

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

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.