructed in any event with none of those units having less than 150 m² floorspace at ground floor level ("the Small Retail Units")),

1.1.1.3 an office building with 2610 m² floorspace and connected by underground ducts to fibre broadband,

1.1.1.4 a public house,

1.1.1.5 a day nursery

("the District Centre Facilities")

has been approved by the Council

- 1.1.2 the submitted design brief and specification of the District Centre Facilities (i) shall have been subject to consultation with relevant stakeholders and the public (the details of the consultation shall have been previously approved by the Council and (ii) shall include the consultation responses;

- 1.2 Unless the Council agrees otherwise, not to Occupy more than 1250 Dwellings in Main Phase 1 unless:

1.2.1 serviced sites (including corresponding roads and footpaths) for the District Centre Facilities (excluding the Small Retail Units) have been provided in accordance with the reserved matters approval and the approved design brief and specification

1.2.2 the Small Retail Units (including corresponding roads and footpaths) have been provided in accordance with the reserved matters approval and the approved design brief and specification

1.2.3 a marketing plan for the District Centre Facilities has been approved by the Council

- 1.3 To market the District Centre Facilities in accordance with the approved marketing plan

- 1.4 To construct and provide serviced sites for the District Centre Facilities (excluding the Small Retail Units) in accordance with the requirements of paragraph 1.2.1 of this schedule prior to the Occupation of 1250 Dwellings in Main Phase 1

- 1.5 To construct and provide the Small Retail Units in accordance with the requirements of paragraph 1.2.2 of this schedule prior to the Occupation of 1250 Dwellings in Main Phase 1

Schedule 14

Orchard Village

- 1.6 Not to Occupy more than 1000 Dwellings in Main Phase 3 unless:
- 1.6.1 a masterplan for the part of the Site including Orchard Village that provides for a retail unit with a floorspace of 150 m² ("the Retail Unit"), further retail units ("the Potential Retail Units") and showing all roads and footpaths has been approved by the Council ;
 - 1.6.2 the submitted masterplan (i) shall have been subject to consultation with relevant stakeholders and the public (the details of the consultation shall have been previously approved by the Council) and (ii) shall include the consultation responses;
- 1 7 Unless the Council agrees otherwise, not to Occupy more than 1400 Dwellings in Main Phase 3 unless:
- 1.7.1 serviced sites (including corresponding roads and footpaths) for such Potential Retail Units specified in the approved masterplan have been provided in accordance with the reserved matters approval and the approved masterplan
 - 1.7.2 the Retail Unit (including corresponding roads and footpaths) has been provided in accordance with the reserved matters approval and the approved masterplan; and
 - 1 7.3 a marketing plan for the site has been approved by the Council
- 1.8 To market the Retail Unit and the Potential Retail Units in accordance with the approved marketing plan
- 1.9 To construct and provide serviced sites in accordance with the requirements of paragraph 1 7 1 of this Schedule prior to the occupation of 1400 Dwellings in Main Phase 3.
- 1 10 To construct and provide the Retail Unit in accordance with the requirements of paragraph 1.7.2 of this schedule prior to the Occupation of 1400 Dwellings in Main Phase 3.

Chilmington Brook

- 1 11 Not to Occupy more than 1000 Dwellings in Main Phase 4 unless:
- 1 11.1 a masterplan for the part of the Site including Chilmington Brook that provides for a retail unit with a floorspace of 150 m² ("the Retail Unit"), further retail units ("the Potential Retail Units") and showing all roads and footpaths has been approved by the Council;
 - 1 11.2 The submitted masterplan (i) shall have been subject to consultation with relevant stakeholders and the public (the details of the consultation shall have been previously approved by the Council by the Owners) and (ii) shall include the consultation responses:
- 1 12 Unless the Council agrees otherwise, not to Occupy more than 1500 Dwellings in Main Phase 4 unless:
- 1.12.1 serviced sites (including corresponding roads and footpaths) for such Potential Retail Units specified in the approved masterplan have been provided in accordance with the reserved matters approval and the approved masterplan
 - 1.12.2 the Retail Unit (including corresponding roads and footpaths) has been

Schedule 14

provided in accordance with the reserved matters approval and the approved masterplan; and

- 1 12.3 a marketing plan for the site has been approved by the Council for approval
- 1.13 To market the Retail Unit and the Potential Retail Units in accordance with the approved marketing plan
- 1 14 To construct and provide serviced sites in accordance with the requirements of paragraph 1.12 1 of this Schedule prior to the occupation of 1500 Dwellings in Main Phase 4.
- 1 15 To construct and provide the Retail Unit in accordance with the requirements of paragraph 1.12.2 of this schedule prior to the Occupation of 1500 Dwellings in Main Phase 4.

SCHEDULE 15

Education

Part 1 – Primary School 1 ~~TC "Part 1 – Primary School 1" VCV "2"~~

The Owners covenant with the County Council as follows:

1. The Owners shall not Commence the Development unless and until the location, extent and GPS coordinates of the PS1 Site within Main Phase 1 have first been approved in writing by the County Council.
2. The Owners shall afford the County Council and its agents an access route to the PS1 Site at all times and for all purposes, starting from a date (not less than 6 months after identification of the PS1 Site) to be nominated by the Owners of the land over which the route will run, until an Adoptable Access has been provided to serve the school for all purposes. The Owners shall not Commence the Development after the date falling 6 months after written approval by the County Council of the location of the PS1 Site unless the requirements of this paragraph are being complied with. This paragraph shall not apply if and insofar as the County Council agrees in writing with the Owners' Agent that satisfactory access to the PS1 Site for all purposes required by the County Council is already available via a public highway.
3. No further Dwellings shall be brought into residential use nor thereafter Occupied on the Site beyond 18 months from the date of Commencement of Development unless a duly executed Transfer in respect of the PS1 Site has been delivered to the County Council, the Owners have provided an Ensured Access to the PS1 Site for the County Council, and provided Temporary Building Services for the PS1 Site. PROVIDED ALWAYS THAT provision of an Adoptable Access and connections within its boundary so as to connect it to surface water drainage facilities and to mains foul drainage water gas electricity and telecommunications shall not be required to be satisfied (other than the provision of Temporary Building Services) until 32 months from the date of Commencement of Development.
4. The Owners shall provide an Adoptable Access to the PS1 Site not later than 32 months from Commencement of Development (or earlier upon the reasonable request of the County Council), execute an agreement to dedicate the same under Section 38 of the Highways Act, and release the same for completion. No further Dwellings shall be brought into residential use and thereafter Occupied on the Site beyond 32 months from the date of Commencement of Development until the Adoptable Access has been provided and dedicated as a highway.
5. The Development shall not be Commenced unless and until PS1 Contribution 1 has been paid to the County Council.
6. No further Dwelling shall be brought into residential use nor thereafter Occupied on the Site beyond 12 months from the date of Commencement of Development unless Bonds have been provided to the value of PS1 Contribution 2 plus PS1 Contribution 3 plus PS1 Contribution 4.
7. The Paying Owners shall:
 - (a) pay PS1 Contribution 1 to the County Council prior to Commencement of Development.
 - (b) pay PS1 Contribution 2 to the County Council not later than 18 months from the date of Commencement of Development
 - (c) pay PS1 Contribution 3 to the County Council not later than 36 months from the date of Commencement of Development
 - (d) pay PS1 Contribution 4 to the County Council not later than 78 months from the date of Commencement of Development

- (e) Provide Bonds to the value of PS1 Contribution 2 plus PS1 Contribution 3 plus PS1 Contribution 4 to the County Council within 12 months of Commencement of Development on the Site.

Part 2 – Primary School 2 ~~TC "Part 2 – Primary School 2" VC "2"~~

8. The Owners shall not bring into residential use nor Occupy more than 1049 Dwellings across the whole Site unless and until the location, extent and GPS coordinates of the PS2 Site within Main Phase 2 have first been approved in writing by the County Council. No further Dwellings shall be brought into residential use or Occupied after the day when 1049 Dwellings have been so first Occupied until the County Council have given its approval under this paragraph.
9. The Owners shall afford the County Council and its agents access to the PS2 Site at all times and for all purposes, starting from the date of approval by the County Council of the PS2 Site under paragraph 8 above, until an Adoptable Access has been provided to serve the school for all purposes and has been dedicated and adopted by the County Council. This paragraph shall not apply if and insofar as the County Council agrees in writing with the Owners' Agent that satisfactory access to the PS2 Site for all purposes required by the County Council is already available via a public highway
10. The Owners shall deliver a duly executed Transfer in respect of the PS2 Site to the County Council and shall have provided an Ensured Access within 6 months from the date when 1100 Dwellings have been first Occupied across the Site. No further Dwellings shall be brought into residential use and thereafter Occupied on the Site beyond 6 months after first Occupation of 1100 Dwellings, unless a duly executed Transfer in respect of the PS2 Site has been delivered to the County Council for completion, and an Ensured Access has been provided to the PS2 Site.
11. The Owners shall provide an Adoptable Access to the PS2 Site, execute an agreement to dedicate the same under Section 38 of the Highways Act and release this for completion by the date when 1930 Dwellings have been first Occupied across the Site (or earlier upon the reasonable request of the County Council). No more than 1929 Dwellings shall be brought into residential use and Occupied on the Site unless and until the Adoptable Access under this paragraph has been provided and dedicated as a highway
12. Unless and until PS2 Contribution 1 has been paid to the County Council, no more than 899 Dwellings shall be brought into residential use nor first Occupied on the Site.
13. No further Dwellings shall be brought into residential use nor thereafter Occupied on the Site unless Bonds have been provided to the value of the PS2 Contribution 2 plus PS2 Contribution 3 plus PS2 Contribution 4
 - (a) by the day falling 30 months after the date on which 900 Dwellings have been Occupied on the Site; or
 - (b) by the time when the 1099th Dwelling on the Site to be so Occupied has been Occupied for the first time,

whichever is earlier
14. The Paying Owners shall:
 - (a) pay PS2 Contribution 1 to the County Council prior to the 900th Dwelling on the Site being so Occupied for the first time; .
 - (b) pay PS2 Contribution 2 to the County Council 33 months after the falling due of PS2 Contribution 1
 - (c) pay PS2 Contribution 3 to the County Council 63 months after the falling due of PS2

Schedule 15

Contribution 1.

- (d) pay PS2 Contribution 4 to the County Council 72 months after the falling due of PS2 Contribution 1
- (e) Provide Bonds to the value of PS2 Contribution 2 plus PS2 Contribution 3 plus PS2 Contribution 4 to the County Council on or before
 - (i) the day falling 30 months after the date on which 900 Dwellings have been Occupied on the Site; or
 - (ii) the day when the 1099th Dwelling to be so Occupied on the Site has been Occupied for the first time,

whichever is earlier

Part 3 – Primary School 3 ~~(TC "Part 3 – Primary School 3" V C V "2")~~

- 15. No further Dwellings shall be brought into residential use or Occupation after the day when 2999 Dwellings across the whole Site have each been brought into residential use and first Occupied, unless and until the location, extent and GPS coordinates of the PS3 Site within Main Phase 3 shall have been first approved in writing by the County Council.
- 16. The Owners shall afford the County Council and its agents access to the PS3 Site at all times and for all purposes, starting from the date of approval by the County Council of the PS3 Site under paragraph 15 above, until an Adoptable Access has been provided to serve the school for all purposes and has been dedicated and adopted by the County Council. This paragraph shall not apply if and insofar as the County Council agrees in writing with the Owners' Agent that satisfactory access to the PS3 Site for all purposes required by the County Council is already available via a public highway.
- 17. The Owners shall deliver a duly executed Transfer in respect of the PS3 Site to the County Council and shall have provided an Ensured Access within 6 months from the date when 3150 Dwellings have been first Occupied across the Site. No further Dwellings shall be brought into residential use and thereafter Occupied on the Site beyond 6 months after first Occupation of 3150 Dwellings, unless a duly executed Transfer in respect of the PS3 Site has been delivered to the County Council for completion and an Ensured Access has been provided to the PS3 Site.
- 18. The Owners shall provide an Adoptable Access to the PS3 Site, execute an agreement to dedicate the same under Section 38 of the Highways Act and release this for completion by the date when 3900 Dwellings have been first Occupied across the Site (or earlier upon the reasonable request of the County Council). No more than 3899 Dwellings shall be brought into residential use and Occupied on the Site unless and until the Adoptable Access under this paragraph has been provided and dedicated as a highway
- 19. Unless and until PS3 Contribution 1 has been paid to the County Council, no more than 2879 Dwellings shall be brought into residential use nor Occupied on the Site.
- 20. No further Dwellings shall be brought into residential use nor thereafter Occupied on the Site unless Bonds have been Provided to the value of the PS3 Contribution 2 plus PS3 Contribution 3 plus PS3 Contribution 4.
 - (a) by the day falling 25 months after the date on which 2880 Dwellings have been Occupied on the Site; or
 - 1.5 (b) by the time when the 3149th Dwelling to be so Occupied on the Site has been Occupied for the first time,

whichever is earlier

21 The Paying Owners shall

- (a) pay PS3 Contribution 1 to the County Council before the Occupation of 2880 Dwellings on the Site for the first time.
- (b) pay PS3 Contribution 2 to the County Council 28 months after the falling due of PS3 Contribution 1.
- (c) pay PS3 Contribution 3 to the County Council 61 months after the falling due of PS3 Contribution 1
- (d) pay PS3 Contribution 4 to the County Council 72 months after the falling due of PS3 Contribution 1.
- (e) Provide Bonds to the value of PS3 Contribution 2 plus PS3 Contribution 3 plus PS3 Contribution 4 to the County Council on or before.
 - (i) the day falling 25 months after the date on which 2880 Dwellings have been Occupied on the Site; or
 - (ii) the time when the 3149th Dwelling to be so Occupied on the Site has been Occupied,

whichever is earlier.

~~Part 4 – Primary School 4~~ ~~TC "Part 4 – Primary School 4" if C.V "2" }~~

22. No further Dwellings shall be brought into residential use or Occupation after the day when 4499 Dwellings across the whole Site have each been brought into residential use and Occupied, unless and until the location, extent and GPS coordinates of the PS4 Site shall have been first approved in writing by the County Council.
23. The Owners shall afford the County Council and its agents access to the PS4 Site at all times and for all purposes, starting from the date of approval by the County Council of the PS4 Site under paragraph 22 above, until an Adoptable Access has been provided to serve the school for all purposes and has been dedicated and adopted by the County Council. This paragraph shall not apply if and insofar as the County Council agrees in writing with the Owners' Agent that satisfactory access to the PS4 Site for all purposes required by the County Council is already available via a public highway.
24. The Owners shall deliver a duly executed Transfer in respect of the PS4 Site to the County Council and shall have provided an Ensured Access within 6 months from the date when 4900 Dwellings have been first Occupied across the Site. No further Dwellings shall be brought into residential use and thereafter Occupied on the Site beyond 6 months after first Occupation of 4900 Dwellings, unless a duly executed Transfer in respect of the PS4 Site has been delivered to the County Council for completion and an Ensured Access has been provided to the PS4 Site.
25. The Owners shall provide an Adoptable Access to the PS4 Site, execute an agreement to dedicate the same under Section 38 of the Highways Act and release this for completion by the date when 5600 Dwellings have been first Occupied across the Site (or earlier upon the

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reasonable request of the County Council). No more than 5599 Dwellings shall be brought into residential use and Occupied on the Site unless and until the Adoptable Access under this paragraph has been provided and dedicated as a highway.

26. Unless and until PS4 Contribution 1 has been paid to the County Council, no more than 4599 Dwellings shall be brought into residential use nor Occupied on the Site.
27. No further Dwellings shall be brought into residential use nor thereafter Occupied on the Site unless Bonds have been Provided to the value of PS4 Contribution 2 plus PS4 Contribution 3,
- (a) by the day falling 21 months after the date on which 4600 Dwellings have been Occupied on the Site, or
 - (b) by the time when the 4900th Dwelling to be so Occupied on the Site has been Occupied,

whichever is earlier

28. The Paying Owners shall

- (a) pay PS4 Contribution 1 to the County Council before 4600 Dwellings have been Occupied on the Site.
- (b) pay PS4 Contribution 2 to the County Council 24 months after the falling due of PS4 Contribution 1.
- (c) pay PS4 Contribution 3 to the County Council 36 months after the falling due of PS4 Contribution 1
- (d) Provide Bonds to the value of PS4 Contribution 2 plus PS4 Contribution 3 to the County Council on or before:
 - (i) the day falling 21 months after the date on which 4600 Dwellings have been Occupied on the Site, or
 - (ii) the time when the 4900th Dwelling to be so Occupied on the Site has been Occupied,

whichever is earlier.

Part 5 – Secondary School ~~TC "Part 5 – Secondary School" (C.V. "2")~~

29. The Owners covenant not to Commence (Statutory) the Development unless:

- 29.1 separate plans of 1:1250 scale and complying with all relevant Land Registry requirements for the purposes of registering the restriction referred to at paragraph 29.3 below showing the full possible extent of the Secondary School Site have been submitted to and approved in writing by the County Council; and
- 29.2 details of the relevant title numbers registered at the Land Registry comprising the title to the land that comprises the full possible extent of the Secondary School Site as identified by the plans approved by the County Council pursuant to paragraph 29.1 above are submitted to and approved in writing by the County Council; and
- 29.3 a restriction is entered in the Proprietorship Register of the titles identified in paragraph 29.2 that comprises the full possible extent of the Secondary School Site as identified by the plans approved by the County Council pursuant to paragraph 29.1 above in the following Land Registry standard form:

No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge

registered before the entry of this restriction, is to be registered without a written consent signed by a solicitor or a conveyancer acting for The Kent County Council of County Hall Maidstone Kent ME14 1XQ

30. Subject to Commence (Statutory) the Development having occurred after 1st September 2019, or if earlier the date when 499 Dwellings have been Occupied on the Site for the first time, no further Dwellings shall be brought into residential use or Occupation unless and until the location, extent and GPS coordinates of the Secondary School Site have been first approved in writing by the County Council. For the avoidance of doubt the requirements relating to the aforementioned calendar date in this paragraph (and any subsequent clauses where a calendar date is used as a trigger event) will have no effect if Commencement (Statutory) the Development has not occurred prior to the date as set out.
31. As soon as reasonably practicable after the the date of the approval of the exact location and extent of the Secondary School Site under paragraph 30 above the restriction entered onto the Proprietorship Register of the titles in accordance with paragraph 29.3 above shall be removed and replaced with a duplicate restriction but only in relation to the land and titles subject of the aforementioned approved location.
32. The Owners shall allow the County Council and its agents access to the Secondary School Site at all times and for all purposes, starting from the date of approval by the County Council of the Secondary School Site under paragraph 30 above, until an Adoptable Access has been provided to serve the school for all purposes and has been dedicated and adopted by the County Council. This paragraph shall not apply if and insofar as the County Council agrees in writing with the Owners' Agent that satisfactory access to the Secondary School Site for all purposes required by the County Council is already available via a public highway.
33. The Owners shall deliver a duly executed Transfer in respect of the Secondary School Site to the County Council and shall have provided an Ensured Access to the County Council before the earlier of:-
 - (a) subject to Commence (Statutory) the Development having occurred 1st September 2020, or
 - (b) the time when the 750th Dwelling to be so Occupied on the Site is Occupied.
34. The Owners shall ensure that no more than 749 Dwellings are Occupied on the Site unless a duly executed Transfer of the Secondary School Site has been delivered to the County Council for completion and an Ensured Access has been provided to the Secondary School Site.
35. The Owners shall provide an Adoptable Access to the Secondary School Site and execute an agreement and release for completion and to dedicate the same as highway under Section 38 of the Highways Act by the earlier of
 - (a) subject to Commence (Statutory) the Development having occurred 1 September 2022, or
 - (b) the time when the 1250th Dwelling to be so Occupied on the Site is Occupied.

The Owners shall provide or dedicate the Adoptable Access earlier upon reasonable request by the County Council.
36. The Owners shall ensure that no more than 1249 Dwellings shall be Occupied nor brought into residential use on the Site unless and until an Adoptable Access to the Secondary School Site has been provided and dedicated as a highway under s.38 of the Highways Act..
37. The Owners shall ensure that after the earlier of the date on which 649 Dwellings have been Occupied on the Site, or subject to Commencement (Statutory) of the Development having occurred, 1 September 2019, no more Dwellings shall be Occupied nor brought into

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residential use on the Site unless a Bond has been provided to the value of Stage One Secondary Contribution 1 plus Stage One Secondary Contribution 2.

38. The Owners shall ensure that after the earlier of the date on which 749 Dwellings have been Occupied on the Site, or or subject to Commencement (Statutory) of the Development having occurred, 1 January 2020, no more Dwellings shall be Occupied nor brought into residential use unless:
- (a) a Bond has been provided to the value of Stage One Secondary Contribution 3 plus Stage One Secondary Contribution 4, and
 - (b) Stage One Secondary Contribution 1 and Stage One Secondary Contribution 2 has been paid to the County Council.
39. The Owners shall ensure that after 3399 Dwellings have been Occupied on the Site, no more Dwellings shall be Occupied nor brought into residential use on the Site unless a Bond has been provided to the County Council to the value of Stage Two Secondary Contribution 1
40. The Owners shall ensure that after 3499 Dwellings have been Occupied on the Site, no more Dwellings shall be Occupied nor brought into residential use on the Site unless
- (a) a Bond has been provided to the County Council to the value of Stage Two Secondary Contribution 2 plus Stage Two Secondary Contribution 3 plus Stage Two Secondary Contribution 4; and
 - (b) Stage Two Secondary Contribution 1 has been paid to the County Council.
41. The Paying Owners shall:
- (a) pay Stage One Secondary Contribution 1 to the County Council on or before (i) the date when 749 Dwellings on the Site have been Occupied or (ii) the subject to Commencement (Statutory) of the Development having occurred 1st January 2020, whichever is the earliest date.
 - (b) pay Stage One Secondary Contribution 2 to the County Council 6 months after the falling due of Stage One Secondary Contribution 1.
 - (c) pay Stage One Secondary Contribution 3 to the County Council 12 months after the falling due of Stage One Secondary Contribution 1
 - (d) pay Stage One Secondary Contribution 4 to the County Council 39 months after the falling due of Stage One Secondary Contribution 1
 - (e) pay Stage Two Secondary Contribution 1 to the County Council on the date when 3499 Dwellings have been occupied on the Site.
 - (f) pay Stage Two Secondary Contribution 2 to the County Council on the date 12 months after the falling due of Stage Two Secondary Contribution 1
 - (g) pay Stage Two Secondary Contribution 3 to the County Council on the date 36 months after the falling due of Stage Two Secondary Contribution 1
 - (h) pay Stage Two Secondary Contribution 4 to the County Council on the date 76 months after the falling due of Stage Two Secondary Contribution 1

Part 6 – The Delivery of Bonds

42. The Paying Owners shall:

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- (a) Provide a Bond to the value of Stage One Secondary Contribution 1 plus Stage One Secondary Contribution 2 by the date on which 649 Dwellings have been Occupied on the Site or subject to Commence (Statutory) the Development having occurred 1 September 2019, whichever is the earlier date;
- (b) Provide a Bond to the value of Stage One Secondary Contribution 3 plus Stage One Secondary Contribution 4 by the date on which 749 Dwellings have been Occupied on the Site or subject to Commence (Statutory) the Development having occurred 1 January 2020, whichever is the earlier date;
- (c) Provide a Bond to the value of Stage Two Secondary Contribution 1 by the date when 3399 Dwellings have been Occupied on the Site, and
- (d) Provide a Bond to the value of Stage Two Secondary Contribution 2 plus Stage Two Secondary Contribution 3 plus Stage Two Secondary Contribution 4 by the date when 3499 Dwellings have been Occupied on the Site.

Part 7: Principles applying in respect of Transfers, Occupation and procedure for Provision of Bonds

- 43. For the purpose of this Schedule 15, the following principles apply:
 - 43.1 A requirement to allow access to the County Council to any site designated for construction of a school imports a negative obligation not to do anything on the Site or use it for any purpose that would interfere with the County Council's right of access under this Deed.
 - 43.2 A requirement to execute a Transfer (or not to Occupy Dwellings unless a Transfer has been executed) shall not be discharged unless the requirements of Schedule 15A have been complied with at the time of the Transfer
- 44. The following procedure must be followed in order to discharge the obligations in this Schedule to Provide a Bond, as well as to discharge the obligations not to Occupy Dwellings unless a Bond has been Provided:
 - 44.1 A Separate Bond must be entered into in respect of each numbered contribution that is secured by a Bond.
 - 44.2 The Bonds may be from the same or a different Issuer to each other, but any Issuer must be first approved in writing by the County Council acting reasonably.
 - 44.3 Each Bond must be in the form set out at Schedule 15B in order for the obligations in this Schedule to be discharged, and must be identified with a unique reference number.
 - 44.4 For each proposed Bond, the spaces in the form at Schedule 15B must be completed so as to faithfully reflect the details of the Issuer, the quantum of the contribution in question (as provided for in this Deed), the Relevant Index and the date when the contribution falls due (as provided for in this Deed).
 - 44.5 The Bond shall take the form of a deed executed by the Issuer and sent to the County Council to check that the form has been properly completed. The County Council shall execute the Deed within seven working days after receipt of the same by the Issuer provided that all the requisite checks have been completed to the satisfaction of the County Council acting reasonably.
 - 44.6 The Bond shall not be deemed Provided for the purpose of this Deed until the County Council has itself executed the deed.

PART 7 – COUNTY COUNCIL COVENANTS

The County Council covenants with the Owners as follows:

- 45. The County Council shall if requested execute a Deed of Covenant in the precise form

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contained in Schedule 15C in respect of each Bond, provided that the Issuer of the corresponding Bond has duly executed the Deed of Covenant and has correctly filled out the reference number of the Bond in question.

46. The Education Contributions shall not be expended by the County Council other than for Education Purposes for the benefit of the Development, subject to the County Council being in receipt of all necessary land interests and all Education Contributions for each relevant school under this Deed. This clause shall not prevent expenditure on administration reasonably incidental or ancillary to the design, construction or fitting-out of the schools, including procurement or legal work
47. To build or procure the construction of each of the schools as identified in this Deed subject to the County Council being in receipt of all necessary land interests and all Education Contributions for each relevant school.
48. Prior to the later of
 - 48.1 ten years from the date of receipt of the final instalment in respect of a School and
 - 48.2 one year following practical completion of a Schoolthe Owners' Agent or the person from whom any contribution was received may apply to the County Council with undertakings for the County Council's costs in establishing total expenditure of the contribution in question. Thereafter, the Owners' Agent or the person from whom the contribution was received may request that the County Council provide an account of the expenditure of the money.
49. In the event that a surplus exists which has neither been expended for Educational Purposes nor contractually committed nor allocated for Educational Purposes, the County Council shall reimburse the balance to the persons from whom the contribution was received or if the person who paid the contribution in question was the Issuer of a Bond to the person who arranged for the provision of that Bond following the expiry of 10 years from the date of receipt of the final instalment in respect of each school.

~~Schedule 15A (TC "Schedule 15A" V.C.11 "1")~~

~~KCC General Site Transfer Requirements (TC "KCC General Site Transfer Requirements" V.C.11 "2")~~

1. The Owner must have provided, prior to executing a Transfer, a formal site investigation report by a competent registered expert confirming and evidencing that the land prior to transfer is free from the following:
 - contamination (including radiation),
 - protected species
 - ordnance
 - rubbish (including broken glass)
 - any adverse ground and soil conditions
 - occupation
2. The Owners shall have given the County Council access by licence prior to the Transfer for the purpose of surveying and carrying out technical investigations.
3. It shall be demonstrated prior to Transfer that the site and any associated areas such as playing fields are fit for purpose, above flood plain level, adequately drained and close to public transport.
4. The site is to be provided to the County Council's level. If works are required to do this, then they shall be undertaken by the Owner at the Owner's cost to an agreed specification and form of works.
5. The site shall have been clearly pegged out on Site to the satisfaction of the delegated representative of the County Council's Head of Property, and fenced using GIS co-ordinates, prior to completion of the Transfer.
6. The Transfer shall convey an Unencumbered freehold with full title guarantee and vacant possession with no covenants that are in the reasonable opinion of the County Council, onerous having regard to the intended educational use of the site.
7. Prior to site transfer, the Owner is to provide, at their own cost and subject to the County Council's approval, suitable free and uninterrupted construction access to a suitable location on the site boundary. Haul roads should be constructed, at no cost to the County Council, and maintained to a standard capable of accommodating heavy goods vehicles and other construction traffic.
8. Prior to the site transfer, the Owner shall have provided, at their own cost and subject to County Council approval adopted services and utilities to an agreed location(s) on the site boundary of sufficient capacity and depth to accommodate the maximum potential requirement without mechanical aid upon transfer. The utilities must include fresh water, foul, surface water, gas, electricity and telecommunications. Necessary statutory undertakers' plant (such as electricity sub-stations or transfer stations) shall be located outside of the site boundary and the County Council shall not be liable for any costs (including legal costs) associated with the installation and commissioning of such plant.
9. The Owners shall in the Transfer provide the County Council with full surface water drainage rights to allow discharge of all surface water from the school site into the Owners' infrastructure without the requirement for storage tanks.
10. The Owners must have agreed to provide temporary electricity and water supplies to the site from the start of construction if formal permanent utilities are not yet present.
11. Prior to the use of the site for its intended purpose (i.e. a school), an adopted highway (or highway capable of being adopted), which is suitable for the intended use of the site shall have been provided up to a suitable point on the site boundary together with a suitable

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alternative vehicular access for deliveries etc., if required. The highway and any alternative access shall have been first approved in writing by the County Council.

12. No mobile phone masts, overhead cables etc shall run within 250m of the school site and where possible the Owners shall have imposed a covenant that none will be erected within this distance of any site boundary.
13. The Owners shall have ensured that the County Council, its agents and contractors have rights to enter so much of the adjoining land within the ownership of the Owners as is reasonably necessary to carry out construction works on the site. The County Council is to be responsible for making good any disturbance caused to the reasonable satisfaction of the adjoining Owners in the exercise of these rights.
14. The Owners shall have paid the County Council's legal costs and surveyor's fees together with administrative costs incurred during negotiations and in completing the Section 106 Agreement, taking transfer of the land including Land Registry costs, the granting of any easements/licences, or any other documentation and any Project Management agreements.
15. A plan of the site to a scale of 1:1250 must have been supplied prior to transfer showing site levels, access, boundaries and details of any adjoining development. The plan is to have been provided in a suitable electronic format together with paper copies. GPS Coordinates are to be marked on the plan.
16. Prior to Transfer, the County Council must be satisfied that adjoining uses should not cause interference, conflict or be inappropriate in any way to the use of the site i.e. the curriculum delivery for schools. This also includes adverse conditions disruption and inconvenience by noise, dust, fumes, traffic circulation, artificial lighting etc.

Schedule 15B

Deed securing an On-Demand Bond to pay the County Council

Executed as a deed on this Day of..... 20.....

BY THIS BOND

Reference Number:.....

We, [.....]

whose registered office is situated at

("the Issuer")

are bound to

THE KENT COUNTY COUNCIL of County Hall Maidstone Kent ME14 1XQ ("the County Council")

as set out in this Deed.

WHEREAS

- 1 The Owners of land at Chilmington Green, Ashford Road, Great Chart, Kent ('the Site') have planning permission issued by Ashford Borough Council as local planning authority pursuant to application number 12/00400/AS to develop the Site for a mixed-use development including up to 5,750 dwellings;
2. the Owners of the Site are bound by an agreement under Section 106 of the Town and Country Planning Act 1990 ('the Section 106 Agreement') not to cause or permit more than a specified number of occupied dwellings across the Site to exceed a specified number unless and until index-linked monetary payments have been made to the County Council;
3. these index-linked monetary payments are required to be made as contributions towards funding expenditure by the County Council on provision of new schools;

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4. the index-linked monetary payments include in particular the following contribution:

[NAME OF CONTRIBUTION AS SPECIFIED IN THE SECTION 106 AGREEMENT]

(‘the Contribution’ or **C**)

comprising the sum of:

- (i) £ [SUM IN FIGURES AND IN WORDS]
(‘the Un-Indexed Figure’ or **F**)

plus

- (ii) an indexation payment (‘the Indexation Payment’ or **I**)

calculated by multiplying the Un-Indexed Figure by

p

100

where **p** is

the percentage change in the [NAME OF RELEVANT INDEX]
(‘the Index’)

between its value on

[INSERT DATE OF PUBLICATION] 2014

(‘the Base Index Value’)

and its latest published value on the date

[when X dwellings on the Site have been Occupied]

[or] [[day] [month] [year]] [whichever is the earlier]],

rounded up or down to 2 decimal places.

(‘the Final Index Value’);

For the avoidance of doubt in algebraic notation:

$$C = F + I$$

$$\text{and } I = (F \times (p/100))$$

5. the County Council requires the Issuer of this Bond to bind itself as a principal unconditionally to make the payment(s) specified in this Deed immediately and in full, if so demanded, in order to secure that the County Council can construct and provide the relevant school or schools as contemplated by the Section 106 Agreement;
6. this Deed comprises an on-demand Bond comprising the recitals to this Deed and Clauses 1 to 8 inclusive;
7. this Bond is an ‘on-demand’ bond and it is not guaranteeing performance of any other party’s obligations to the County Council;

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8. the Issuer accordingly agrees that its liability to pay the County Council on demand under this Bond is assumed as a principal, independently and without regard to whether any other party is also liable to make the monetary payments in question, and without proof of default by any other party;
9. the Issuer further agrees that the Section 106 Agreement does not form part of this Bond, which contains freestanding obligations and is not to be construed by reference to the Section 106 Agreement;
10. the Issuer is aware that the County Council will shortly execute a separate deed of covenant with the Issuer that makes reference to this Bond ('the County Council's Covenants'), but it is agreed that the County Council's Covenants shall not form part of this Bond, which contains freestanding obligations and is to be construed independently and without reference to the County Council's Covenants; and
- 11 the Issuer and the County Council agree that this Deed comprises the entire agreement between the parties for the purpose of this Bond to the exclusion of any representations or separate agreements made by either party;

NOW THIS DEED WITNESSES as follows:

Commencement and Expiry of the Bond

- 1 This Bond has been executed by the Issuer and then delivered to the County Council for sealing, and is effective immediately from the date of sealing by the County Council. It shall expire at 24.00hrs on [DATE], unless terminated sooner by the County Council giving notice in writing to the Issuer. Upon expiry, this Bond shall, without prejudice to any accrued liability to pay or payments previously made, become null and void, such that no Demand under clause 2 shall be effective if received after expiry.

The Issuer's promise to pay

2. The Issuer irrevocably and unconditionally promises to the County Council, as primary obligor, to immediately pay to the County Council upon written Demand signed on behalf of the County Council and received at its registered address before the date of expiry of this Bond, any amount or amounts demanded not exceeding, in aggregate, the total value of the Contribution as defined at recital 4 above.

Schedule 15B

3. A Demand shall constitute conclusive proof for the purpose of clause 2 above that the quantum demanded is due to the County Council under this Bond.
4. For the avoidance of doubt, Clause 2 above shall allow the County Council to make more than one Demand, and to:
 - (a) require in a Demand immediate payment of the Un-Indexed Figure at any time in advance of the quantum of the Indexation Payment crystallising (i.e. when the Final Index Value has not been published); and
 - (b) require in a Demand immediate payment of an advance on the Indexation Payment equal to
$$(q/100) \times F$$
where
 F is the Un-Indexed Figure, and
 q is any positive percentage change in the Index (rounded up or down to 2 decimal places) between the Base Index Value and the latest published value immediately preceding the date of the instant Demand ('the Demand Index Value') (or, if there has been a previous Demand for such an advance on the Indexation Payment, the Demand Index Value quoted in the previous Demand), it being assumed for the purpose of clause 2 above that p will not be less than the value of q .
5. Payments shall be deemed not to have been made for the purpose of clause 2 above unless the amounts demanded have been received in cleared funds by the County Council in the following bank account:

National Westminster Bank Plc
Maidstone Branch
Account Number 001 00013
Sort Code: 60-60-08

or such other bank account as the County Council shall notify in writing at the time when it makes the Demand.

Rights of third parties, assignment or transfer

6. This Bond is personal to the County Council and is not transferable or assignable, except that if the County Council should be dissolved and/or its functions as education authority transferred to a successor body by or under any enactment, the rights of the County Council under this Bond may be transferred or assigned to its successor body.
7. Save as set out in Clause 6 above, this Deed is not intended to confer rights on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999.

Governing law and jurisdiction

8. This Deed and any disputes or claims relating to it shall be governed by and determined in accordance with the law of England for all purposes. The courts of England shall have exclusive jurisdiction to try any claim arising out of or in connection with this Deed, its subject-matter or formation (including any non-contractual claims)

IN WITNESS WHEREOF, we being duly authorised by the Issuer for the purpose have executed and delivered this Deed this.. . . .day of the month of in the year 20

[THE COMMON SEAL of.....]

was hereunto affixed in the presence of:-

Director:

Director/Secretary:

PRINT NAME:

Signature:

WITNESS NAME:

Signature:

[SEAL]

AND we the County Council have caused to be affixed our [Common Seal] this
.day of the month of in the year 20

in the presence of:

Schedule 15B

NAME.....

Signature:

NAME.....

Signature

[SEAL]

**Schedule 15C
DEED OF COVENANT**

Executed as a deed on this day of..... 20.....

BETWEEN:

THE KENT COUNTY COUNCIL of County Hall Maidstone Kent ME14 1XQ (**"the County Council"**)

AND

[.....]

whose registered office is situated at

(**"the Issuer"**)

WHEREAS:

- A. The Issuer has executed and delivered an on-demand Bond to the Council with reference number [.....] (**"the Bond"**),
in consideration for which the County Council has made promises that are fully and comprehensively evidenced in this Deed;
- B. The parties hereto agree that this Deed comprises the entire agreement between the parties to the exclusion of any other representations or promises whatsoever;
- C. The parties hereto agree that this Deed falls to be interpreted in the light of the Bond, and that terms used in the Bond shall have the same meaning for the purpose of this Deed as they do in the Bond;
- D. It is agreed that references below to clause numbers are to the corresponding clauses in this Deed of Covenant unless otherwise stated;

NOW THIS DEED WITNESSES as follows:

County Council's covenants in respect of its enforcement of the Bond

Schedule 15C

1. Upon application in writing by the Issuer, where any sum in respect of the Indexation Payment has been demanded under the Bond, the County Council shall if it has not already provided such information confirm in writing within 7 calendar days:
 - (a) the values of *p* or *q*, as the case may be, used to draw up the Demand,
 - (b) the Base Index Value upon which the sum demanded was calculated,
 - (c) the Demand Index Value upon which the sum demanded was calculated; and where relevant
 - (d) the immediately previous Demand Index Value quoted in the previous Demand.
2. If the County Council has received in cleared funds one or more payments towards the Contribution from any person other than the Issuer (which shall only be deemed to be made for that purpose if the paying party has so notified the County Council in writing) ('Relevant Payments'), then the County Council agrees that the maximum liability of the Issuer enforceable under the Bond shall forthwith be automatically reduced to the difference between the Contribution and the sum of any such Relevant Payments ('the Maximum Liability').
3. Where clause 2 above applies:
 - (a) the County Council shall not thereafter present or enforce any Demand so as to require the Issuer to pay it more than the Maximum Liability from time to time applying;
 - (b) the County Council shall notify to the Issuer receipt of any Relevant Payments, and the amounts of the same, in writing within 14 calendar days from receipt;
 - (c) at any time after a payment by the Issuer pursuant to a Demand and before the date falling exactly 1 (one) calendar year on from the date when the Final Index Value has been published, if it transpires that the aggregate amount received by the County Council from the Issuer under clause 2 of the Bond exceeds the Maximum Liability then:
 - (i) the Issuer may submit a written claim for reimbursement to the County Council, showing its calculations in full including any interest claimed under clause 6 below and specifying a bank account for payment, and
 - (ii) the County Council shall reimburse the difference between the amount paid to it by the Issuer and the amount of the Maximum Liability within 14 calendar days of receipt of the written claim, plus any interest calculated in accordance with clause 6 below, if such has been claimed.
4. If a Demand is presented for the purpose of the Bond in breach of clause 3(a), it is agreed that the Issuer remains bound to make the payment immediately without questioning its liability to pay, and its exclusive remedy is to thereafter submit a written claim for reimbursement pursuant to clause 3(c)(i) and then if necessary to bring proceedings for breach of clause 3(c)(ii).

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5. Once the Final Index Value has been published, then at any time before the date falling exactly 1 (one) calendar year on from that date, if the County Council has received in cleared funds one or more payments in respect of the Contribution from the Issuer, but owing to any deflation in the Index the aggregate sums received from the Issuer exceeded the Contribution (or, if any Relevant Payments have been received, the Maximum Liability) from the date of publication of the Final Index Value, then:
- (a) The Issuer may submit a written claim for reimbursement to the County Council, showing its calculations in full including any interest claimed under clause 6 below and specifying a bank account for payment, and
 - (b) the County Council shall reimburse any difference between the net amount paid to it by the Issuer under the Bond as at the date of publication of the Final Index Value and the amount of the Contribution (or Maximum Liability, if clause 2 above applies), plus any interest calculated in accordance with clause 6 below, within 14 calendar days.

Interest

6. In the event of reimbursements due
- (a) under clause 3(c), the County Council shall pay simple interest accruing daily at an annualised rate of the Bank of England base rate then pertaining plus 1%:
 - (i) on amounts properly demanded at the time of the relevant Demand but subsequently matched by Relevant Payments, from the date 28 days after those Relevant Payments were made down to the date of reimbursement; and
 - (ii) where amounts were demanded subsequent to Relevant Payments so as to require the Issuer to pay an aggregate amount exceeding the Maximum Liability at the time of such Demand, on the excess net amount paid by the Issuer above the Maximum Liability from time to time applying, accruing from the date of payment on the Demand breaching clause 3(a) until the date of reimbursement.
 - (b) under clause 5(b), the County Council shall pay simple interest on the sum owed to the Issuer accruing daily from the date of publication of the Final Index Value until the date of reimbursement, at an annualised rate of the Bank of England base rate then pertaining plus 1%.

Commencement and termination

7. This Deed commences at the date on which it is executed by both parties, but clauses 1 to 6 inclusive are conditional upon, and shall be of no effect until, due execution of the Bond by both the Issuer and the County Council. No claim may be made by the Issuer for breach of this Deed after expiry of the time limit set out in clauses 3(c) and 5 above.

Schedule 15C

Rights of third parties, assignment or transfer

8. The County Council's Covenants at clauses 5 to 8 inclusive are personal to the Issuer and are not transferable or assignable. This Deed is not intended to confer rights on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999.

Governing law and jurisdiction

9. This Deed and any disputes or claims relating to it shall be governed by and determined in accordance with the law of England for all purposes. The courts of England shall have exclusive jurisdiction to try any claim arising out of or in connection with this Deed, its subject-matter or formation (including any non-contractual claims).

IN WITNESS WHEREOF, we being duly authorised by the Issuer for the purpose have executed and delivered this Deed this.....day of the month of in the year 20

THE COMMON SEAL of
was hereunto affixed in the
presence of:-

Director

Director/Secretary

AND the County Council have duly affixed

THE COMMON SEAL of the County Council
in the
presence of:-

Name:

Signature:

Name:

Signature

[SEAL]

SCHEDULE 16
Other KCC Services

OWNERS' COVENANTS

Part 1 – Library Services Contribution

1. The Owners must ensure that no more Dwellings shall be Occupied nor brought into residential use on the Site:
 - 1.1 after
 - 1.1.1 2000 Dwellings have been Occupied on the Site or, if earlier,
 - 1.1.2 the 10th anniversary of Commencement of Development,unless and until Library Services Contribution 1 has been paid to the County Council;
 - 1.2 after
 - 1.2.1 3500 Dwellings have been Occupied on the Site or, if earlier,
 - 1.2.2 the 17th anniversary of Commencement of the Development;unless and until Library Services Contribution 2 has been paid to the County Council;
 - 1.3 after
 - 1.3.1 5,000 Dwellings have been Occupied on the Site or, if earlier,
 - 1.3.2 the 20th anniversary of Commencement of the Development,unless and until Library Services Contribution 3 has been paid to the County Council;
 - 1.4 after
 - 1.4.1 5,500 Dwellings have been Occupied on the Site , or if earlier,
 - 1.4.2 the 25th anniversary of Commencement of the Development,unless and until Library Services Contribution 4 has been paid to the County Council.
2. The Paying Owners shall:
 - 2.1 pay Library Services Contribution 1 to the County Council by the earlier of (a) the date when 2000 Dwellings have been Occupied on the Site for the or (b) the 10th anniversary of Commencement of Development;
 - 2.2 pay Library Services Contribution 2 to the County Council by the earlier of (a) the date when 3500 Dwellings have been Occupied on the Site or (b) the 17th

Schedule 16

anniversary of Commencement of Development;

- 2.3 pay Library Services Contribution 3 to the County Council by the earlier of (a) the date when 5000 Dwellings have been Occupied on the Site or (b) the 20th anniversary of Commencement of Development; and
- 2.4 pay Library Services Contribution 4 to the County Council by the earlier of (a) the date when 5500 Dwellings have been Occupied on the Site or (b) the 25th anniversary of Commencement of Development.

Part 2 – Youth Services Contribution

- 3. The Owners must ensure that no more Dwellings shall be Occupied nor brought into residential use on the Site:
 - 3.1 after
 - 3.1.1 499 Dwellings have been Occupied on the Site or if earlier,
 - 3.1.2 the 4th anniversary of Commencement of Development.unless and until Youth Services Contribution 1 has been paid to the County Council;
 - 3.2 after
 - 3.2.1 1099 Dwellings have been Occupied on the Site or, if earlier,
 - 3.2.2 the 6th anniversary of the Commencement of Development,unless and until Youth Services Contribution 2 has been paid to the County Council;
 - 3.3 after
 - 3.3.1 1799 Dwellings have been Occupied on the Site or, if earlier,
 - 3.3.2 the 10th anniversary of Commencement of the Development,unless and until Youth Services Contribution 3 has been paid to the County Council.
- 4. The Paying Owners shall:
 - 4.1 Pay Youth Services Contribution 1 to the County Council by the earlier of (a) the date when 500 Dwellings have been Occupied on the Site or (b) the 4th anniversary of Commencement of Development;
 - 4.2 Pay Youth Services Contribution 2 to the County Council by the earlier of (a) the date when 1100 Dwellings have been Occupied on the Site, or (b) the 6th anniversary of Commencement of Development; and
 - 4.3 Pay Youth Services Contribution 3 to the County Council by the earlier of (a) the date when 1800 Dwellings have been Occupied on the Site, or (b) the 10th anniversary of Commencement of Development.

Part 3 – Community Learning Contribution

- 5. The Owners must ensure that no more Dwellings shall be Occupied nor brought into residential use on the Site:
 - 5.1 after
 - 5.1.1 1499 Dwellings have been Occupied on the Site or if earlier,
 - 5.1.2 the 8th anniversary of Commencement of Development.unless and until Community Learning Contribution 1 has been paid to the County Council;
 - 5.2 after
 - 5.2.1 2999 Dwellings have been Occupied on the Site or, if earlier,
 - 5.2.2 the 15th anniversary of the Commencement of Development,

unless and until Community Learning Contribution 2 has been paid to the County Council;

6. The Paying Owners shall:

- 6.1 pay Community Learning Contribution 1 to the County Council by the earlier of (a) the date when 1500 Dwellings have been Occupied on the Site, or (b) the 8th anniversary of Commencement of Development; and
- 6.2 pay Community Learning Contribution 2 to the County Council before the earlier of (a) the date when 3000 Dwellings have been Occupied on the Site , or (b) the 15th anniversary of Commencement of Development.

Part 4 – Family Social Care Contribution

7 The Owners must ensure that no more Dwellings shall be Occupied nor brought into residential use on the Site:

7.1 after

- 7.1.1 1799 Dwellings have been Occupied on the Site, or, if earlier,
 - 7.1.2 the 10th anniversary of Commencement of Development.
- unless and until Family Social Care Contribution 1 has been paid to the County Council;

7.2 after

- 7.2.1 3049 Dwellings have been Occupied on the Site, or, if earlier,
 - 7.2.2 the 15th anniversary of the Commencement of Development,
- unless and until Family Social Care Contribution 2 has been paid to the County Council;

7.3 after

- 7.3.1 499 Dwellings have been Occupied on the Site, or if earlier,
 - 7.3.2 the 4th anniversary of Commencement of the Development,
- unless and until the Telecare Contribution has been paid to the County Council.

8. The Paying Owners shall:

- 8.1 Pay Family Social Care Contribution 1 to the County Council by the earlier of (a) the date when 1800 Dwellings have been Occupied on the Site , or(b) the 10th anniversary of Commencement of Development;
- 8.2 Pay Family Social Care Contribution 2 to the County Council by the earlier of (a) the date when 3050 Dwellings have been Occupied on the Site, or (b) the 15th anniversary of Commencement of Development; and
- 8.3 Pay the Telecare Contribution to the County Council by the earlier of (a) the date when 500 Dwellings have been Occupied on the Site, or (b) the 4th anniversary of Commencement of Development.

COUNTY COUNCIL COVENANTS

- 9. The County Council shall not use the Contributions paid under this Schedule and any interest accrued on them for any purpose other than the specific purpose for which

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they were paid.

10. At the expiration of 10 years from the date on which any Contribution was received in accordance with the provisions of this Deed, the County Council shall, if so requested in writing by the person who paid the Contribution, repay any surplus balance left over from that Contribution (including the accrued interest on it, if any) which has not been expended on, contractually committed to or allocated for its purpose.

SCHEDULE 17

Ecology

1. The Owners covenant with the Council as follows:

- 1 1** Not to Occupy the number of Dwellings specified (if any) in any mitigation and enhancement strategy approved pursuant to conditions 79, 80, 81, 82, 83, 84, 85 of the Planning Permission, any ecological mitigation strategy approved pursuant to condition 78 of the Planning Permission or any site wide Ecological Enhancement and Mitigation Strategy approved pursuant to condition 76 of the Planning Permission unless:-

 - 1 1.1** the corresponding property has been transferred to the CMO in a state that is laid out in accordance with the details and plans approved by the Council as part of the reserved matters approval relating to the corresponding property; and
 - 1 1.2** at nil consideration; and
 - 1 1.3** with payment to the CMO of a sum equivalent to any SDLT or other tax payable by the CMO (if any) as a result of registering the transfer at HM Land Registry; and
 - 1 1.4** together with any documentation that may be necessary for the property to be registered at HM Land Registry
 - 1 1.5** together with the health and safety file, any operating and maintenance manuals and maintenance schedules and all guarantees, warranties (including any collateral warranties which the CMO may reasonably require) and as built drawings.
- 1.2** To repair within 3 months of being notified by the CMO (unless the CMO agrees otherwise) any Defects (including of a cosmetic nature) which occur within 12 months of the corresponding property being transferred to the CMO and any Defects (including of a cosmetic nature) that occur prior to the corresponding property being transferred to the CMO that do not prevent its occupation and/or use by the CMO and/or the public (as appropriate) for the purposes for which the corresponding is intended to fulfil PROVIDED ALWAYS THAT

 - 1.2.1** where the remedy of the defects relates to planting and this can only be carried out during a particular planting season then, if later, the repair shall be carried out by the end of the next available planting season; and
 - 1.2.2** in the event of a dispute as to the extent or existence or otherwise of a Defect or the nature and extent of the works required to remedy the same, if later, the repairs shall be carried out within 1 month of the determination of the said dispute save where paragraph 1.3.1 applies
- 1.3** To make available the corresponding land for the purposes of translocating species or for any other purpose identified by any mitigation and enhancement strategy approved pursuant to conditions 79, 80, 81, 82, 83, 84, 85 of the Planning Permission, any ecological mitigation strategy approved pursuant to condition 78 of the Planning Permission or any site wide Ecological Enhancement and Mitigation Strategy approved pursuant to condition 76 of the Planning Permission.

SCHEDULE 18
A28 Improvements Works

1. The Owners covenant with the Council not to Occupy nor bring into residential use any further Dwellings if a total of 400 Dwellings have been Occupied on the Site unless and until the bond required to be delivered to the County Council pursuant to the S.278 Agreement has been delivered to the County Council in the form required by the S.278 Agreement.

2. Hodson Chilmington Green Developments Hodson CG One and Hodson CG Two (here meaning Hodson Developments (Ashford) Limited Chilmington Green Developments Limited Hodson (CG One) Limited and (Hodson CG Two) Limited and not persons deriving title to the Site under or through them) and the County Council covenant with the Council not to vary the terms conditions or obligations of the S.278 Agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed but such consent shall not be construed as being unreasonably withheld or delayed for the purposes of this clause if the Council withhold such approval on the grounds that the proposed variation to the S.278 Agreement would result in i) the nature of works detailed by the S.278 Agreement being changed and/or ii) a significant reduction in the creation of highways capacity that would have otherwise have been created but for the proposed variation to the S.278 Agreement and/or iii) a significant delay in the implementation of the works detailed by the S.278 Agreement).

Schedule 18A (TC "Schedule 18A" V.C.V.11")

DATED _____ **2017**

THE KENT COUNTY COUNCIL (1)

-and-

HODSON DEVELOPMENTS (ASHFORD) LIMITED (2)

and

CHILINGMINGTON GREEN DEVELOPMENTS LIMITED (3)

and

HODSON DEVELOPMENTS (CG ONE) LIMITED (4)

and

HODSON DEVELOPMENTS (CG TWO) LIMITED (5)

**DEED
UNDER SECTION 278 HIGHWAYS ACT 1980**

**Relating to highway improvement works at A28 -
Ashford Kent**

Commercial and Environmental
Governance and Law
Kent County Council
County Hall
Maidstone
ME14 1XQ
T: 03000 415910
W: www.kent.gov.uk/Legal
Ref: LS/21/105422/450 – 17/08/2015

KENT LEGAL SERVICES

Let our knowledge help you transform people's lives



THIS DEED OF AGREEMENT is made the

day of

Two Thousand and

Seventeen.

BETWEEN

(1) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone Kent ME14 1XQ (the "**Council**"); and

(2) **HODSON DEVELOPMENTS (ASHFORD) LIMITED** (Company Registration No 07468189) whose registered office is at 55 Office Suite 9, 55 Park Lane, London, W1K 1NA ("**Hodson**") (also known as "**the First Developer**"); and

(3) **CHILINGMINGTON GREEN DEVELOPMENTS LIMITED** (Company registration number 09286703) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA (and ("**the Second Developer**"); and

(4) **HODSON DEVELOPMENTS (CG ONE) LIMITED** (Company registration number 10392676) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA ("**the Third Developer**"); and

(5) **HODSON DEVELOPMENTS (CG TWO) LIMITED** (Company registration number 10392663) whose registered office is at Office Suite 9 55 Park Lane London W1K 1NA ("**the Fourth Developer**"); and

It is hereby agreed and Declared between the Parties hereto as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions (arranged in alphabetical order and in certain instances incorporating in their definitions expressions defined elsewhere in this Clause) shall have the meanings set out below:-

"**1980 Act**" means the Highways Act 1980 (as amended)

"**1990 Act**" means the Town and Country Planning Act 1990 (as amended)

"**A28 Works**" means the strategic county highway works and being substantially in the form shown in the Jacobs scheme/Amey scheme for highway improvements on the A28 in Ashford drawing no.4300246/000/79 Rev 1 dated 26 July 2016 annexed and such other works which are necessarily ancillary thereto as may reasonably be required in relation thereto and any revisions thereof agreed in writing between the parties (but at the Council's reasonable discretion in exercise of its statutory powers under the 1980 Act);

"**Account**" means an interest bearing bank account in the name of the Council;

"**Agreed Timetable**" means the timetable agreed between the Council and SELEP for the expenditure of the LEP Funding towards the A28 Works;

"**Authorised Purposes**" means the construction of the A28 Works or the repayment by the Council for any forward funding of such works;

"**Borrowing Costs**" means the interest at the prevailing rate on the capital costs of constructing the A28 Works should the Council need to borrow money from a third party in order to forward-fund the A28 Works;

"**Commencement**" means the date upon which a material operation as defined in section 56(4) of the 1990 Act shall be carried out in respect of the Development and the terms "Commence" and "Commencement" shall be construed accordingly;

"**Construction Contract**" means the contract to be let by the Council for the construction of the A28 Works;

"Costs Overrun" means any cost item of the A28 Works which exceeds the total cost estimates contained in the Allen Dadswell Report dated July 2014 Revision A;

"Costs Overrun Notice" means a Notice served on the Developer by the Council specifying any Costs Overrun that has been reasonably and properly incurred by the Council (and which is not due to the Council's manifest negligence) on the A28 Works beyond the estimated costing of the project set out in Annex 2;

"Developer's Appointee" means the individual jointly appointed by the Developer to co-ordinate performance of their obligations;

"Development" means the development of the Development Site pursuant to the Planning Permission;

"Development Site" means land benefited by the A28 Works shown edged red on Plan 1 with land owned or controlled by BDW shown shaded blue, by Hodson shown shaded red, by Pentland shaded grey and by Jarvis shaded green;

"Dispute Resolution Procedure" means the procedure specified Schedule 2 to this Deed;

"Force Majeure Event" means fire, flood, storm, tempest, earthquake, war, terrorism, civil unrest, lock-outs, the unavailability of construction materials, rebellion, revolution, nationalisation, military or usurped power confiscation, requisition, destruction or damage to property by or under the Order of any Government or Public or Local Authority or in position of Government Sanction Embargo or similar action, law, Judgment, Order, Decree, embargo, blockade, labour dispute, boycott interruption or failure of utility services failure of transportation of any personnel equipment, machinery, supply or material required for the construction breach of contract by any contractor or sub-contractor or any other matter or cause beyond the immediate control of the Council;

"LEP Funding" means £10.2m (ten million two hundred thousand pounds) from the South East Local Enterprise Partnership;

"Notify" means a written notice from the Council to the Developer's Appointee (or the Developer) of its intention to request Tenders for performance of the A28 Works;

"Party" means any of the two parties to this agreement but not their successors in title and the expression Parties shall be construed accordingly;

"Payment Tables" means the tables setting out the money due from the Developer and which appear Annex 1 and Annex 2 to this Deed;

"Planning Permission" means the outline Planning Permission to be granted by Ashford Borough Council under reference number 12/00400/AS or any amendment thereto or substitution therefor or planning permission granted pursuant to any subsequent planning application which has the effect of varying amending duplicating or in substitution for the planning permission granted pursuant to the Planning Permission or whole or partial substitution therefor;

"Post Contract Costs" means £28,988,800 (twenty eight million nine hundred and eighty eight thousand eight hundred pounds) being the costs that are estimated to be incurred by the Council after the letting of the Construction Contract;

"Pre-Contract Costs (Advance Design Costs)" means £303,050.00 (three hundred and three thousand and fifty pounds) being the outstanding unpaid costs incurred by the Council before the Construction Contract is let;

"Programme" means in respect of the A28 Works the programme and details prepared by appropriately qualified engineers to include all designs, materials, documents, drawings, specifications, tender documents and Stage 1 and Stage 2 Safety Audit specifications together with the programme for the A28 Works incorporating a statement of the overall sequence in which the elements of the A28 Works are to be carried out together with an estimate of the amount of time to be spent by the Council in carrying out and completing the A28 Works;

"Provide a Bond" means to deliver to the Council an executed dated legal instrument from a Surety for the total amount contained in line 11 of the Developer's Payment Table 1 in Annex 2 that instrument being in the form set out at Annex 3 and to be drawn down in the manner also set out at Annex 3 as appropriate and "Provide a Bond" and all like uses of the term shall be construed accordingly and "Bond" and all like terms shall be construed accordingly also;

"SELEP" means the South East Local Enterprise Partnership;

"Surety" means such bank or other financial institution being a provider of commercial bonds as may be nominated by the Developer or any of them and approved in writing by the Council's Corporate Director of Finance and Procurement for the purpose of the Developer Providing a Bond;

- 1.2. Reference in this Deed to any clause sub-clause paragraph schedule drawing or plan without further designation shall be a reference to the clause sub-clause paragraph schedule drawing or plan of (or in the case of a drawing or plan annexed to) this Deed so numbered.
- 1.3. Reference to any statute or order shall include any statutory extension modification or re-enactment thereof and any order regulation or bye-law made thereunder.
- 1.4. Words importing the singular number only shall include the plural number and vice versa and words importing any particular gender shall include masculine feminine and neuter genders.
- 1.5. The headings in this Deed and the front cover are for convenience only and shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof

2. RECITALS

- 2.1 The First Developer Second Developer Third Developer and Fourth Developer shall hereinafter be referred to as the Developer and shall be joint and severally liable for the covenants in this Deed .
- 2.2. The Developer has applied to the Borough Council for Planning Permission to carry out the Development.
- 2.3. The Council is the highway authority under the 1980 Act for the area in which the A28 Works are to be carried out.
- 2.4. The Council has secured an Offer of LEP Funding which must be spent before 31 March 2021 and subject to the completion and observance of the terms of this Deed it can as a result build the A28 Works at nil cost.
- 2.5. The parties hereto have agreed to enter into this Deed for the purpose of securing payments by the Developer towards the cost of the A28 Works at no cost to the Council to enable the Council to carry out the A28 Works which the Council is satisfied will be of benefit to the strategic highway network and are of benefit to the public.

3. STATUTORY PROVISIONS

The several covenants given under Clause 4 and Schedule 1 are given pursuant to Section 278 of the 1980 Act by the Developer and the covenants on the part of the Developer shall be covenants to which the provisions of Section 278 of the 1980 Act shall apply as regards any expenses recoverable by the Council.

4. DEVELOPER'S COVENANTS

The Developer hereby covenants jointly and severally with the Council in the terms set out in Schedule 1 to this Deed.

5. THE COUNCIL'S COVENANTS

The Council hereby covenants with the Developer as follows:

- 5.1 That subject only to compliance by the Developer with its Covenant to Provide a Bond under paragraphs 4 and 7 of Schedule 1 to this Deed it will let a Construction Contract no later than 2020 in accordance with the Programme subject to no Force Majeure Event occurring and in the event of a Force Majeure Event occurring the Council shall on the cessation or resolution of the Force Majeure Event carry out and complete the A28 Works as expeditiously as possible thereafter and in accordance with the Programme, but with an extension commensurate to the duration of the Force Majeure Event;
- 5.2. that it will give the Developer's Appointee or the Developer not less than two (2) months prior written notice of its intention to commence the A28 Works and the season and year of its proposed start and finish dates for the A28 Works and will thereafter diligently proceed with the A28 Works provided always that should it decide to accelerate the A28 Works beyond the timescale set out in the Programme the Developer shall not be responsible for any additional contributions or any earlier payments than covenanted for in Annex 1,
- 5.3. that it will use reasonable endeavours to secure any necessary order required in connection with the carrying out of the A28 Works including any necessary authorisations or permissions or consents required in connection therewith
- 5.4. where no Construction Contract has been let or proceeded with and completed for the A28 Works within 60 months from the date of Provision of a Bond in respect of the Post Contract Costs the Bond shall be automatically discharged and certification by the Corporate Director of Finance and Procurement at the Council that nothing is owed under them shall be forthwith provided to the bondsmen and the Developer;
- 5.5. not to use or apply the Developer's contributions or any part thereof other than towards the Authorised Purposes;
- 5.6. the Council shall use its reasonable endeavours to minimise the total costs of the A28 Works and the Borrowing Costs and in particular shall investigate the availability of low-interest borrowings from the Public Works Loans Board and other available sources of funding and finance and shall not agree to any contract claims or claims for compensation under Part 1 of the Land Compensation Act 1973 in excess of £10,000 without first having consulted with and given the Developer a reasonable opportunity to comment on the amount and justification of any such claims and having taken into account the Developer's responses to any such consultation
- 5.7 The Council using its engineer's and its Corporate Director of Finance and Procurement's certificates will keep the Developer and the Developer's Appointee regularly informed as to progress and the certified cost of the A 28 Works including the Borrowing Costs and any accrued interest with a periodical written update not less than annually on the anniversary of the date of this Agreement and using an open book – accounting basis of the actual costs. of the A28 Works its actual Costs of Borrowing and all or any available sources of funding and finance for the A28 Works;
- 5.8. Following the letting of the Construction Contract the Council will issue a statement to the Developer's Appointee or the Developer confirming the award of the contract for the A28 Works to the successful contractor and confirm the amount of the contract sum;
- 5.9. The Council will review the costs of the A28 Works and the related Payment Table in consultation with the Developer on both of the occurrences referred to in Sub- Clauses 6.1 to 6.3 below
- 5.10. The Council shall not call on the Bond unless it shall first have served the Developer with 21 days prior Notice of their intention to do so
- 5.11. The Council shall in the event the sum payable in respect of the Post Contract Costs is paid within 21 days of service of the Notice not call on the Bond but in the event the sum payable in respect of the Post Contract Costs remains outstanding the Council shall call on the Bond.

6. DECLARATIONS

It is hereby agreed and declared between the Parties as follows:

- 6.1. Should it be found that on Practical Completion of the A28 Works the costs of the A28 Works including Borrowing Costs were less than those used to formulate the Payment Tables then the Council shall forthwith inform the Developer and reformulate the amounts at that time owing under this Deed using the same payment dates and giving credit to the Developer for any previous overpayments by them and accrued interest
- 6.2. Should it be found that on the date of seven years (7) from Practical Completion of the A28 Works that the actual costs of the A28 Works including Borrowing Costs were less than those used to formulate the Payment Tables then the Council shall forthwith inform the Developer and reformulate the amounts at that time owing under this Deed using the same payment dates and giving credit to the Developer for any previous overpayments by them and any accrued interest over the remainder of the repayment period.
- 6.3. Should it be found at any time post tender period that the costs of the A28 Works including the Borrowing Costs are more than those used to formulate the Payment Tables but giving credit to the Developer for any previous overpayments by them and any accrued interest then the Council may serve the Developer or the Developer's Appointee with a Costs Overrun Notice PROVIDED ALWAYS THAT the aggregate amount of all such Costs Overrun Notices shall not exceed £3,471,750 (Three Million Four Hundred and Seventy One Thousand Seven Hundred and Fifty Pounds).

7 CERTIFICATION AND ADOPTION OF THE WORKS

The Council agrees that upon practical completion of the A28 Works any land dedicated under a Section 38 Agreement shall subject to observance of all the terms of that Agreement be adopted using its powers under Section 38 of the Highways Act 1980 and shall thereafter be highway maintainable at the public expense.

8. RELEASE OF BOND

Upon receipt of any payment due under this Deed which has been secured by a Bond, the amount secured by the Bond shall be immediately and automatically reduced by a corresponding amount and the Surety shall to that extent be immediately and automatically released from its liability under this Deed and the Bond to that extent without the need for any act or Deed on the part of the relevant Developer or its Surety, and the Council shall confirm the release to the Provider of the Bond to the extent of the payment received within 21 days of receipt.

9. NOTICES

Any notice or other written communication to be served by one person upon another pursuant to the terms of this Deed shall be deemed to have been validly served if delivered by hand or sent by prepaid registered or recorded delivery post to the person to be served at its registered address herein specified or such other address as may from time to time be notified for the purpose by notice in writing and any such notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory thereof

10. INTEREST ON OVERDUE PAYMENTS

For the purposes of this Deed in the event of any delay in the making of any payment required to be made by a Developer to the Council under this Deed simple interest shall be payable thereon calculated on a daily basis at the rate of three (3) per cent per annum above the National Westminster Bank plc base lending rate from time to time in force from the due date to the date of actual payment, for which purpose a sum shall be taken as due not later than the day before the payment is due in accordance

with the payment table as set out in Annex 2 to this Deed the sum due shall bear interest from the due date until the date of payment and the Developer hereby covenants with the Council to pay any interest accrued at the same time and to the same recipient as the sum on which it has accrued is paid.

11. NO ASSIGNMENT

The Developer shall not have the right to assign or transfer the benefit of this Deed or any part thereof save to any other funder of the Developer and only with the Council's prior approval and the Council shall not be obliged to require performance of this Deed by any person other than the Developer.

12. MISCELLANEOUS PROVISIONS

- 12.1. It is not intended that any person who is not a party to this Deed shall be able to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.
- 12.2. the construction programme shall not exceed 60 months from the date on which the Developer shall have provided their Bond
- 12.3. On final completion of the A28 Works as evidenced by its Engineers Certificate of Final Completion the Council will provide evidence on an open book accounting basis of the actual costs of the A28 Works its actual Costs of Borrowing and all or any available sources of funding and finance for the A28 Works
- 12.4. Any disputes under this Agreement shall be determined in accordance with the Dispute Resolution Provisions

SCHEDULE 1

Developer's Covenants

1. The Developer hereby covenants with the Council to pay that part of the Pre-Contract Costs (Advance Design Costs) at the dates and times set out in line 1 of Payment Table 1 of Annex 1
2. The Developer hereby covenants with the Council to pay the Post-Contract Costs in the instalments and at the dates and times set out in Payment Table 1 of Annex 2.
3. The Developer hereby covenants to pay the shortfall of the costs of the A28 Works being the reduction in the amount of the LEP Funding in the event that part or all of the LEP Funding is withdrawn by SELEP for any reason including a failure to deliver the scheme in accordance with the Agreed Timetable to allow the A28 Works to be carried out at nil cost to the Council.
4. Any additional funding required to pay the shortfall of the costs of the A28 Works pursuant to clause 3 of this Schedule over and above the sums shown in Payment Table 1 in Annex 2 being the Post Contract Costs to complete the A28 Works at nil cost to the Council payable pursuant to clause 2 of this Schedule will before the Construction Contract is let be paid by the Developer to the Council and the Council shall send to the Developer a revised payment schedule in substitution of Payment Table 1 of Annex 2 in these circumstances or in the event the Council is able to increase its forward funding provide an amended Bond under clause 7 of this Schedule to reflect the increased funding and borrowing costs over and above that already set out in Payment Table 1 in Annex 2 to this Deed.
5. In the event the Council does not increase its forward funding the Developer shall pay the sums required in respect of the additional funding required over and above the sums shown in Payment Table 1 in Annex 2 pursuant to Clause 4 of this Schedule.
6. The Developer covenants to indemnify the Council against any demand from SELEP to repay any part of the LEP Funding expended by the Council prior to the Construction Contract being let in the event the LEP Funding is withdrawn or reduced for any reason including a failure to deliver the scheme in accordance with the Agreed Timetable.
7. The Developer hereby covenants with the Council to Provide a Bond for the Post Contract Costs as set out in line 11 of the Payment Table 1 of Annex 2 within six weeks of notification by the Council under Clause 5.2 of this Deed.
8. The Developer covenants upon receipt of a Costs Overrun Notice by the Council to pay the amount specified in that Notice within 3 months to a maximum cumulative total amount of £3,471,750 (Three Million Four Hundred and Seventy One Thousand Seven Hundred and Fifty Pounds).

SCHEDULE 2

Dispute Resolution Procedure

1. Wherever in this Deed the consent agreement or approval of any Party is required, it shall not be unreasonably withheld or delayed but without implying any fetter on the statutory powers and reasonable discretions of the Council as highway authority.
2. In the event of any dispute between the Parties including any dispute as to reasonableness, BUT FOR THE AVOIDANCE OF ALL DOUBT EXCLUDING any question relating to the amount including interest or the due date for payment of an amount of money covenanted by a Developer for payment of the Council under this Deed any Party may invite any other Party to resolve the dispute by mediation in such manner as the Parties may agree.
3. In the event of a dispute between the Parties including a dispute as to any test of reasonableness the Parties agree that the matter in dispute may on the application of both or all parties in dispute and following the exhaustion of all dialogue between Principals or Senior Officers of the Disputing Parties be referred to a Surveyor acting as an expert (hereinafter referred to as the "Expert") (being either a member of the Planning Division of the Royal Institution of Chartered Surveyors or a Fellow of the Institution of Civil Engineers (as appropriate) with not less than ten years relevant experience whose identity will be agreed between the Parties or in default of agreement appointed by or on behalf of the President for the time being of either the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers on the application of any Party and in the case of the Council being a disputing Party the reference to the Expert will explicitly be on terms that require the expert to have special regard inter alia to:-
 - (i) the Council's duties as a public body and as a Highway Authority under the 1980 Act; and
 - (ii) the benefit to the public of securing the Developer funding for highways improvements to the A28.
4. The procedure to be followed in any dispute resolution shall be that written submissions shall be exchanged between the parties and served upon the person appointed within 21 days of the appointment of that person with any response to be exchanged between the parties and served upon the person appointed within 14 days of the date that the first submissions were served upon the person appointed. (time in all cases being of the essence).
5. Any determination by the Expert shall as part of their appointment to be made in writing giving reasons and delivered to the Parties within 28 days of the last date for submission of responses.
6. The finding of the person appointed including any finding in respect of costs shall be final and binding upon all parties and costs shall be at the discretion of the person appointed.

Annex 1 – Pre-Contract Costs - Advance Design Costs

Payment Table 1		
	Amount	Due Date
1	£303,050.00	15 March 2017

Annex 2 – Post - Contract Costs

PAYMENT TABLE Post - Contract 278 Contributions		
PAYMENT TABLE 1 Hodson Post - Contract 278 Contributions		
Line	Column 1 Amount	Column 2 – Due Date
1	£4,754,800	31/03/2021
2	£2,868,700	31/03/2022
3	£2,868,700	31/03/2023
4	£2,868,600	31/03/2024
5	£2,868,700	31/03/2025
6	£2,868,700	31/03/2026
7	£2,868,600	31/03/2027
8	£2,868,700	31/03/2028
9	£2,330,400	31/03/2029
10	£1,822,900	31/03/2030
11	TOTAL £28,988,800	

Annex 3

**DEED SECURING AN
ON-DEMAND BOND TO PAY THE COUNTY COUNCIL**

Executed as a deed on this Day of..... 20.....

BY THIS BOND

Reference Number:.....

We, [.....]

whose registered office is situated at

("the Issuer")

are bound to

THE KENT COUNTY COUNCIL of County Hall Maidstone Kent ME14 1XQ ("the County Council")

as set out in this Deed.

WHEREAS

1. The Owners of land at Chilmington Green, Ashford Road, Great Chart, Kent ('the Site') have planning permission issued by Ashford Borough Council as local planning authority pursuant to application number 12/00400/AS to develop the Site for a mixed-use development including up to 5,750 dwellings;

2. The Developer of the Site being Hodson Developments (Ashford) Limited Chilmington Green Developments Limited Hodson Developments (CG ONE) Limited and Hodson Developments (CG Two) Limited have entered into an agreement under s.278 Highways Act 1980 dated [DATE] to secure contributions towards the cost of improvement works to the A28 which are to be carried out by the Council

3. The s.278 Agreement requires the Owner to provide an on demand bond for the full cost of the A28 Improvement Works this being the full amount of the Owner's liability under the terms of the s.278 Agreement.

4. The payments include the following payments to be made in respect of the post Contract Costs:

Post Contract Costs
comprising the sum of:

(i) £ [SUM IN FIGURES AND IN WORDS]

5. the County Council requires the Issuer of this Bond to bind itself as a principal unconditionally to make the payment(s) specified in this Deed immediately and in full, if so demanded, in order to secure that the County Council can construct and provide the relevant improvement works to the A28 as required by the Section 278 Agreement ,

6. this Deed comprises an on-demand Bond comprising the recitals to this Deed and Clauses 1 to 9 inclusive;

7. this Bond is an 'on-demand' bond and it is not guaranteeing performance of any other party's obligations to the County Council;

8. the Issuer accordingly agrees that its liability to pay the County Council on demand under this Bond is assumed as a principal, independently and without regard to whether any other party is also liable to make the monetary payments in question, and without proof of default by any other party;

9. the Issuer further agrees that the Section 106 Agreement and Section 278 Agreement does not form part of this Bond, which contains freestanding obligations and is not to be construed by reference to the Section 106 Agreement and Section 278 Agreement;

10. the Issuer and the County Council agree that this Deed comprises the entire agreement between the parties for the purpose of this Bond to the exclusion of any representations or separate agreements made by either party;

NOW THIS DEED WITNESSES as follows:

Commencement and Expiry of the Bond

1. This Bond has been executed by the Issuer and then delivered to the County Council for sealing, and is effective immediately from the date of sealing by the County Council. It shall expire at 24.00hrs on [DATE], unless terminated sooner by the County Council giving notice in writing to the Issuer. Upon expiry, this Bond shall, without prejudice to any accrued liability to pay or payments previously made, become null and void, such that no Demand under clause 2 shall be effective if received after expiry.

The Issuer's promise to pay

2. The Issuer irrevocably and unconditionally promises to the County Council, as primary obligor, to immediately pay to the County Council upon written Demand signed on behalf of the County Council and received at its registered address before the date of expiry of this Bond, any amount or amounts demanded not exceeding, in aggregate, the total value of the payments towards the A28 Improvement Works as defined at recital 4 above.

3. A Demand shall constitute conclusive proof for the purpose of clause 2 above that the quantum demanded is due to the County Council under this Bond.

4. For the avoidance of doubt, Clause 2 above shall allow the County Council to make more than one Demand, and to:

(a) require in a Demand immediate payment of the amount of the payment owing after the due date as set out in the table at Clause 4 of the recitals

5. Payments shall be deemed not to have been made for the purpose of clause 2 above unless the amounts demanded have been received in cleared funds by the County Council in the following bank account:

National Westminster Bank Plc
Maidstone Branch
Account Number: 001 00013
Sort Code: 60-60-08

or such other bank account as the County Council shall notify in writing at the time when it makes the Demand.

6. Upon receipt of any payment due under the Section 278 Agreement which is guaranteed under this Bond the amount secured under the Bond shall be automatically reduced by the corresponding amount and

the Issuer shall be released from the relevant part of the liability of the Bond without the need for any act or deed on the part of the Owner.

Rights of third parties, assignment or transfer

7 This Bond is personal to the County Council and is not transferable or assignable, except that if the County Council should be dissolved and/or its functions as highways authority transferred to a successor body by or under any enactment, the rights of the County Council under this Bond may be transferred or assigned to its successor body.

8. Save as set out in Clause 6 above, this Deed is not intended to confer rights on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999.

Governing law and jurisdiction

9. This Deed and any disputes or claims relating to it shall be governed by and determined in accordance with the law of England for all purposes. The courts of England shall have exclusive jurisdiction to try any claim arising out of or in connection with this Deed, its subject-matter or formation (including any non-contractual claims)

IN WITNESS WHEREOF, we being duly authorised by the Issuer for the purpose have executed and delivered this Deed this.....day of the month of in the year 20

THE COMMON SEAL of
was hereunto affixed in the
presence of:-

Director:

Director/Secretary:

PRINT NAME:

Signature:

WITNESS NAME:

Signature:

[SEAL]

AND we the County Council have caused to be affixed our [Common Seal] this
.....day of the month of in the year 20

in the presence of:

NAME.....
Signature:

NAME.....
Signature

[SEAL]

DEED OF COVENANT

Executed as a deed on this day of..... 20.....

BETWEEN:

THE KENT COUNTY COUNCIL of County Hall Maidstone Kent ME14 1XQ ("the County Council")

AND

[.....]

whose registered office is situated at

(“the Issuer”)

WHEREAS:

- A. The Issuer has executed and delivered an on-demand Bond to the Council with reference number [.....] (“the Bond”), in consideration for which the County Council has made promises that are fully and comprehensively evidenced in this Deed;
- B. The parties hereto agree that this Deed comprises the entire agreement between the parties to the exclusion of any other representations or promises whatsoever;
- C. The parties hereto agree that this Deed falls to be interpreted in the light of the Bond, and that terms used in the Bond shall have the same meaning for the purpose of this Deed as they do in the Bond;
- D. It is agreed that references below to clause numbers are to the corresponding clauses in this Deed of Covenant unless otherwise stated;

NOW THIS DEED WITNESSES as follows:

County Council's covenants in respect of its enforcement of the Bond

1. If the County Council has received in cleared funds one or more payments towards the Contribution from any person other than the Issuer (which shall only be deemed to be made for that purpose if the paying party has so notified the County Council in writing) (“Relevant Payments”), then the County Council agrees that the maximum liability of the Issuer enforceable under the Bond shall forthwith be automatically reduced to the difference between the Contribution and the sum of any such Relevant Payments (“the Maximum Liability”).
2. Where clause 1 above applies:
 - (a) the County Council shall not thereafter present or enforce any Demand so as to require the Issuer to pay it more than the Maximum Liability from time to time applying;
 - (b) the County Council shall notify to the Issuer receipt of any Relevant Payments, and the amounts of the same, in writing within 14 calendar days from receipt;
3. If a Demand is presented for the purpose of the Bond in breach of clause 2(a), it is agreed that the Issuer remains bound to make the payment immediately without questioning its liability to pay.

Commencement and termination

4. This Deed commences at the date on which it is executed by both parties, but clauses 1 to 3 inclusive are conditional upon, and shall be of no effect until, due execution of the Bond by both the Issuer and the County Council.

Rights of third parties, assignment or transfer

5. The County Council's Covenants at clauses 3 to 5 inclusive are personal to the Issuer and are not transferable or assignable. This Deed is not intended to confer rights on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999.

Governing law and jurisdiction

6. This Deed and any disputes or claims relating to it shall be governed by and determined in accordance with the law of England for all purposes. The courts of England shall have exclusive jurisdiction to try any claim arising out of or in connection with this Deed, its subject-matter or formation (including any non-contractual claims).

IN WITNESS WHEREOF, we being duly authorised by the Issuer for the purpose have executed and delivered this Deed this..... day of the month of in the year 20 :

THE COMMON SEAL of
was hereunto affixed in the
presence of:-

Director

Director/Secretary

[SEAL]

AND the County Council have duly affixed

THE COMMON SEAL of the County Council
in the
presence of:-

Name:

Signature:

Name:

Signature
[SEAL]

Drawdown letter

To: The Manager

Fax Number: (01622)
Direct Dial/Ext: (01622)
E-mail address: @kent.gov.uk
Ask for:
Your Ref:
Our Ref: LS/21/ /
Date:

FORM OF DEMAND

Dear Sir

BOND NO [*number of performance bond*]
DATED [*date*]
ON BEHALF OF [*name*] ("**the Developer**")

We refer to the above Bond signed by you. This is a demand as referred to in the Bond. Terms defined in the Bond shall have the same meaning in this demand.

We hereby certify that an amount equal to £[*amount of this demand in figures and words*] is due from the Developer under the Section 278 Agreement dated [*date*] and is unpaid and we are entitled to claim that amount under this Bond.

[*or*

We hereby certify that an amount equal to £[*amount of this demand in figures and words*] is due owing to the Developer being insolvent, bankrupt or in liquidation or similar situation, and we are entitled to claim that amount under this Bond.]

Therefore, we hereby demand payment from you no later than five (5) business days after receipt by you of this demand in the sum of £[*amount of this demand in figures and words*] under the Bond.

Payment should be made to the following account:-

Account Name	The Kent County Council
Account Bank	National Westminster Bank Plc Maidstone Branch PO Box 4 Maidstone Kent ME14 1XU
Sort Code	60-60-08
Account No.	00100013

This demand is governed by English Law.

Yours faithfully

Duly Authorised Signatory for and on behalf of Kent County Council

IN WITNESS WHEREOF this Deed has been duly executed as a deed and delivered on the date first before written.

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

Authorised Signatory

EXECUTED AS A DEED by affixing the
Common seal of **HODSON DEVELOPMENTS (ASHFORD) LIMITED**
in the
presence of:

Director

Director/Secretary

EXECUTED AS A DEED by affixing the
Common seal of **CHILINGMINGTON GREEN DEVELOPMENTS LIMITED**

in the
presence of:

Director

Director/Secretary

EXECUTED AS A DEED by affixing the
Common seal of **HODSON DEVELOPMENTS (CG ONE) LIMITED**

in the
presence of:

Director

Director/Secretary

EXECUTED AS A DEED by affixing the
Common seal of **HODSON DEVELOPMENTS (CG TWO) LIMITED**

**in the
presence of:**

Director

Director/Secretary

SCHEDULE 19
Off-Site Pedestrian and Cycle Links

The Owners covenant with the Council and with the County Council as follows:

- 1 The Owners must ensure that no more Dwellings shall be Occupied nor brought into residential use on the Site:
 - 1.1 after 1000 Dwellings have been Occupied on the Site, unless and until £133,000.00 (one hundred and thirty three thousand pounds) Index Linked has been paid to the County Council;
 - 1.2 after 1500 Dwellings have been Occupied on the Site, unless and until a second payment of £133,000.00 (one hundred and thirty three thousand pounds) Index Linked has been paid to the County Council;
 - 1.3 after 1999 Dwellings have been Occupied on the Site, unless and until a third payment of £133,000.00 (one hundred and thirty three thousand pounds) Index Linked has been paid to the County Council;
 - 1.4 after 3999 Dwellings have been Occupied on the Site, unless and until a fourth payment of £133,000.00 (one hundred and thirty three thousand pounds) Index Linked has been paid to the County Council.
2. The Paying Owners shall pay the total sum of £532,000.00 (five hundred and thirty two thousand pounds) Index Linked to the County Council in the following instalments:
 - 2.1 £133,000.00 (one hundred and thirty three thousand pounds) Index Linked prior to the Occupation of 1001 Dwellings;
 - 2.2 £133,000.00 (one hundred and thirty three thousand pounds) Index Linked prior to the Occupation of 1501 Dwellings;
 - 2.3 £133,000.00 (one hundred and thirty three thousand pounds) Index Linked prior to the Occupation 2000 Dwellings;
 - 2.4 £133,000.00 (one hundred and thirty three thousand pounds) Index Linked prior to the Occupation 4000 Dwellings;
- 2 The County Council covenants with the Paying Owners to spend the monies received only on constructing two footways either side of Magpie Hall Road to the east of the Site (as indicatively shown as annotated and highlighted pink together with other unrelated works on the attached drawing 131065/A/25 rev B), promotion of national cycle route 18 (including but not limited to as indicatively shown on the attached drawing 131065/A/102) and the following as indicatively shown on the attached drawing 131065/A/84: improving signage on the footpath/cycleway from the Site through Great Chart to the Matalan roundabout; surfacing, widening and fencing Greensands Way; monitoring traffic flow in Bartlets Lane and surfacing works to byway AW245 (mistakenly referred to as 'Signage of Byway' on the drawing).

SCHEDULE 20
Provision of Bus Services

1. The Owners covenant with the Council as follows:

- 1.1 Not to Occupy more than 100 Dwellings until (i) a temporary bus stop to serve the first 200 Dwellings has been provided on the Site in accordance with the reserved matters approval and such standards for adoption as the Council may have specified when the reserved matters are approved and (ii) a maintenance scheme for the bus stop has been approved in writing by the Council.
- 1.2 To construct and provide on the Site a temporary bus stop to serve the first 200 Dwellings in accordance with requirements of paragraph 1.1 of this schedule prior to the Occupation of 100 Dwellings.
- 1.3 Not to Occupy more than 100 Dwellings until a bus service has started operating between the Site and the town centre at a frequency of at least every 30 minutes and starting at a time to connect with the first train from Ashford International to St Pancras International and finishing at a time to connect with the last train from St Pancras International to Ashford International (at the time of going to tender). In the event the Owners have used a tender approved by the Council (which may include a requirement to tender for different options), but no bids are successful, the Council may consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly. Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above.
- 1.4 Not to Occupy more than 200 Dwellings until (i) the initial bus related infrastructure for Main Phase 1 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A at annex 5) has been provided on the Site in accordance with the reserved matters approval and such standards for adoption as the Council may have specified when the reserved matters are approved and (ii) a maintenance scheme for the infrastructure has been approved in writing by the Council
- 1.5 To construct and provide on the Site the initial bus related infrastructure for Main Phase 1 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) in accordance with the requirements of paragraph 1.4 of this schedule prior to the Occupation of 200 Dwellings.
- 1.6 Not to Occupy more than 1,222 Dwellings until (i) the subsequent bus priority measures and bus related infrastructure for Main Phase 1 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) have been provided on the Site in accordance with the reserved matters approval and such standards for adoption as the Council may have specified when the reserved matters are approved and (ii) a maintenance scheme for the measures and infrastructure has been approved in writing by the Council and any property so specified has been transferred at nil consideration and nil cost to the specified body
- 1.7 To construct and provide on the Site the subsequent bus priority measures and bus related infrastructure for Main Phase 1 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) prior to the Occupation of 1,222 Dwellings.
- 1.8 Not to Occupy more than 1,222 Dwellings until the frequency of the bus service between the Site and the town centre is increased to at least every 20 minutes and starting at a time to connect with the first train from Ashford International to St Pancras International and finishing at a time to connect with the last train from St Pancras International to Ashford International (at the time of going to tender). In the event the Owners have used a tender approved by

the Council (which may include a requirement to tender for different options), but no bids are successful, the Council may consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly. Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above.

- 1.9 Not to Occupy more than 2,772 Dwellings until (i) the bus priority measures and bus related infrastructure for Main Phase 2 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) have been provided on the Site in accordance with the reserved matters approval and such standards for adoption as the Council may have specified when the reserved matters are approved and (ii) a maintenance scheme for the measures and infrastructure has been approved in writing by the Council.
- 1.10 To construct and provide on the Site the bus priority measures and bus related infrastructure for Main Phase 2 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) prior to the Occupation of 2,772 Dwellings.
- 1.11 Not to Occupy more than 2,772 Dwellings until the frequency of the bus service between the Site and the town centre is increased to at least every 13-14 minutes and starting at a time to connect with the first train from Ashford International to St Pancras International and finishing at a time to connect with the last train from St Pancras International to Ashford International (at the time of going to tender). In the event the Owners have used a tender approved by the Council (which may include a requirement to tender for different options), but no bids are successful, the Council may consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly. Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above.
- 1.12 Not to Occupy more than 4,107 Dwellings until (i) the bus priority measures and bus related infrastructure for Main Phase 3 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) have been provided on the Site in accordance with the reserved matters approval and such standards for adoption as the Council may have specified when the reserved matters are approved and (ii) a maintenance scheme for the measures and infrastructure has been approved in writing by the Council
- 1.13 To construct and provide on the Site the bus priority measures and bus related infrastructure for Main Phase 3 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) prior to the Occupation of 4,107 Dwellings.
- 1.14 Not to Occupy more than 4,107 Dwellings until the frequency of the bus service between the Site and the town centre is increased to at least every 10 minutes and starting at a time to connect with the first train from Ashford International to St Pancras International and finishing at a time to connect with the last train from St Pancras International to Ashford International (at the time of going to tender). In the event the Owners have used a tender approved by the Council (which may include a requirement to tender for different options), but no bids are successful, the Council may consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly. Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above.
- 1.15 Not to Occupy more than 5,000 Dwellings until (i) the approved bus priority measures and bus related infrastructure for Main Phase 4 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) have been provided on the Site in accordance with the reserved matters approval and such standards for adoption as the Council may have specified when the reserved matters are

Schedule 20

approved and (ii) a maintenance scheme for the measures and infrastructure has been approved in writing by the Council.

- 1.16 To construct and provide on the Site the approved bus priority measures and bus related infrastructure for Main Phase 4 (to include within the adopted/adoptable highway the provision of bus clearways, shelters, bus boarders, flags, real-time information displays and any other necessary infrastructure as indicatively shown on plan 131065/A/23 rev A) prior to the Occupation of 5,000 Dwellings.
 - 1 17 Not to Occupy a Dwelling until the occupiers have been given vouchers with a face value of £450.00 (four hundred and fifty pounds) Index Linked per Dwelling for use on the bus service between the Site and the town centre.
 - 1 18 To maintain the bus priority measures and bus related infrastructure in accordance with the relevant approved maintenance scheme.
2. Provided the Council has previously approved in writing all tenders for the bus service, the covenants in paragraphs 1.3, 1.8, 1 11 and 1.14 are conditional on the Paying Owners subsidising the bus service by no more than £900,000.00 (nine hundred thousand pounds) Index Linked before occupation of more than 100 Dwellings, £800,000.00 (eight hundred thousand pounds) Index Linked before occupation of more than 1222 Dwellings, £900,000.00 (nine hundred thousand pounds) Index Linked before occupation of more than 2772 Dwellings and £400,000.00 (four hundred thousand pounds) Index Linked before occupation of more than 4107 Dwellings.

SCHEDULE 21
Off-Site Traffic Calming

1 The Owners covenant with the Council and the County Council as follows:

1.1 Not to Occupy on the Site more than the following numbers of Dwellings

1.1.1 1

1.1.2 1450

1.1.3 2650

1.1.4 4140

1.1.5 the final Dwelling

1.1.6 one further number of Dwellings as the Council or the County Council may specify to the Owners in writing

unless (i) monitoring by means of automatic traffic counts has been carried out at such locations in Great Chart (north and south of village) and on Magpie Hall Road, Long Length, Mock Lane, Tally Ho Road, Woodchurch Road, Hornash Lane, Criol Lane, Pound Lane and Coulter Road as the Council and the County Council have previously approved in writing and (ii) the monitoring data has been passed to the Council and the County Council

1.2 To ensure that no more than 999 Dwellings be Occupied nor brought into residential use on the Site unless and until the sum of £204,249.00 (two hundred and four thousand two hundred and forty nine pounds) Index Linked has been paid to the County Council for Off-site Traffic Calming

1.3 To ensure that no more than 1999 Dwellings be Occupied nor brought into residential use on the Site unless and until a further sum of £204,249.00 (two hundred and four thousand two hundred and forty nine pounds) Index Linked has been paid to the County Council for Off-site Traffic Calming

2. The Paying Owners shall pay the total sum of £408,498.00 (four hundred and eight thousand four hundred and ninety eight pounds) Index Linked to the County Council for Off-site Traffic Calming in the following instalments:

2.1 £204,249.00 (two hundred and four thousand two hundred and forty nine pounds) Index Linked prior to the Occupation of the 1,000th Dwelling on the Site.

2.2 £204,249.00 (two hundred and four thousand two hundred and forty nine pounds) Index Linked prior to the Occupation of the 2,000th Dwelling on the Site.

SCHEDULE 22

RIF

- 1 The Owners covenant with the Council as follows:
 - 1.1 Not to Occupy more than 3,999 Dwellings nor to allow the same until £1,405,647.00 (one million four hundred and five thousand six hundred and forty seven pounds) has been paid to the Council
 - 1.2 Not to Occupy more than 4,599 Dwellings nor to allow the same until £1,405,647.00 (one million four hundred and five thousand six hundred and forty seven pounds) has been paid to the Council
 - 1.3 Not to Occupy more than 5,199 Dwellings nor to allow the same until £1,405,647.00 (one million four hundred and five thousand six hundred and forty seven pounds) has been paid to the Council
 - 1.4 Not to Occupy more than 5,599 Dwellings nor to allow the same until £1,405,648.00 (one million four hundred and five thousand six hundred and forty eight pounds) has been paid to the Council
2. The Paying Owners covenant with the Council to pay the total sum of £5,622,589.00 (five million six hundred and twenty two thousand and five hundred and eighty nine pounds) to the Council in the following instalments:
 - 2.1 £1,405,647.00 (one million four hundred and five thousand six hundred and forty seven pounds) prior to the Occupation of the 4,000 Dwellings;
 - 2.2 £1,405,647.00 (one million four hundred and five thousand six hundred and forty seven pounds) prior to the Occupation of the 4,600 Dwellings;
 - 2.3 £1,405,647.00 (one million four hundred and five thousand six hundred and forty seven pounds) prior to the Occupation of the 5,200 Dwellings;
 - 2.4 £1,405,648.00 (one million four hundred and five thousand six hundred and forty eight pounds) prior to the Occupation of the 5,600 Dwellings.
3. The Council covenants with the Owners to only use the money received under this Schedule for infrastructure and road improvement works at the Drovers Roundabout and junction 9 of the M20 and the Eureka Skyway footbridge (including the repayment of forward funding in respect of the said improvement works).

SCHEDULE 23

Viability

1. The Council's Input to the Viability Review Submission in respect of each Viability Review Phase.

1.1 The Owners covenant with the Council that they shall via the Owners' Agent serve:-

- 1.1.1 an Occupation Notice on the Council in respect of each of the numbers of Dwellings detailed by column 2 of Table 1; and
- 1.1.2 an Affordable Housing Information Request in respect of each of the Viability Review Phases detailed by column 1 of Table 1 before the dates detailed by column 3 of Table 1 and corresponding to each of those Viability Review Phases.

1.2 The Council covenants with the Owners that within 30 Working Days of receiving an Affordable Housing Information Request from the Owners' Agent the Council shall serve on the Owners' Agent an Affordable Housing Information Reply including a fully populated Table 3 showing the Additional Affordable Housing Provision: Mix Proportions and what shall comprise the Minimum Affordable Housing Provision for the relevant Viability Review Phase.

2. The Submission of Viability Review Submissions for each Viability Review Phase

2.1 The Owners covenant with the Council not to Occupy:-

2.1.1 more than 851 Dwellings unless and until a Viability Review Submission for Viability Review Phase Two has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a Viability Review Fee has been paid to the Council; and

2.1.2 more than 1351 Dwellings unless and until a Viability Review Submission for Viability Review Phase Three has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Review Fee has been paid to the Council; and

2.1.3 more than 1951 Dwellings unless and until a Viability Review Submission for Viability Review Phase Four has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Review Fee has been paid to the Council; and

2.1.4 more than 2475 Dwellings unless and until a Viability Review Submission for Viability Review Phase Five has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Review Fee has been paid to the Council; and

2.1.5 more than 2975 Dwellings unless and until a Viability Review Submission for Viability Review Phase Six has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Review Fee has been paid to the Council; and

2.1.6 more than 3475 Dwellings unless and until a Viability Review Submission for Viability Review Phase Seven has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Fee has been paid to the Council; and

2.1.7 more than 4034 Dwellings unless and until a Viability Review Submission for Viability Review Phase Eight has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Fee has been paid to the Council; and

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2.1.8 more than 4534 Dwellings unless and until a Viability Review Submission for Viability Review Phase Nine has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Fee has been paid to the Council; and

2.1.9 more than 5034 Dwellings unless and until a Viability Review Submission for Viability Review Phase Ten has been submitted by the Owners via the Owners' Agent to the Council for the Council's approval and a further Viability Fee has been paid to the Council.

2.2 For the avoidance of doubt:-

2.2.1 there is no obligation on the Owners to submit a Viability Review Submission in respect of Viability Phase One and the Council shall not consider a viability review or a Viability Review Submission of Viability Review Phase One pursuant to the terms of this Deed; and

2.2.2 the Council shall consider only one Viability Review Submission and not two or more Viability Review Submissions for each Viability Review Phase pursuant to terms of this Deed but for the avoidance of doubt the Council shall:-

a) consider amendments to and/or updates to a Viability Review Submission submitted to it by the Owners via the Owners' Agent dealing solely with the Council's reasons for objecting to a Viability Review Submission in the event the Council rejects the Viability Review Submission and such amendments and/or updates to a Viability Review Submission are submitted to the Council within the timescales set out in paragraph 3; and

b) consider amendments to and/or updates to a Viability Review Submission submitted to it by the Owners via the Owners' Agent responding to and dealing solely with the Council's request/s for reasonable clarification and/or further information and/or further evidence (if any) complying with the requirements of and submitted to the Council within the timescales set out in paragraph 3.

3. The Conclusion of Viability Reviews for each Viability Review Phase

3.1 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Two.

3.2 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Three.

3.3 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two and Viability Review Phase Three unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Four.

3.4 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and

Viability Review Phase Two and Viability Review Phase Three and Viability Review Phase Four unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Five.

- 3.5 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two and Viability Review Phase Three and Viability Review Phase Four and Viability Review Phase Five unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Six.
- 3.6 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two and Viability Review Phase Three and Viability Review Phase Four and Viability Review Phase Five and Viability Review Phase Six unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Seven.
- 3.7 The Owners covenant with the Council that they shall not carry out any Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two and Viability Review Phase Three and Viability Review Phase Four and Viability Review Phase Five and Viability Review Phase Six and Viability Review Phase Seven unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Eight.
- 3.8 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two and Viability Review Phase Three and Viability Review Phase Four and Viability Review Phase Five and Viability Review Phase Six and Viability Review Phase Seven and Viability Review Phase Eight unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Nine.
- 3.9 The Owners covenant with the Council that they shall not carry out a Material Operation pursuant to the Planning Permission on land other than land within Viability Phase One and Viability Review Phase Two and Viability Review Phase Three and Viability Review Phase Four and Viability Review Phase Five and Viability Review Phase Six and Viability Review Phase Seven and Viability Review Phase Eight and Viability Review Phase Nine unless and until all of the events described by paragraph 3.10 have occurred OR all of the events detailed by paragraph 3.11 and paragraph 3.12 and paragraph 3.14 have occurred OR all of the events in paragraph 3.11 and paragraph 3.13 and paragraph 3.15 have occurred OR all of the events detailed by paragraph 3.16 have occurred OR all the events detailed in paragraph 3.17 have occurred for and in respect of Viability Review Phase Ten.
- 3.10 The Council has confirmed to the Owners' Agent in writing that it approves of the content of the Viability Review Submission for the relevant Viability Review Phase (or approves the content of an amended or updated version of such Viability Review Submission received by