Version dated 21/01/25

Dated 27 February 2017

(1) **HODSON DEVELOPMENTS (ASHFORD) LIMITED and others**

(2) **ASHFORD BOROUGH COUNCIL**

(3) **KENT COUNTY COUNCIL**

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# 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**

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

Planning Application Number: 12/00400/AS

Ashford Legal Services Reference: DS54-0669

Version dated 21/01/25

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**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 of an even date between 1) Hodson and 2) Hodson CG Two referred to at Recital D.7) and TT35024 (subject to the transfer of the land shown coloured orange and numbered 8 on Land Ownership Plan Two pursuant to a transfer 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 of an even date between 1) Hodson and 2) Hodson CG Two referred to at Recital D.6) 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 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 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 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 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 of an even date between 1) Chilmington Green Developments and 2) Hodson CG Two referred to at Recital D.8.

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 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 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 of an even date between 1) Hodson CG Two and 2) Hodson referred to at Recital A.1 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 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 of an even date between 1) Hodson CG Two and 2) BDW referred to at Recital L.1 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 of an even date between 1) Hodson CG Two and 2) Hodson and referred to at Recital A.2 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 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 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 of an even date between 1) Hodson CG Two and 2) BDW referred to at Recital L.2.

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 of an even date between 1) Alan John Pullen and Kathleen Marguerite Pullen and 2) Hodson CG Two.

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 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 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 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 K683893 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 even date between 1) Alan John Pullen and 2) Hodson CG Two.

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.

F. 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 of an even date between 1) Pentland Homes and 2) Hodson referred to at Recital A.3.

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 Land Ownership Plan One by virtue of:-

1. Acquiring the freehold interest in all that land coloured dark blue and numbered 13 on 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 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 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 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 22 December 2016.

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

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

N. Titlestone has an interest in the Site by virtue of a charge of an even date in respect of the entirety of Hodson CG One's interest in the Site set out at Recital C.

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

P. 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.

Q. 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.

R. 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:-

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| **"Additional Affordable Housing Provision"** | 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 Five to Viability Review 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:-<br><br>a) shall not exceed the Affordable Housing Cap; and<br><br>b) 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 substituted for additional Affordable Housing Dwellings (of whatever type) without resulting in a Deficit and there is a Residual Surplus. |
| **"Additional Affordable Housing Provision: Mix Proportions"** | What the Council require the Additional Affordable Housing Provision for the relevant Viability Review Phase to comprise of (in the event the Viability Review |

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| | 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). |
| **"Adoptable Access"** | 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. |
| **"Affordable Housing Cap"** | 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:-<br><br>a) 40% of the total number of Dwellings within the relevant Viability Review Phase; and<br><br>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. |
| **"Affordable Housing Dwelling Mix"** | Full details of the quantums 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 |

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| | relevant Viability Phase or Viability Review Phase which shall:-<br><br>a) include the following details in respect of each such Affordable Housing Unit:-<br><br>i) whether it is intended to be an Affordable Rented Unit a Shared Ownership Unit or an Intermediate Housing Unit; and<br><br>ii) whether it is intended to be a house or a flat;<br><br>iii) how many bedrooms it is intended to have;<br><br>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;<br><br>v) what the GIA and NIA it is intended to be;<br><br>b) be in accordance with the constraints imposed by and the details of the Parameter Plans and Environmental Statement; and<br><br>c) be in accordance with the requirements of the Planning Permission including all relevant conditions to the Planning Permission; and<br><br>d) be in accordance with and shall be consistent with the details of any Reserved Matters Application/s for that Viability Phase or Viability Review Phase submitted to the Council (prior to the Viability Review Submission for the same Viability Review Phase in the case of Viability Review Phases) |
| **"Affordable Housing Information Reply"** | A written reply to the Affordable Housing Information Request from the Council to the Owners' Agent which:-<br><br>1) shall set out the following by means of populating column 3 of Table 3:-<br><br>a) the Council's requirements for the Minimum Affordable Housing Provision for the relevant Viability Phase or Viability Review Phase in terms of:-<br><br>i) whether each of the Affordable Rented Units (comprising ~~60~~33% of the Minimum Affordable Housing Provision for the relevant Viability Phase or 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<br><br>ii) whether the remaining ~~40~~67% of the Minimum Affordable Housing Provision for the relevant Viability |

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| | Phase or 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<br><br>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<br><br>2) shall include the Additional Affordable Housing Provision: Mix Proportions for the relevant Viability Phase or Viability Review Phase; and<br><br>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. |
| **"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 Phase or 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 17.1 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 |

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| | 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"** | The Additional Affordable Housing Provision (if any) to be provided within a Viability Review Phase:-<br><br>a) as approved by the Council pursuant to paragraph 3 of Schedule 23 of this Deed; or<br><br>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;<br><br>which for the avoidance of doubt shall be provided in accordance with:-<br><br>a) the full details of the quantums 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<br><br>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. |

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| **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. |
| **"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. |
| **"Bus Service"** | A bus service operating between the Site and the town centre/railway station at a frequency of every 30 minutes during Peak Hours and every 60 minutes outside Peak Hours and starting at 0600 and finishing at 2000 on Monday to Sunday |
| **"Bus Service Monitoring "** | Monitoring of the Bus Service by carrying out the following monitoring of use of the Bus Service by residents and visitors of the Development which shall as a minimum include the following:<br><br>a) carrying out surveys of residents and visitors;<br><br>and<br><br>b) monitoring of the usage of the Bus Service by residents and visitors of the Development |
| **"Bus Service Monitoring Period"** | a period of 25 years starting from the first operation of the Bus Service |
| **"Bus Service Monitoring Report"** | A report setting out the data and information gathered during the Bus Service Monitoring undertaken during the Bus Service Monitoring Review Period which shall include:-<br><br>a) data of the usage of the Bus Service by residents and visitors of the Development<br><br>b) any feedback received from residents of the Development in respect of the Bus Service<br><br>c) where the Bus Service is being significantly over or under utilised a proposed revision to the Bus Service to either increase or reduce its service as appropriate for approval by the County Council together with a |

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| | timetable for implementing the revised Bus Service |
| **"Bus Service Monitoring Review Period"** | Initially periods of 6 months commencing on the day of the first operation of the Bus Service for a period of two years and thereafter annually on the anniversary of the first operation of the Bus Service |
| **"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 Hamlet"** | The area identified as such on Figure 7 in the Chilmington Green Area Action Plan. |
| **"Chilmington Green Developments Viability 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 hatched yellow on Land Ownership Plan One. |
| **"Chilmington Green Partnership CMO Working Group"** | 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:-<br>a) with the production of the CMO Operating Business Plan by the Consortium Members pursuant to paragraph 5 of Schedule 4;<br>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. |
| **"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. |

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| **"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 5 of Schedule 4 of this Deed which must comply with the following:-<br><br>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<br><br>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<br><br>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<br><br>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<br><br>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; an<br><br>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<br><br>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<br><br>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 |

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| | amounts for including setting aside reasonable provision for future costs predicted to be incurred by the CMO in providing such estate services; and<br><br>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<br><br>10) it must contain the information and follow the format detailed by the document at Schedule 40. |
| **"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:-<br><br>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<br><br>b) shall be no less than 200 square metres GIA; and<br><br>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<br><br>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<br><br>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<br><br>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 |

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| | exclusive use of the CMO's staff and visitors to the CMO; and<br><br>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. |
| **"Commence (Statutory) the Development"** | The carrying out of a Material Operation (Statutory) pursuant to the planning permission for the Planning Application and any Reserved Matters Application approval and any modification to the planning permission for the Planning Application and any Reserved Matters Application occurring prior to the commencement (Statutory) of the Development which would constitute the beginning of the Development for the purpose of section 56 of the Planning Act (as amended) but for non-compliance with any condition of the planning permission for the Planning Application and any modification to the same and related expressions such as "Commenced (Statutory) the Development" "Commencement (Statutory) of the Development" and "Commenced (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. |
| **"Commercial Land"** | All the net developable land within the relevant Viability Phase or 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:- |

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| | a) any land on which the Community Hub Building is to be constructed; and<br><br>b) 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 which building has been approved by the Council in accordance with the approved brief. |
| **"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. |

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| **"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'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. |
| **"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"** | 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 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 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. |
| **"Development"** | The development of the Site pursuant to the Planning Permission. |

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| **"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<br>1) combined 27.39 ha of land marked "DP1" and "DP2", and<br>2) 7.44 ha of land marked "DP3"<br>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. |

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| **"Education Purposes"** | the construction of Primary School 1 Primary School 2 Primary School 3 and Secondary School respectively. |
| **"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 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. |
| **"Extra Care Housing Units"** | 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:-<br><br>a) each Dwelling shall be a self-contained home, within a residential apartment building and shall have its own "front door"; and<br><br>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 |

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| | 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;<br><br>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<br><br>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. |
| **"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 6th 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. |
| **"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. |

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| **“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 within 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 27 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"** | 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.<br><br>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 17. |
| **"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, 11, or 14 of Schedule 1 and occupied in accordance with the provisions of paragraph 20 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. |

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| **“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 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 Ownership 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 grant of the CMO First Operating Premises Lease. |
| **“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. |
| **"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). |

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| **"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 Leasehold"** | 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. |
| **"Main Phase 1 Allotment"** | 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. |
| **"Main Phase 1 Informal/Natural Green Space"** | 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. |
| **"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, |

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| | 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 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 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)"** | A material operation within the meaning of Section 56(4) of the Planning Act other than the following:-<br>a) archaeological investigation works and archaeological works; and<br>b) site compounds; and<br>c) ecological investigation works and ecological works; and<br>d) site surveys; and<br>e) the erection of any temporary means of enclosure; and<br>f) testing for contamination and trial pits for the purposes of identifying/testing for contamination but for the avoidance of doubt not remediation works. |

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| **"Material Operation"** | A material operation within the meaning of Section 56 (4) of the Planning Act other than the following:-<br><br>a) site clearance; and<br><br>b) site compounds; and<br><br>c) site surveys; and<br><br>d) demolition work; and<br><br>e) archaeological investigation works and archaeological works; and<br><br>f) ecological investigation works and ecological works; and<br><br>g) investigations for the purpose of assessing ground conditions; and<br><br>h) remedial work in respect of any contamination or other adverse ground conditions; and<br><br>i) diversion or laying of services; and<br><br>j) erection of any temporary means of enclosure; and<br><br>k) the temporary display of site notices or advertisements. |
| **"Minimum Affordable Housing Provision"** | 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:-<br><br>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<br><br>b) the requirements of Schedule 1 of this Deed. |
| **"Negative Planning Obligations"** | 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 |

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| | "Negative Planning Obligation" shall be construed accordingly. |
| **"NIA"** | Net internal area as defined by the Royal Institute of Chartered Surveyors Guidance Note: Code of Measuring Practice 6th Edition. |
| **"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"** | Details of the estimated number and mix of all Open Market Dwellings to be constructed within the relevant Viability Review Phase which shall be:-<br><br>a) in accordance with the constraints imposed by and the details of the Parameter Plans and the Environmental Statement; and<br><br>b) in accordance with the requirements of the Planning Permission including all relevant conditions to the Planning Permission; and<br><br>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 |

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| | Submission for the same Viability Review Phase; and<br><br>shall include the following:-<br><br>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<br><br>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. |
| **"Parameter Plans"** | the plans with the following references:-<br><br>OPA01R1: Application Boundary Plan<br><br>OPA02R1: Lane Use Plan<br><br>OPA03R1: Residential Density Plan<br><br>OPA04R1: Storey Heights Plan<br><br>OPA05R1: Access and Strategic Vehicle Routes Plan<br><br>OPA06R rev. P2: Open Space Plan<br><br>OPA07R1: Building Parameters Plan<br><br>131065/SK/1106: Footpath and Cycle Routes Plan |
| **"Paying Owners"** | Chilmington Green Developments and Hodson and Hodson CG One and Hodson CG Two and Hodson Developments (CG Three) Limited and "Paying Owners" shall mean any one of them. |
| **"Peak Hours"** | between 0700-1000 and 1600-1900 |

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| **"Permitted Disposal"** | 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. |
| **"Planning Act"** | The Town and Country Planning Act 1990. |
| **"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:-<br><br>a) up to 5,750 residential units, in a mix of sizes, types and tenures;<br><br>b) up to 10,000 sq m (gross external floorspace) of Class B1 use;<br><br>c) up to 9,000 sq m (gross external floorspace) of Class A1 to A5 uses;<br><br>d) Education (including a secondary school of up to 8 ha and up to four primary schools of up to 2.1 ha each);<br><br>e) Community Uses (Class D1) up to 7,000 sq m (gross external floorspace);<br><br>f) Leisure Uses (Class D2) up to 6,000 sq m (gross external floorspace);<br><br>g) provision of local recycling facilities;<br><br>h) provision of areas of formal and informal open space;<br><br>i) 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);<br><br>j) 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;<br><br>k) new planting and landscaping, both within the Site and on its boundaries, and ecological enhancement works; and<br><br>l) associated groundworks;<br><br>Where appearance, landscaping, layout and scale are reserved for future approval and where access is reserved for future approval with the exception of the |

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| | 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 a draft of which is 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. |
| **"Premature Viability Review Submission"** | Means a Viability Review Submission submitted greater than 12 months in advance of each of the progress stages specified at Schedule 23 paragraph 2.1.1 to 2.1.6. and for the avoidance of doubt any Viability Review Submission which is not followed by the submission of the relevant Reserved Matters Application within 12 months shall be resubmitted such that it is not submitted more than 12 months in advance of the submission of the relevant RMA. |
| **"Previous Viability Review Phase"** | 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 Six is Viability Review Phase Five. |
| **"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. |

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| **"Proposed Additional Affordable Housing Provision"** | 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:-<br><br>a) full details of the quantums 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<br><br>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. |
| **"PS1 Contribution 1"** | £150,000.00 (one hundred and fifty thousand pounds) (which shall not be Index Linked); |
| **"PS1 Contribution 2"** | £2,285,000.00 (two million two hundred and eighty five thousand pounds) (which shall not be Index Linked); |
| **"PS1 Contribution 3"** | £2,103,200.00 (two million one hundred and three thousand and two hundred pounds) (which shall not be Index Linked); |
| **"PS1 Contribution"** | £4,538,200.00 (four million five hundred and thirty eight thousand two hundred pounds) for Primary School 1 or for Education Purposes payable by instalments referred to as PS1 Contributions 1-3. |
| **"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 2.05 ha 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 |

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| | 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 2.05 ha and otherwise in full accordance with the 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 or any other provider of social housing otherwise approved by the Council, such approval not to be unreasonably withheld. |
| **"Relevant Dispute"** | Any dispute relating to this Deed other than:-<br><br>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<br><br>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 |

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| | c) any dispute relating to Schedule 3 (Combined Heat and Power Plant); and<br><br>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<br><br>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** | 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. |
| **"Relevant Index"** | a) 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:-<br><br>4 (paragraph 6.1.4 only) and 20 (paragraph 1.11 only);<br><br>b) All-in Tender Price Index as published by BCIS on behalf of RICS shall apply to the amounts in the following schedules:-<br><br>5, 20 (paragraph 2 only), 24, 26, 27 and 28;<br><br>c) General Buildings Cost Index as published by BCIS on behalf of RICS shall apply to the amounts in the following schedules:-<br><br>7, 12, 13, 15, and 25;<br><br>d) Output Price Indices for Public Works as published by BCIS on behalf of RICS shall apply to the amounts in the following schedules:-<br><br>6, 8, 9, and 10;<br><br>e) Civil Engineering Cost Index as published by BCIS shall apply to the amounts in the following schedules:-<br><br>21;<br><br>f) 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"; |

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| | g) 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";<br><br>h) 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, or any replacement or successor to each such index from time to time as may be approved by the Council or the County Council as appropriate. |
| **"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. |
| **"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 8.0 ha in extent and otherwise in full accordance with the KCC General Site Transfer Requirements. |

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| **"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 P1 annotated '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"** | £2,258,333 (two million two hundred and fifty eight thousand and three hundred and thirty three pounds) Index Linked. |
| **"Stage One Secondary Contribution 2"** | £2,258,333 (two million two hundred and fifty eight thousand and three hundred and thirty three pounds) Index Linked. |
| **"Stage One Secondary Contribution 3"** | £2,258,333 (two million two hundred and fifty eight thousand and three hundred and thirty three pounds) Index Linked. |
| **"Stage One Secondary Contribution 4"** | £2,258,333 (two million two hundred and fifty eight thousand and three hundred and thirty three pounds) Index Linked. |
| **"Stage One Secondary Contribution 5"** | £2,258,333 (two million two hundred and fifty eight thousand and three hundred and thirty three pounds) Index Linked. |
| **"Stage One Secondary Contribution 6"** | £2,258,333 (two million two hundred and fifty eight thousand and three hundred and thirty three 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 1-6 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 |

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| | 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 27 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 27. |
| **"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. |
| **"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). |

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| **"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"** | The terms on which the land comprising the relevant facility ("the Land") is transferred to the CMO which shall:-<br><br>a) provide that the Unencumbered (Transfer Terms) freehold of the Land is transferred to the CMO at nil or nominal consideration;<br><br>b) 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);<br><br>c) 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.<br><br>Subject to the definition of Unencumbered (Transfer Terms), any such transfer may be subject to:-<br><br>a) 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;<br><br>b) rights and easements granted in favour of the Council and/or the County Council or a statutory undertaker service provider or utility company;<br><br>c) 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<br><br>d) Restrictive covenants preventing the use of any land works and facilities other than the uses for which they were intended |

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| | 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. |
| **"Transfer"** | 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. |
| **"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:-<br>a) any covenants restricting the use of land for its intended purposes;<br>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;<br>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 |

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| | the Owners' Agent to the Council pursuant to the provisions of Schedule 23. |
| **"Viability Phase"** | Any of Viability Phase One, Viability Phase Two, Viability Phase Three or Viability Phase Four |
| **"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. |
| **"Viability Phase Two"** | The area/s of land noted F&G, I, L, M&O and P on the Viability Phase Two Plan 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:-<br><br>a) which must not overlap with any other land comprised of Viability Phase One; and<br><br>b) when combined with the land comprised of Viability Phase One must comprise of 100% of the land in Main AAP Phase One; and<br><br>c) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase One. |
| **"Viability Phase Two Plan"** | The plan at Annex 2A to this Deed. |
| **"Viability Phase Three"** | The area/s of land noted E2,F2, G2,H2,I2 and J2 on the Viability Phase Three Plan 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:-<br><br>a) which must not overlap with the land comprised of Viability Phase One and Viability Phase Two; and<br><br>b) for the avoidance of doubt may comprise of more than one area of land within the Main AAP Phase Two. |
| **"Viability Phase Three Plan"** | The plan at Annex 2B to this Deed. |
| **"Viability Phase Four"** | The area/s of land noted I2,N2,C2,D2,A2,B2 and CH on the Viability Phase Four Plan within Main AAP Phase Two and on which it must be intended to build a |

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| | further 524 Dwellings and to contain related infrastructure to be defined pursuant to the submission to and approval by the Council of a plan:-<br><br>a) which must not overlap with the land comprised of Viability Phase One Viability Phase Two and Viability Phase Three; and<br><br>b) when combined with the land comprised of Viability Phase Three must comprise of 100% of the land in Main AAP Phase Two; and<br><br>c) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Two. |
| **"Viability Phase Four Plan"** | The plan at Annex 2C to this Deed. |
| **"Viability Review Phase Five"** | 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:-<br><br>a) which must not overlap with the land comprised of Viability Phase One Viability Phase Two Viability Phase Three and Viability Phase Four; and<br><br>b) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Three. |
| **"Viability Review Phase Six"** | 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:-<br><br>a) which must not overlap with the land comprised of Viability Phase One Viability Phase Two Viability Phase Three Viability Phase Four and Viability Review Phase Five; and<br><br>b) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Three. |
| **"Viability Review Phase Seven"** | 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:- |

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| | a) which must not overlap with the land comprised of Viability Phase 1 Viability Phase Two Viability Phase Three Viability Phase Four Viability Review Phase Five and Viability Review Phase Six; and<br><br>b) 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<br><br>c) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Three. |
| **"Viability Review Phase Eight"** | 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:-<br><br>a) which must not overlap with the land comprised of Viability Phase One Viability Phase Two Viability Phase Three Viability Phase Four Viability Review Phase Five Viability Review Phase Six and Viability Review Phase Seven; and<br><br>b) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Four. |
| **"Viability Review Phase Nine"** | 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-<br><br>a) which must not overlap with the land comprised of Viability Phase One Viability Phase Two Viability Phase Three Viability Phase Four Viability Review Phase Five Viability Review Phase Six Viability Review Phase Seven and Viability Review Phase Eight; and<br><br>b) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Four. |
| **"Viability Review Phase Ten"** | 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- |

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| | a) which must not overlap with the land comprised of Viability Phase One Viability Phase Two Viability Phase Three Viability Phase Four Viability Review Phase Five Viability Review Phase Six Viability Review Phase Seven Viability Review Phase Eight and Viability Review Phase Nine; and<br><br>b) 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<br><br>c) for the avoidance of doubt may comprise of more than one area of land within Main AAP Phase Four. |
| **"Viability Review Phase Plan"** | A plan of at least 1:1250 scale showing:-<br><br>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<br><br>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 Five to Viability Review Phase Ten (inclusive). |
| **"Viability Review Submission"** | A written submission to the Council for the relevant Viability Review Phase to comprise of the following relating to the relevant Viability Review Phase:-<br><br>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<br><br>b) a Viability Review Phase Plan; and<br><br>c) a Viability Review Template (Minimum Affordable Housing Provision);and<br><br>d) a Viability Review Template (Additional Affordable Housing Provision) if the Viability Review Template (Minimum Affordable Housing Provision) shows a Surplus; and<br><br>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 |

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| | Housing Provision for that Viability Review Phase (with full details as to the quantums 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<br><br>f) the Proposed Additional Affordable Housing Provision if the Viability Review Template (Minimum Affordable Housing Provision) shows a Surplus; and<br><br>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<br><br>h) the Residual Surplus (if any). |
| **"Viability Review Template (Additional Affordable Housing Provision)"** | A Viability Review Template completed in respect of the relevant Viability Review Phase which:-<br><br>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<br><br>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<br><br>c) shall be populated with all of the Viability Review Template Inputs; and;<br><br>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<br><br>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. |
| **"Viability Review Template (Minimum Affordable Housing Provision)"** | A Viability Review Template completed in respect of the relevant Viability Review Phase which:- |

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| | 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<br><br>b) shall assume there shall be no Additional Affordable Housing Provision provided in the relevant Viability Review Phase; and<br><br>c) shall be populated with all Viability Review Template Inputs other than the Additional Affordable Housing Provision: Mix Proportions; and<br><br>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<br><br>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. |
| **"Viability Review Template Inputs"** | All of the following as they apply to the relevant Viability Review Phase:-<br><br>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<br><br>and "Viability Review Template Input" shall be construed as referring to one of the above as the context so requires. |
| **"Viability Review Template Results"** | All of the following as they apply to the relevant Viability Review Phase:-<br><br>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). |
| **"Viability Review Template"** | The template viability assessment summary to be used in the review of the viability of each of Viability Review |

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| | Phases Five 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. |

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.

2.2.1A Also, in the event that an Owner shall have completed all of the Dwellings in the area(s) of the Site in which it has an interest and all of those Dwellings shall have been Occupied by a tenant under a lease or shared ownership purchase, then that Owner shall no longer be bound by covenants to do or not to do anything in, on, over or under that land 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.A1 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.A2 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.A3 Chilmington Green Developments Hodson CG One Hodson CG Two and Hodson shall continue to be personally jointly and severallly bound by all of the Positive Planning Obligations to Pay; and

2.2.1.A4 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 No person(s) shall be bound by the Positive Planning Obligations To Pay and Positive Obligations To Provide And/Or Construct under this Deed in their capacity as:-

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

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

2.4 No person(s) shall be bound by the Negative Planning Obligations (with the exception of the obligations and covenants pursuant to paragraph 6 of Schedule 4 of this Deed and paragraph 20 of Schedule 1 of 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 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. For the avoidance of doubt such a person shall be bound be all other restrictions covenants and obligations in accordance with the terms of this Deed.

2.6 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 6 of Schedule 4 of this Deed and paragraph 20 of Schedule 1 of this Deed.

2.7 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.

2.8 The obligations contained in this Deed shall not be binding upon any interest in any part of the Site:-

2.8.1 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; and

2.8.2 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

2.8.3 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.

2.9 **Negative Planning Obligations and Notification Obligations**

2.9.1 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).

2.9.2 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.

2.9.3 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.

2.9.4 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.

2.10 **Positive Obligations to Pay**

2.10.1 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.

2.10.2 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:-

2.10.2.1 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 27 and any interest due

under clause 18) such proportion ('P') to be calculated in accordance with the following formula:-

P = A x ((C divided by (B less the sum of D 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 27 and any interest due under clause 18 but for the avoidance of doubt not applying this clause 2.10.2.1

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 multipied 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 27 and any interest due under clause 18; and

b) If when applying the forumula 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 27 and any interest due under clause 18; and

2.10.2.2 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 27 and any interest due under clause 18) ('P1') such proportion to be calculated in accordance with the following formula:-

P1 = A1 x ((C1 divided by (B1 less the sum of D1 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 27 and any interest due under clause 18 but for the avoidance of doubt not applying clause 2.10.2.1 and this clause 2.10.2.2.

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 27 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 27 and any interest due under clause 18.

2.10.3 In the event that:-

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

2.10.3.2 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

2.10.3.3 the Reserved Matters Applications referred to at 2.10.3.2 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.

2.10.4 Notwithstanding the provisions of clause 2.10.3 the Council and the County Council may agree (in their absolute discretion) to substitute a different number of Dwellings for 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 than 5178 Dwellings at any time.

2.10.5 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 2.10.2.1 and clause 2.10.2.2.

2.10.6 For the avoidance of doubt:-

2.10.6.1 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 2.10.2.1; and

2.10.6.2 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 2.10.2.2; and

2.10.6.3 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 27 and interest due pursuant to clause 18) has been received by them in cleared funds.

2.11 **Positive Obligations To Provide And/Or Construct**

2.11.1 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.

2.11.2 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.

2.12 **Affordable Housing Positive Obligations To Provide And/Or Construct**

2.12.1 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 1.1 of Schedule 1.

2.12.2 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.

2.12.3 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.

2.12.4 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.

2.12.5 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.

2.12.6 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.

2.12.7 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.

2.13 **All Other Obligations Covenants Restrictions and Requirements**

2.13.1 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, and the Affordable Housing Positive Planning Obligations To Provide And/Or Construct.

2.13.2 The covenants obligations and restrictions made by the Owners pursuant to clause 2.13.1 above are made jointly and severally unless otherwise stated.

2.14 **Enforcing Authorities to Whom Obligations are Made**

2.14.1 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 save for those covenants in Schedule 15AB which shall be enforceable by the County Council alone.

2.15 **Enforceability of all Negative Planning Obligations against all Owners**

2.15.1 For the avoidance of doubt all Negative Planning Obligations (except those Negative Planning Obligations detailed by clause 7.2 of this Deed) 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 to clause 2.8 inclusive)

2.15.2 Without prejudice to the generality of the clause 2.15.1, each and every Owner must cease works or Occupation of Dwellings (as appropriate) so as not to breach Negative Planning Obligations notwithstanding:-

2.15.2.1 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 2.10;

2.15.2.2 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

2.15.2.3 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

2.15.2.4 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

2.15.2.5 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

2.15.2.6 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

2.15.2.7 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.

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 27 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) once any Positive Planning Obligation to Provide and/or Construct shall have been fully satisfied; and

(3) 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.

2.15.3 For the avoidance of doubt:-

2.15.3.1 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

2.15.3.2 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

2.15.3.3 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 negatived by evidence to the contrary

2.15.4 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).

2.16 **BDW**

2.16.1 BDW acknowledges and agrees with the Council and the County Council that its interest in the Site pursuant to the agreement dated 22 December 2016 between 1) BDW and 2) Hodson CG Two and dated 22 December referred to at Recital L.3 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.

## 3. THE COUNCIL AND THE COUNTY COUNCIL'S COVENANTS

3.1 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.

3.2 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.

## 4. LEGAL FEES

4.1 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 | 3820 |
| 7.1.16.79 | 3850 |
| 7.1.16.80 | 3900 |
| 7.1.16.81 | 3925 |
| 7.1.16.82 | 3950 |
| 7.1.16.83 | 4000 |
| 7.1.16.84 | 4050 |
| 7.1.16.85 | 4100 |
| 7.1.16.86 | 4150 |
| 7.1.16.87 | 4200 |
| 7.1.16.88 | 4450 |
| 7.1.16.89 | 4500 |
| 7.1.16.90 | 4525 |
| 7.1.16.91 | 4550 |
| 7.1.16.92 | 4600 |

7.1.16.93 4750

7.1.16.94 4800

7.1.16.95 4925

7.1.16.96 5000

7.1.16.97 5050

7.1.16.98 5060

7.1.16.99 5100

7.1.16.100 5150

7.1.16.101 5200

7.1.16.102 5350

7.1.16.103 5400

7.1.16.104 5400

7.1.16.105 5425

7.1.16.106 5500

7.1.16.107 5550

7.1.16.108 5650

7.1.16.109 5600

7.1.16.110 5700

7.1.16.111 5750

7.2 The Paying Owners hereby covenant with the Council and the County Council not to Occupy more than the total 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.

9.2 The Council is not involved in, and neither assents to nor dissents from, the provisions of schedule 15AB, which provisions and anything implied in or by them are not enforceable by or against the Council and do not bind or commit the Council in any way. The Council shall remain fully and effectually able to exercise unfettered all of its statutory and other legal powers rights and responsibilities (including in respect of any proposed and/or actual application made under section 73 or section 96A of the Planning Act which may be contemplated and/or made whether or not in pursuance of schedule 15AB) as if schedule 15AB were not part of 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. DISBURSEMENT OF EDUCATION CONTRIBUTIONS

25.1 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 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.

## 26. COUNCIL'S COVENANTS

26.1 The Council hereby covenants with the Owners:-

26.1.1 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

26.1.2 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); and

26.1.3 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 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.

27. **INDEX LINKING**

27.1 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 August 2018 or the third quarter of 2018 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”).

27.2 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 third quarter of 2018 to the quarterly index figure of the Relevant Index for the date when the reserved matters approval is granted.

27.3 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 percentage change (if any) shall be between the figure of the Relevant Index for August 2018 to the monthly index figure of the Relevant Index for the date when the corresponding reserved matters approval is granted.

27.4 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 August 2018 and the figure of the Relevant Index for the month in which the Council approves the CMO Operating Business Plan pursuant to paragraph 5 of Schedule 4.

27.5 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 5 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 5 of Schedule 4 and the figure for the Relevant Index for the month when the relevant Rentcharge Deed the for the relevant Dwelling is dated.

27.6 Where any Index Linked payment required to be made under this Agreement by virtue of the Indexation results in that payment exceeding the cost of the item for which it is to be paid, the amount payable shall be reduced accordingly and only the amount reduced as aforesaid shall be payable.

28. **COMPLIANCE PACK**

28.1 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, Chilmington Green Developments and the Jarvis' covenant with the Council as follows:-

1.1 Hodson CG One, Hodson and Chilmington Green Developments covenant with the Council to construct 24 Dwellings within the Hodson Viability Phase One Land the Hodson CG One Viability Phase One Land and the Chilmington Green Developments Viability Phase One Land as Affordable Housing Units prior to the date on which the 1000th Dwelling to be Occupied is Occupied in accordance with the requirements of paragraphs 2 and 3 below; and

1.2 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 2 and 3 below.

2. The Affordable Housing Units referred to at paragraphs 1.1 and 1.2 above shall be provided as Shared Ownership Units.

3. All of the Affordable Housing Units referred to at paragraph 1.1 and 1.2 above shall be provided as 2 and/or 3 bed houses and one of the Affordable Housing Units referred to at paragraph 1.1 and paragraph 1.2 above shall accommodate Habinteg fixtures and fittings (e.g. 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.

4. The Owners covenant with the Council that they shall via the Owners' Agent serve:-

4.1 an Occupation Notice on the Council in respect of the number of Dwellings detailed by column 2 of Table 1 in respect of Viability Phase Two ; and

4.2 an Affordable Housing Information Request in respect of Viability Phase Two before the date detailed by column 3 of Table 1 and corresponding to Viability Phase Two.

5. The Owners covenant with the Council that they shall via the Owners' Agent serve:-

5.1 an Occupation Notice on the Council in respect of number of Dwellings detailed by column 2 of Table 1 in respect of Viability Phase Three ; and

5.2 an Affordable Housing Information Request in respect of Viability Phase Three before the date detailed by column 3 of Table 1 and corresponding to Viability Phase Three.

6. The Owners covenant with the Council that they shall via the Owners' Agent serve:-

6.1 an Occupation Notice on the Council in respect of the number of Dwellings detailed by column 2 of Table 1 in respect of Viability Phase Four; and

6.2 an Affordable Housing Information Request in respect of Viability Phase Four before the date detailed by column 3 of Table 1 and corresponding to Viability Phase Four

7. The Council covenants with the Owners that within 30 Working Days of receiving an Affordable Housing Information Request from the Owners' Agent pursuant to paragraphs 4 to 6 the Council shall serve on the Owners' Agent an Affordable Housing Information Reply including a fully populated Table 3 showing the Affordable Housing Provision: Mix Proportions for the relevant Viability Phase.

8. The Council covenants with the Owners that it shall take into account the most recent relevant housing need in the borough of Ashford as shown by the results of the most recently completed Strategic Housing Market Assessment (or such other assessment of housing need in the borough of Ashford as may supplement or succeed the Strategic Housing Market Assessment)

conducted by the Council prior to serving the Affordable Housing Information Reply on the Owners' Agent in respect of Viability Phases Two, Three and Four and shall also take into account any consultation undertaken by the Council with Registered Providers relating to the provision of Affordable Housing Units on the Site;.

9. The Owners covenant with the Council not to Occupy more than 1,300 Dwellings unless until

9.1 the 30 Affordable Housing Units referred to at paragraphs 1.1 and 1.2 above have been completely constructed and provided in Viability Review Phase One in compliance with the requirements of paragraph 2 and paragraph 3 above and been made ready for Occupation and either:-

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

OR

9.1.2 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 1.1 and 1.2 above are located has been delivered to a Registered Provider.

10. The Owners covenant with the Council to construct 10% of the Dwellings within each of Viability Phase Two, Viability Phase Three, Viability 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 95% of the Dwellings in each such Viability Phase or Viability Review Phase are Occupied.

11. The Affordable Housing Units constructed and provided pursuant to paragraph 10 above shall comprise of a combination of Affordable Rent Units (to be ~~30~~ 33% of those Affordable Housing Units) and Shared Ownership Units (to be ~~70~~67% of those Affordable Housing 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 10 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.

12. The Owners covenant with the Council to construct the Approved Additional Affordable Housing Provision (if any) for each of 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 95% of the Dwellings in each such Viability Review Phase are Occupied.

13. The Affordable Housing Units constructed and provided pursuant to paragraph 12 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 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.

14. The Affordable Housing Units constructed and provided pursuant to paragraph 12 shall comprise of a combination of Affordable Rent Units (~~being 30~~to be 33% of those Affordable Housing Units) and Shared Ownership Units (~~being 70~~to be 67% 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 12 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.

15. The Owners covenant with the Council to construct all of the Affordable Housing Units within each of the Viability Phase Two, Viability Phase Three, Viability Phase Four, Viability Review Phase Five, Viability Review Phase Six, Viability Review Phase Seven, Viability Phase Review 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 10 and paragraph 12 above) apart from flats to Lifetime Home Standards.

16. The Owners covenant with the Council not to Occupy more than 75% of the Dwellings within each of Viability Phase Two, Viability Phase Three, Viability 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:-

16.1.1 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 10 above and the Approved Additional Affordable Housing Provision (if any) for the same Viability Review Phase to be constructed and provided pursuant to paragraph 12 above) or to be provided within the relevant Viability Phase have been completely constructed and provided within the relevant Viability Review Phase or Viability Phase in accordance with all of the requirements of paragraph 13 to paragraph 15 inclusive and have been made ready for occupation

and either:-

16.1.1.1 the Unencumbered freehold interest in all of the Affordable Housing Land within the relevant Viability Review Phase or Viability 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

16.1.1.2 the Unencumbered freehold interest in all of the Affordable Housing Land within the relevant Viability Review Phase or Viability 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

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

OR

16.1.1.4 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.

17. 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 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 1.1, 1.2, 9,10 or 12 above as the case may be.

18. 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 17 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, 9, 10 or 12 above as appropriate.

19. 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

20. The Owners covenant with the Council as follows:

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

20.1.1 in the tenure as is required pursuant to paragraphs 1 to 16 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

20.1.2 by a tenant or leaseholder of a Registered Provider; and (and persons living with them); and

20.1.3 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

20.1.4 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

20.1.5 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).

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

21.1.1 initial purchase in the range of 25%-75% the percentage of the equity; and

21.1.2 the annual rent (paid weekly or monthly) for the outstanding equity shall accord with HCA guidelines; and

21.1.3 the ability but no obligation to purchase additional shares of equity up to 100%.

22. 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).

23. 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.

24. 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.

25. 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

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

26.1 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

26.2 The Council not enforcing this Schedule against:

26.2.1 any mortgagee or chargee of the Registered Provider (including any receiver appointed) that takes possession of Affordable Housing Land as long as:

26.2.2 the Council is notified that a power of sale has become exercisable;

26.2.3 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)

26.2.4 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

26.2.5 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

26.2.6 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)

26.2.7 individual owners and occupiers of a Dwelling (except for paragraph 20).

27. 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).

28. 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.

29. 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**

**Not used**

## SCHEDULE 3

### Combined Heat and Power Plant ("CHP")

The Owners covenant with the Council 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

## 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:

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

(i) the production of the CMO Operating Business Plan by the Consortium Members pursuant to paragraph 5 of this Schedule pending creation of the CMO as an entity in accordance with paragraph 3 of this Schedule; and

(ii) contributing towards the creation of the CMO as an organisation; and

(iii) 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

(iv) 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

(v) 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 :-

(a) one Council Member (to be nominated by the Council) who may be supported by senior officer/s ; and

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

(c) one representative for all of the parish councils within the site together (to be nominated by the parish councils within the Site); and

(d) 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) a CMO welcome pack document and a marketing document explaining and promoting:-

(i) the purpose of the CMO; and

(ii) the CMO's functions; and

(iii) the constitutional structure of the CMO; and

(iv) 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

(v) 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

(vi) the process by which residents can elect/select Directors to the board of the CMO; and

(vii) 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. The documents to be provided pursuant to this paragraph may be provided in electronic form, unless the first purchaser or tenant/occupier do not have access to e-mail and/or for another reason require a paper copy in which case they must be provided in paper form.

**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:-

(a) 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

(b) 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(a) 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 prior to 350 Dwellings being~~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

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

5.1 The Owners covenant with the Council as follows:-

5.1.1 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;

5.1.2 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.

**6. Residential Charge Payment Mechanism**

6.1 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:-

6.1.1 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 6.2 and all sums due to be paid to the CMO on completion of the relevant Rentcharge Deed have been paid; and

6.1.2 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

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

6.1.4 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.

6.2 Each such Rentcharge Deed entered into pursuant to paragraph 6.1 above shall detail:-

6.2.1 Sum A as approved by the Council as part of the CMO Operating Business Plan pursuant to paragraph 5 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

6.2.2 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

6.2.3 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 5 of this Schedule such sum as shall be separately approved by the Council in writing as the Initial Service Charge Cap; and

6.3 The Owners (and for the purposes of this clause 6.3 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 6.1 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.

6.4 Notwithstanding the provisions of clause 6.3, 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 6.3 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 6.3.

6.5 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 6.3 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 6.1.1 subject to payment of the sums referred to in paragraphs 6.1.1 and 6.1.4 and subject to provision of the undertaking required by paragraph 6.1.3.

6.6 The Council covenants with the Paying Owners to pay back to the Paying Owners the two CMO Start Up Contributions amounting to £168,369.91 ( one hundred and sixty eight thousand, three hundred and sixty nine pounds ninety one pence ) already paid to the Council within 28 days

**7. Declarations**

7.1 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

### Early Community Development

1. The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £212,847.14 ( two hundred and twelve thousand eight hundred and forty seven pounds fourteen pence ) already paid to the Council for community development programme(s) for the residents and future residents of the development within 28 days.

## 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;

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;

1.2 to provide and construct the Informal/Natural Green Space Facilities within:-

1.2.1 Main Phase 1 prior to the Occupation of 1450 Dwellings within that Main Phase; and

1.2.2 Main Phase 2 prior to the Occupation of 1100 Dwellings within that Main Phase; and

1.2.3 Main Phase 3 prior to the Occupation of 1550 Dwellings within that Main Phase;

1.2.4 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.

## SCHEDULE 7

### Chilmington Hamlet

1. The Owners covenant with the Council as follows:

1.1 Not to Occupy more than 3000 Dwellings unless a design brief and specification for the following indicative facilities and/or facilities of no greater environmental impact as may be approved by the Council (approval not to be unreasonably withheld)

| | |
|---|---|
| 1 x cricket pitch | 1.42 ha; |
| 1 x community pavilion (to comprise 297 $m^2$ of floorspace of which 250 $m^2$ 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 including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ("the Facilities"). The scope of the said facilities to be altered as may reasonably be required to match the stipulated total capital cost as aforesaid.

1.2 The submitted design and specification of the Facilities

1.2.1 shall have been subject to consultation with relevant stakeholders and the public

1.2.2

1.2.3 shall include the consultation responses.

1.3 Unless the Council agrees otherwise, not to Occupy more than 3,500 Dwellings unless

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

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;

and either

1.3.4 the Facilities have been transferred to the CMO by way of the grant of a lease in the Facilities for a term of 21 years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report 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 any conditions of the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO (their approval of the form not to be unreasonably withheld);

or

1.3.5 the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located in 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 lease ) in a form previously approved by the Council where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld 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 lease/s together with any documentation that may be necessary for the CMO to register such leases 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

1.3.6 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 3500 Dwellings.

2. The Council covenants with the Owners 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 –**
**List of Matters to be included in Design Brief and Specification for Schedule 7**

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.

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:-

350 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);

500 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);

850 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);

850 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);

1350 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 including fees, contingencies, specification and design costs, supervision fees, access roads and service costs ("the Facilities"),the scope of the said Facilities to be altered as agreed with the Council to match the stated capital cost for each of PSI, 2, 4, 5 and 7 and the total capital cost as aforesaid.

1.1.2 the submitted design brief and specification of the Facilities (i) shall have been subject to consultation with the relevant stakeholders and the public and (ii) shall include the consultation responses;

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

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

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

1200 Dwellings in Main Phase 3 in relation to play space "PS4"

1300 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

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;

and either

1.2.4 the Facilities have been transferred to the CMO by way of the grant of a lease in the Facilities for a term of 21 years at a peppercorn ground rent and which (a) shall not secure any service charge in relation to the premises (b) shall be unencumbered (except for any easements or other rights to lay maintain enter report 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 any conditions of the Planning Permission that apply to the land and (c) shall confer all legal rights and easements over neighbouring and adjacent land that are reasonably necessary and appropriate to enable the demised land to be used for its intended uses and purposes. The form of the said lease to be acceptable to the CMO (their approval of the form not to be unreasonably withheld);or

1.2.5 where the Owners have served the CMO with an engrossed lease/s (as appropriate) of the land on which the Facilities are located 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 lease ) in a form previously approved by the Council where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld 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 lease/s together with any documentation that may be necessary for the CMO to register such leases 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 construct and provide:-

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

1.3.2 play space "PS2" in Main Phase 2 prior to the occupation of more than 700 Dwellings in Main Phase 2;

1.3.3 play space "PS4" in Main Phase 3 prior to the occupation of more than 1200 Dwellings in Main Phase 3;

1.3.4 play space PS5 in Main Phase 4 prior to the occupation of more than 1300 Dwellings in Main Phase 4;

1.3.5 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 Council covenants with Owners

2.1 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 –**
**List of Matters to be included in Design Brief and Specification for Schedule 8**

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

   (b) 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

   (c) 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.

(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 1,450 Dwellings in Main Phase 1 or more than 1,100 Dwellings in Main Phase 2

1.1.1 the Main Phase 1 Allotment or the Main Phase 2 ("the Allotment Facilities") have been provided in accordance with the relevant reserved matters approval and the planned cost for that Allotment;

*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;*

1.1.2 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;

1.1.3 the Allotment Facilities have been provided to the CMO bv way of renewable bi-annual licence/s (as appropriate) in a form acceptable to the CMO, its approval not to be unreasonably withheld.

1.2 to construct and provide:-

1.2.1 the Main Phase 1 Allotment in Main Phase 1 prior to the Occupation of more than 1,450 Dwellings in Main Phase 1;

1.2.2 the Main Phase 2 Allotment in Main Phase 2 prior to the occupation of more than 1,100 Dwellings in Main Phase 2;

in accordance with the requirements of paragraph 1.1.1 of this schedule.

## 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 To prepare a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches in consultation with the Council 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 lease which it seeks approval of under sub-paragraph 2.2.3.2, 2.3.3.2 or 2.5.7.2, £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 2,650 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) including 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) including 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 relevant stakeholders and the public and (ii) shall include the consultation responses;

2.2 Not to Occupy more than 3,650 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 and at a cost not exceeding the total capital cost for these facilities stated above;

2.2.2 all necessary actions have been taken to ensure that the land on which the the first phase of 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 apply to the first phase of 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;

and either

2.2.4 the first phase of the Sports Facilities have been transferred to the CMO by way of the grant of a lease as aforesaid of the land on which first phase of

the Sports Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld); or

2.2.6 where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the first phase of the Sports Facilities are located 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 served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) 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 5,500 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 and at a cost not exceeding the total capital cost for these facilities stated above;

2.3.2 all necessary actions have been taken to ensure that the land on which the second phase of the Sports Facilities 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 second phase of 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;

and either

2.3.4 the second phase of the Sports Facilities have been transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the second phase of the Sports Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld); or

2.3.5 where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the second phase of the Sports Facilities are located 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 served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) 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

**DP3**

2.4 Not to Occupy more than 2,100 Dwellings unless:

2.4.1 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 submitted to the Council for approval 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) including PS6, fees, contingencies, specification and design costs, supervision fees, access costs and service costs ("the Facilities")

2.4.2 the submitted design brief and specification for DP3 and PS6 (i) shall have been subject to consultation with the relevant stakeholders and the public and (ii) shall include the consultation responses;

2.5 Not to Occupy more than:

2.5.1 2,650 Dwellings unless 1 ha of DP3 has been provided

2.5.2 3,500 Dwellings unless 0.86 ha of DP3 has been provided

2.5.3 5,000 Dwellings unless PS6 and 1.08 ha of DP3 have been provided

2.5.4 5,750 Dwellings unless 4.42 ha of DP3 has been provided

and in each case:

2.5.5 the provision is in accordance with the reserved matters approvals and the approved design brief and specification and at a cost not exceeding the total capital cost for these facilities stated above;

2.5.6 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;

2.5.7 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;

and either

2.5.8 the Facilities have been transferred to the CMO by way of the grant of a lease as aforesaid of the land on which the Facilities are located in a form acceptable to the latter (their approval of the form not to be unreasonably withheld); or

2.5.9 where the Owners have served the CMO with an engrossed lease/s (as appropriate) as aforesaid of the land on which the Facilities are located 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 served the same) in a form previously approved by the Council (where the Council's approval of the form of lease proposed by the Owners is not to be unreasonably withheld) 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

**Discovery Park Sports Pitches and Discovery Park Sports Hub and DP3**

2.6 To construct and provide:-

2.6.1 The first phase of the Sports Facilities before the Occupation of more than 3,650 Dwellings in accordance with the requirements of paragraph 2.2.1 of this schedule; and

2.6.2 The second phase of the Sports Facilities prior to the Occupation of more than 5,500 Dwellings in accordance with the requirements of paragraph 2.3.1 of this schedule; and

2.6.3 1 ha of DP3 before the Occupation of more than 2,650 Dwellings in accordance with the requirements of paragraph 2.5.1 of this schedule; and

2.6.4 0.86 ha of DP3 before the Occupation of more than 3,500 Dwellings in accordance with the requirements of paragraph 2.5.2 of this schedule; and

2.6.5 PS6 and 1.08 ha of DP3 before the Occupation of more than 5,000 Dwellings in accordance with the requirements of paragraph 2.5.3 of this schedule; and

2.6.6 4.42 ha of DP3 before the Occupation of more than 5,750 Dwellings in accordance with the requirements of paragraph 2.5.4 of this schedule.

2.7 The Council covenants with Owners following approval of the design brief and specification under paragraph 2.1.1 and 2.4.1 to notify the director appointed to the CMO by the Council of the approval and the reasons for it

2.8 The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £20,000 ( twenty thousand pounds) already paid to the Council for the preparation of a masterplan for the Discovery Park, the Discovery Park Sports Hub, PS6 and the Discovery Park Sports Pitches.as soon as reasonably practicable

2.9 The ~~Paying~~Council covenants with Owners ~~covenant with the Council~~ 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 ~~2,000th~~400th Dwelling.

**Schedule 10A –**
**List of matters to be included in Design Brief and Specification for Sports Hub and Sports Pitches 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.

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

2. Design and materials standards

The brief shall comply with the following:-

6.6 The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.

6.7 The brief shall identify the most appropriate collateral policy to cover latent defects that should be applied.

6.8 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. .

6.9 The Brief shall give details of the facilities' appearance

6.10 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.

6.11 The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.

6.12 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;

6.13 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;

6.14 The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)

6.15 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 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.

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 facility

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

   3.3 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)

4. The site

   4.1 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

5. Planning requirements

5.1 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.

5.2 The Brief shall identify those design elements to give general compliance with the site specific masterplan and to the Chilmington Green Area Action Plan .

5.3 The Brief shall identify the requirements within this Deed which are an integral part of delivering the scheme in question e.g. floor area

5.4 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.

5.5 In particular the brief shall explain how the facility will be delivered in phases, with costs split proportionately between the phases

6. Design and materials standards

The brief shall comply with the following:-

6.1 The design of the facility as detailed by the Brief shall meet all relevant statutory requirements.

6.2 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.

6.3 The Brief shall give details of the facilities' appearance

6.4 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.

6.5 The Brief shall give details of the design of the landscaping of the facility and surrounding site and materials used in its construction.

6.6 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;

6.7 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;

6.8 The brief shall detail the design of and materials used in the construction of character features within the site of the facility (if any)

6.9 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 drainage, service connections, parking, 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 11**

**Not used**

## SCHEDULE 12

## Community Hub Building

1. The Owners covenant with the Council as follows:

1.1 Not to Occupy more than 2,850 Dwellings unless:

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

to be provided in the District Centre has been approved by the Council with a total capital cost that ( together with the Facilities Second Tranche) does not exceed £2,000,000 (two million pounds) including fees, contingencies, specification and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below

1.1.2 the submitted design brief and specification of the Facilities: First Tranche (i) shall have been subject to consultation with the relevant stakeholders and the public and (ii) shall include the consultation responses;

Not to occupy more than 3,850 Dwellings unless

1.1A.1 a design brief and specification for the Facilities: Second Tranche and/or other facilities of no significantly greater environmental impact as may be approved by the Council to be provided in the District Centre has been approved by the Council with a total capital cost that ( together with the Facilities First Tranche) does not exceed £2,000,000 (two million pounds) including fees, contingencies, specification and design costs, supervision fees, access roads and service costs and the costs of those matters to be done at the Owner's expense referred to below

1.1.3 the submitted design brief and specification of the Facilities: Second Tranche (i) shall have been subject to consultation with the relevant stakeholders and the public and (ii) shall include the consultation responses;

1.2 Unless the Council agrees otherwise, not to Occupy more than 3,250 Dwellings unless:

1.2.1 the Facilities First Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: Second Tranche does not exceed the sum of £2,000,000 (two million pounds) inclusive as stated above;

1.2.2 all necessary actions have been taken to ensure that the land on which the Facilities: First Tranche 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: First Tranche and are required to be discharged prior to the occupation/use of the relevant Facilities have been discharged at the Owners' expense; and

1.2.4 the Facilities; First Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them .

1.2.5 The Facilities: First Tranche shall comprise the following:

- a multi-purpose community space of up to 1500 sqm, to include
- a fully stocked and equipped library
- 340 sqm space for police community and social services outreach including family and social care (subject to lease confirmation)
- 400sqm within the multi-use building of community space to meet the needs of the community and the CMO and to provide ancillary facilities for the MUGA
- a multi-use games area
- up to 500sqm of GP provision (subject to NHS lease confirmation)

Subject always to such variations in scope as may reasonably be required to ensure that the total cost including the Facilities: Second Tranche does not exceed the sum of £2,000,000 (two million pounds) inclusive as stated above.

1.2.6 To construct and provide the Facilities: First Tranche in accordance with the requirements of paragraph 1.2.1 of this schedule prior to the Occupation of more than 3,250 Dwellings.

1.2A Unless the Council agrees otherwise, not to Occupy more than 4,250 Dwellings unless:

1. 2A.1 the Facilities Second Tranche have been provided in accordance with the reserved matters approval and the approved design brief and specification and at a cost which together with the Facilities: First Tranche does not exceed the sum of £2,000,000 (two million pounds) inclusive as stated above

1.2A.2 all necessary actions have been taken to ensure that the land on which the Facilities: Second Tranche 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;

1.2A.3 all conditions to a planning permission or reserved matters approval that apply to the Facilities: Second Tranche and are required to be discharged prior to the occupation/use of the relevant Facilities have been discharged at the Owners' expense;

1.2A.4 the Facilities; Second Tranche have been transferred, in so far as required, to the proposed user/s of each by way of lease/s or tenancies (as appropriate) of the same on terms suitable to their intended use and that are acceptable to them; and

1.2A.5 the Facilities: Second Tranche shall comprise the following:

- a further community space of up to 2500 sqm, to include
- a 1000 sqm community leisure building
- up to 500sqm of GP provision (subject to NHS lease confirmation)
- additional floor space of up to 200 sqm for identified community needs, including youth provision

Subject always to such variations in scope as may reasonably be required to ensure that the total cost including the Facilities: First Tranche does not exceed the sum of £2,000,000 (two million pounds) inclusive as stated above.

1.2A.6 To construct and provide the Facilities: Second Tranche in accordance with the requirements of paragraph 1.2A.1 of this schedule prior to the Occupation of more than 4,250 Dwellings.

1.2A.7 In respect of the Facilities: First and Second Tranche, the right to carry out the requisite building works is reserved always to the Paying Owners.

1.2A.8 In respect of each of the Facilities: First and Second Tranche, no building contract shall be entered nor construction begin prior to confirmation of the public service leases, i.e. for Police or GP use

1.3 The prohibitions on Occupation set out in paragraphs 1.2 and 1.2A in respect of each of the Facilities: First and Second Tranche and the obligations to construct and provide the Facilities: First and Second Tranche set out in paragraphs 1.2.6 and 1.2A.6 shall cease to apply , if despite using reasonable endeavours the Owners have not been able to enter into an agreement with an occupier for the grant of a lease of the Facility.

**Schedule 12A**
**List of Matters to be included in Design Brief and Specification for Schedule 12**

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, 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 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:

   (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:

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

## List of Matters to be Included in Design Brief and Specification for Schedule 13

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, wide range of different users, etc)

   (c) 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 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 1500 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 ( acting reasonably and having regard to any reserved matter approval or alternative planning permission which may be granted for district centre facilities in Main Phase 1) :-

1.1.1.1 a supermarket,

1.1.1.2 other retail units ("Small Retail Units"),

1.1.1.3 an office building 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 ~~2700~~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, if any ) have been provided in accordance with the reserved matters approval and the approved design brief and specification

1.2.2 the Small Retail Units (if any) (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, if any ) in accordance with the requirements of paragraph 1.2.1 of this schedule prior to the Occupation of ~~2700~~1250 Dwellings in Main Phase 1.

1.5 To construct and provide the Small Retail Units ( if any) in accordance with the requirements of paragraph 1.2.2 of this schedule prior to the Occupation of ~~2700~~1250 Dwellings in Main Phase 1.

**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 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

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. 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 on or before 29 March 2019

### Part 2 – Primary School 2

7. The County Council shall consult with the Owners and other relevant stakeholders including any potential future school operators as to the need for PS2 arising from demand from within the Development. Following the consultation and before 1200 Dwellings have been Occupied the County Council must decide, acting reasonably, whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years.

8. If the decision under paragraph 7 is not to proceed with PS2 at that stage, the process set out in paragraph 7 shall be repeated and a further decision whether to proceed or not with PS2 for the purpose of ensuring that it is operational within 3 years shall be made by the County Council

before the next 300 Dwellings are Occupied and again as required so that the decision whether to proceed or not with PS2 is reviewed prior to the Occupation of every additional 300 Dwellings unless and until either the County Council decides to proceed with PS2 or 2900 Dwellings have been Occupied.

9. If the County Council decides under paragraph 7 or 8 to proceed with PS2 the following paragraphs 10 to 15 shall apply, but not otherwise

10. The Owners shall not bring into residential use nor Occupy more than another 100 Dwellings across the whole Site following the decision to proceed 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 the 100 Dwellings as aforesaid have been so first Occupied until the County Council have given its approval under this paragraph ( such approval not to be unreasonably withheld).

11. 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, 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.

12. 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 12 months from the date when another 200 Dwellings ( including the 100 referred to in paragraph 10 above) have been first Occupied across the Site following the decision to proceed. No further Dwellings shall be brought into residential use and thereafter Occupied on the Site beyond 12 months after first Occupation of 200 Dwellings as aforesaid , 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.

13. 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 another 900 Dwellings ( including the 200 referred to in paragraph 12 above) have been first Occupied across the Site following the decision to proceed (or earlier upon the reasonable request of the County Council). No more than another 899 Dwellings as aforesaid shall be brought into residential use and thereafter Occupied on the Site unless and until the Adoptable Access under this paragraph has been provided and dedicated as a highway.

14. Unless and until PS2 Contribution 1 has been paid to the County Council, no more than 2,650 Dwellings shall be brought into residential use nor first Occupied on the Site .

15. The Paying Owners shall:

    (a) pay PS2 Contribution 1 to the County Council prior to 2,650 Dwellings on the Site being Occupied for the first time ;

    (b) pay PS2 Contribution 2 to the County Council prior to 3,250 Dwellings on the Site being Occupied for the first time ;

    (c) pay PS2 Contribution 3 to the County Council prior to 3,850 Dwellings on the Site being Occupied for the first time ;

    (d) pay PS2 Contribution 4 to the County Council prior to 4,350 Dwellings on the Site being Occupied for the first time ;

**Part 3 – Primary School 3**

16. The County Council shall consult with the Owners and other relevant stakeholders including any potential future school operators as to the need for PS3 arising from demand from within the Development. Following the consultation and before 3250 Dwellings have been Occupied

the County Council must decide, acting reasonably, whether to proceed or not with PS3 for the purpose of ensuring that it is operational within 3 years.

17. If the decision under paragraph 16 is not to proceed with PS3 at that stage, the process set out in paragraph 16 shall be repeated and a further decision whether to proceed or not with PS3 for the purpose of ensuring that it is operational within 3 years shall be made by the County Council before the next 300 Dwellings are Occupied and again as required so that the decision whether to proceed or not with PS3 is reviewed prior to the Occupation of each additional 300 Dwellings unless and until either the County Council decides to proceed with PS3 or 4499 Dwellings have been Occupied.

18. If the County Council decides under paragraph 16 or 17 to proceed with PS3 the following paragraphs 19 to 24 shall apply, but not otherwise.

19. The Owners shall not bring into residential use nor Occupy more than another 100 Dwellings across the whole Site following the decision to proceed unless and until the location, extent and GPS coordinates of the PS3 Site within Main Phase 3 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 the 100 Dwellings as aforesaid have been so first Occupied until the County Council have given its approval under this paragraph ( such approval not to be unreasonably withheld).

20. 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, 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.

21. 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 12 months from the date when another 200 Dwellings ( including the 100 referred to in paragraph 19 above) have been first Occupied across the Site following the decision to proceed. No further Dwellings shall be brought into residential use and thereafter Occupied on the Site beyond 12 months after first Occupation of 200 Dwellings as aforesaid , 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.

22. 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 another 900 Dwellings ( including the 200 referred to in paragraph 21 above) have been first Occupied across the Site following the decision to proceed (or earlier upon the reasonable request of the County Council). No more than another 900 Dwellings as aforesaid shall be brought into residential use and thereafter Occupied on the Site unless and until the Adoptable Access under this paragraph has been provided and dedicated as a highway.

23. Unless and until PS3 Contribution 1 has been paid to the County Council, no more than 4,500 Dwellings shall be brought into residential use nor Occupied on the Site.

24. The Paying Owners shall

    (a) pay PS3 Contribution 1 to the County Council before the Occupation of 4,500 Dwellings on the Site for the first time .

    (b) pay PS3 Contribution 2 to the County Council before the Occupation of 4,900 Dwellings on the Site for the first time .

    (c) pay PS3 Contribution 3 to the County Council before the Occupation of 5,300 Dwellings on the Site for the first time .

    (d) pay PS3 Contribution 4 to the County Council before the Occupation of 5,700 Dwellings on the Site for the first time .

## Part 4– Secondary School

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

25.1 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 25.3 below showing the full possible extent of the Secondary School Site have been submitted to and approved in writing by the County Council; and

25.2 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 25.1 above are submitted to and approved in writing by the County Council; and

25.3 a restriction is entered in the Proprietorship Register of the titles identified in paragraph 25.2 that comprises the full possible extent of the Secondary School Site as identified by the plans approved by the County Council pursuant to paragraph 25.1 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*

26. 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.

27. As soon as reasonably practicable after the date of the approval of the exact location and extent of the Secondary School Site under paragraph 26 above the restriction entered onto the Proprietorship Register of the titles in accordance with paragraph 25.3 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.

28. 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 26 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.

29. 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.

30. 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.

31. 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

31.1 subject to Commence (Statutory) the Development having occurred 1 September 2022, or

31.2 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.

32. 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.

33. The Paying Owners shall:

(a) Pay the Stage One Secondary Contribution 1 to the County Council on or before ~~the date when 2650~~Occupation of 1,000 Dwellings on the Site ~~have been Occupied.~~or on or before 1 March 2026 whichever is the earlier date .

(b) Pay the Stage One Secondary Contribution 2 to the County Council within 12 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2027 whichever is the earlier date ~~when 3125 Dwellings on the Site have been Occupied.~~.

(c) Pay the Stage One Secondary Contribution 3 to the County Council within 24 months of the falling due date of the Stage One Secondary Contribution 1 on or before 1 March 2028 whichever is the earlier date ~~when 3625 Dwellings on the Site have been Occupied.~~.

(d) Pay the Stage One Secondary Contribution 4 to the County ~~Councilon~~Council within 36 months of the falling due date of the Stage One Secondary Contribution 1 on or before 1 March 2029 whichever is the earlier date ~~when 4500 Dwellings on the Site have been Occupied.~~.

(e) Pay the Stage One Secondary Contribution 5 to the County Council within 48 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2030 whichever is the earlier date.

(f) Pay the Stage One Secondary Contribution 6 to the County Council within 60 months of the falling due date of the Stage One Secondary Contribution 1 or on or before 1 March 2031 whichever is the earlier date.

34. The Owners shall not Occupy or cause or permit Occupation of more than 2650 Dwellings unless and until the Stage One Secondary Contribution 1 has been paid.

35. If any of the sums due pursuant to paragraph 33 of this schedule 15 (part 4) are not paid when it falls due, the Paying Owners shall not Occupy or cause or permit Occupation of any further Dwellings from the date the applicable sum in paragraph 33 falls due until it is paid in full to the County Council.

36. If any of the sums due pursuant to paragraph 33 of this schedule 15 (part 4) is not paid when it falls due, the Council or the County Council may give notice to the Owners (other than the Paying Owners) of such a breach and from service of that notice the Owners (other than the Paying Owners) shall not Occupy or cause or permit the Occupation of any further Dwellings until such payment/s have been paid to the County Council in full.

## Part 5 – The Delivery of Bonds

**41.** The Paying Owners shall :

(a) 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

(b) 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 5~~ Part 6 – Principles Applying in Respect of Transfers and Occupation

37. For the purpose of this Schedule 15, the following principles apply:

37.1 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.

37.2 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.

## ~~Part 6~~ Part 7 – County Council Covenants

The County Council covenants with the Owners as follows:

38. 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

39. 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.

40. One year following practical completion of a School, the 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 such account to be provided by the County Council within a reasonable time of any such request.

41. 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 as soon as reasonably practicable following provision of the account.

42. The County Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £8,829.11 ( eight thousand eight hundred and twenty nine pounds eleven pence ) already paid to the County Council by way of indexation on PS1 Contribution 1 and the sum of £2,096,017.66 (two million ninety sixty thousand seventeen pounds sixty six pence) already paid to the County Council in respect of PS1 Contribution 4 (including indexation) within 28 days.

**Schedule 15A –**
**KCC General Site Transfer Requirements**

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 in a reasonably level condition. 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, 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 to the site boundary, at no cost to the County Council, and maintained prior to transfer to a standard capable of accommodating heavy goods vehicles and other construction traffic.

8. Prior to the site transfer or, if not reasonably practicable, with a reasonable time thereof 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) may 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. 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 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.

11. 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.

12. 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.

13. 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.

14. 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 15AB –**
**Infrastructure and Forward Funding**

1. In this schedule the following words shall have the following meaning in addition to the definitions provided in clause 1.1 of the Original Agreement:

| | |
|---|---|
| **Access A** | a new access A – the northern A28 roundabout to the Site shown on Drawing number 131065/A/01 Rev B approved pursuant to the Planning Permission (or such other scheme to substantially the same effect in highways terms previously approved in writing by the Council in consultation with the County Council) |
| **Access C Roundabout** | a new access C – the southern access roundabout shown on approved drawing 131065/A/02 Rev B approved pursuant to the Planning Permission (or such other scheme to substantially the same effect in highways terms previously approved in writing by the Council in consultation with the County Council) |
| **Active Travel Route** | the footpath across the Site to Chilmington Green Road along the route coloured brown shown on drawing TQ9740/3C |
| **Amendment** | an application pursuant to section 96A or section 73 of the Act to make an amendment to the Infrastructure Route to change the design of the junction of Chilmington Green Road/ Chilmington Green Avenue Extension/Chilmington Avenue in a form approved by the County Council (acting reasonably) the location of which is indicatively shown on Drawing VD21443- VEC-00-XX-DR-D-103 Rev D |
| **Chilmington Avenue Extension** | indicatively shown on Drawing No. VD21443-VEC-00-XX-DR-D-103 Rev D outlined in red; |
| **Contractor's Invoice** | invoices from a Hodson, a contractor or members of Hodson's professional team for the Approved Infrastructure Works as provided for in paragraph 3 part 3 of this schedule |
| **Department for Education** | The Department for Education or any successor body; |
| **Infrastructure Works** | any works reasonably required by the County Council to facilitate the construction of pedestrian access to and from and the opening and operation of the Secondary School on the Secondary School Site which may include planning and design works, technical designs works, procurement of works and construction works relating to works to be carried out to the Chilmington Avenue Extension, the Active Travel Route and the Access C Roundabout |

| | |
|---|---|
| **Infrastructure Costs** | the sums to be applied towards the Infrastructure Works in accordance with this schedule up to a maximum of £3,100,000 (three million one hundred thousand pounds) in aggregate |
| **Infrastructure Report** | the report in respect of the Infrastructure Works as required pursuant to this schedule part 4 |
| **Infrastructure Route** | an infrastructure route from Access C to Chilmington Green Road permitted under reference 21/00840/AS as amended pursuant to the Amendment |
| **Interest 1** | three percent (3%) above the Bank of England base rate |
| **Section 73 Application** | an application under section 73 of the Planning Act to vary conditions 27 and 29 of the Planning Permission |
| **Wave Funding** | any funding awarded by the Department for Education in respect of the Secondary School to be constructed on the Secondary School Site. |

2. In this Schedule unless the context otherwise requires:-

2.1 words denoting an obligation on a person to do any act matter or thing include an obligation to procure that it be done;

2.2 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.

## Part 1– Conditionality

The Paying Owners covenant with the County Council as set out in this schedule.

1. If Wave Funding is not granted:

1.1 the County Council shall notify Hodson or one of the Paying Owners in writing; and

1.2 unless the County Council has approved any Infrastructure Works under Part 3, paragraph 2, this Schedule shall not apply.

2. Where the County Council has approved any Infrastructure Works under Part 3, paragraph 2 before notification to Hodson or one of the Paying Owners that Wave Funding has not been granted:

2.1 Part 2 shall not apply; and

2.2 Parts 3, 4 and 5 shall continue to apply.

## Part 2– Section 73 Application

1. Hodson shall submit to the County Council for approval a programme for completion of the Infrastructure Works (such approval not to be unreasonably withheld or delayed) as soon as

practicable following the date of this deed ("the Programme"). The County Council shall be reasonable in withholding its consent if the Programme does not demonstrate that the following will be completed on or before 31 May 2023:

1.1 the Access C Roundabout;

1.2 the Infrastructure Route; and

1.3 the Chilmington Avenue Extension from Access A to Chilmington Green Road together comprising "the Works")

2. The County Council and Hodson shall meet between 30 November 2022 and 31 December 2022 to assess the progress of the Infrastructure works pursuant to the Programme. If the County Council reasonably considers that the Works are unlikely to be completed by 31 May 2023 to:

2.1 binder course in respect of any carriageway;

2.2 highway drainage (including drainage situated outside of any highway) and all sustainable drainage systems (where this applies);

2.3 all other drainage contained within any highway;

2.4 clearance of vision splays;

2.5 street lighting illuminated traffic signs and bollards (where appropriate);

2.6 structures (where appropriate).

2.7 crushed concrete in respect of any footways and cycleways; and

2.8 topsoil for any verge,

the County Council may request that Hodson prepares a draft Section 73 Application.

3. Hodson shall bring all footways and cycleways comprising the Chilmington Avenue Extension up to binder course in accordance with relevant conditions in the Planning Permission.

4. If the County Council requires the Section 73 Application to be prepared pursuant to paragraph 2, Hodson shall prepare the Section 73 Application for the County Council's approval as soon as reasonably practicable following such request and in any event within thirty (30) days. Hodson shall submit the Section 73 Application to the Council within seven (7) days of written approval from the County Council The process set out in this paragraph shall be repeated until such time that a Section 73 Application has been approved by the Council.

5. If Hodson is in breach of its obligations in paragraph 3, the County Council may give notice to the Paying Owners of such a breach and from receipt of that notice the Paying Owners shall not Occupy or cause or permit the Occupation of any further Dwellings unless and until Hodson has submitted a valid Section 73 Application to the Council in the form approved by the County Council.

6. Nothing contained or implied in this deed shall be construed as fettering the Council's discretion in respect of any Section 73 Application submitted to the Council or prejudice or affect the rights powers duties and obligations of the Council both as the local planning authority and in the exercise of its functions rights powers duties and obligations of the Council under all public and private statutes bylaws orders and regulations may be fully and effectually exercised as if the Part 2 provisions were not included in this schedule 2.

## Part 3 – Infrastructure Works and Amendment

1. Hodson shall prepare the Amendment for the County Council's approval as soon as practicable following the date of this deed and in any event within thirty (30) days. Hodson shall submit the application for Amendment to the Council within seven (7) days of written approval from the County Council. The process set out in this paragraph shall be repeated until such time that an Amendment has been approved by the Council.

2. Hodson shall submit to the County Council for approval a budget and schedule of works for completion of the Infrastructure Works (such approval not to be unreasonably withheld or delayed) as soon as practicable following the date of this deed ("the Budget"). The Budget shall include a breakdown of the costs to be incurred by the contractors and all members of the professional team.

3. At any time following the date of this deed, Hodson may make an application in writing to the County Council for approval of a part of the Infrastructure Works to be carried out. Such application shall be supported by a schedule of works that demonstrates such works fall within the Infrastructure Works and that the Infrastructure Costs are within the Budget.

4. The County Council shall approve an application under paragraph 2 within 10 days ("Approved Infrastructure Works").

5. Following completion of any Approved Infrastructure Works, Hodson may make an application in writing to the County Council for release of a part of the Infrastructure Costs. Such application shall be supported by:

   5.1 a statement confirming the Approved Infrastructure Works have been completed;

   5.2 a statement by a clerk of works appointed by the County Council confirming that such works accurately reflect the Approved Infrastructure Works; and

   5.3 a Contractor's Invoice.

6. The County Council shall act reasonably in considering any application received pursuant to paragraphs 2 and 4 (of this Part 3) and shall respond to approve or reject such application within ten (10) days following receipt. If the application is rejected, the County Council shall provide substantive reasons behind its decision.

7. On approval by the County Council of an application for release of a part of the Infrastructure Costs, the County Council shall pay the approved amount to Hodson within ten (10) days of approval.

8. Hodson shall provide proof of payment of the Contractor's Invoice within ten (10) days of receipt of part of the Infrastructure Costs from the County Council.

9. Should Hodson fail to pay the Contractor's Invoice for which the County Council has released part of the Infrastructure Costs, the County Council may withhold any release of further Infrastructure Costs unless until satisfactory evidence of actual payment of previous Contractor's Invoices has been provided to the County Council.

10. A new paragraph shall be inserted in the definition of Relevant Dispute in the Original Agreement as follows:

    "f) any dispute about the release of the Infrastructure Costs and/or whether any works proposed by Hodson are within the scope of the Infrastructure Works."

11. Interest 1 shall be payable by the Paying Owner in respect of any amount of the Infrastructure Costs. Such interest shall be payable from the date any part of the Infrastructure Costs is paid to the Paying Owners until the date of repayment to the County Council. The Paying Owners shall repay any Infrastructure Costs plus Interest 1 to the County Council on or before 1 March 2027.

12. The Paying Owners shall not Occupy or cause or permit Occupation of any further Dwellings after 1 March 2027 unless and until the Infrastructure Costs plus Interest 1 payable from the date any part of the Infrastructure Costs is paid to the Paying Owner until the date of repayment to the County Council have been paid to the County Council in full.

13. If Hodson fails to carry out or complete the Infrastructure Works in accordance with its obligations under this deed or fails to meet with the County Council pursuant to part 2, paragraph 2 of this schedule, the County Council after giving no less than twenty one (21) days written notice to Hodson, shall be entitled to carry out or complete the Infrastructure Works in default, using the County Council's own employees, or by contractors or otherwise and to recover from the Paying Owner the actual cost reasonably incurred in carrying out or completing the Infrastructure Works.

## Part 4 – Infrastructure Reporting

1. Hodson shall submit an Infrastructure Report to the County Council on the 15th day of every month, commencing six (6) weeks after the date of this deed setting out:

   1.1 the items of Infrastructure Works that have been completed in the preceding month;

   1.2 which Infrastructure Works are scheduled to be completed in the following three (3) months;

   1.3 any matters that have led to or may lead to an unexpected variation in the Programme; and

   1.4 any matters that have led to or may lead to an unexpected variation in costs from the Budget.

2. Hodson and the County Council shall meet on request by either party as early as possible within ten (10) days of a request being received in writing to review the progress of the Infrastructure Works and/or any Infrastructure Report.

## Part 5 – Forward Funding

1. The Paying Owners and the County Council agree that by the arrangements set out in this schedule 15AB, the County Council are forward funding infrastructure that the Paying Owners should have provided by virtue of the provisions in paragraph 29(a) of Schedule 15 and paragraphs 7 to 9 of Schedule 15A the Original Agreement. On repayment of the sums forward funded by the Paying Owners to the County Council set out in this Schedule, the County Council may credit the relevant repayment equal to the sum forward funded by the County Council (including interest received thereon) to its own resources."

**Schedule 15B – Not used**

**Schedule 15C – Not used**

## SCHEDULE 16

## Not used

**SCHEDULE 17**

**Not used**

**SCHEDULE 18**

**Not used**

**SCHEDULE 19**

**Not used**

## SCHEDULE 20

### Provision of Bus Services

1. The Owners covenant with the Council as follows:

1.1 Not to Occupy more than ~~2,684~~500 Dwellings until (i) a temporary bus stop to serve the first ~~2684~~500 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 ~~2,684~~500 Dwellings in accordance with requirements of paragraph 1.1 of this schedule prior to the Occupation of ~~2684~~500 Dwellings.

1.3 Not to Occupy more than ~~2,684~~500 Dwellings until ~~a bus service~~the Bus Service has started operating ~~between the Site and the town centre to connect with trains from St Pancras International to Ashford International~~. In the event the Owners have used a tender approved by the Council (which may include a requirement to tender for different service options), but no bids are successful, the Council will consent to the Owners tendering for an alternative service instead. In that case, the level of service described above shall be construed accordingly and shall in accordance with the successful bid (if any). Alternatively or in addition, the Council may consent in writing to the Owners Occupying a greater number of Dwellings than specified above (consent not to be unreasonably withheld).

1.4 Not to Occupy more than ~~2,784~~1,222 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 ~~2,784~~1,222 Dwellings.

1.6 Not to Occupy more than ~~3,584~~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 ~~3,584~~1,222 Dwellings.

~~1.8 Not to Occupy more than 3,584 Dwellings until the frequency of the bus service between the Site and the town centre is increased to at least every 20 minutes provided however that this obligation shall not apply if the Owners provide evidence from the bus service operator (which is accepted by the Council acting reasonably) that it is not viable to operate the service at that frequency in which case the Owner shall not Occupy more than 3,584 Dwellings until the frequency of the bus service between the Site and the town centre is increased to the extent that the operator confirms it is viable to do so.~~

1.8 In order to monitor the effectiveness of the Bus Service the Owners shall during the Bus Service Monitoring Period carry out the Bus Service Monitoring. During the Bus Service Monitoring Period the Owners shall prepare and submit to the County Council for approval a Bus Service Monitoring Report by not later than 28 days after the end of each Bus Service Monitoring Review Period. Prior to the submission of a report referred to in paragraph (ii) the Owners shall agree the structure of that report with the County Council. If any Bus Service Monitoring Report includes a proposal for a revised Bus Service for approval by the County Council if approved the Owners shall implement the revised Bus Service as approved so that it is in place and operational in accordance with the timetable set out in the approved Bus Service Monitoring Report.

1.9 Not to Occupy more than ~~4,784~~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 ~~4,784~~2,772 Dwellings and any property so specified has been transferred at nil consideration and nil cost to the specified body.

~~1.11 Not to Occupy more than 4,784 Dwellings until the frequency of the bus service between the Site and the town centre is increased to at least every 13-14 minutes provided however that this obligation shall not apply if the Owners provide evidence from the bus service operator (which is accepted by the Council acting reasonably) that it is not viable to operate the service at that frequency in which case the Owner shall not Occupy more than 4,784 Dwellings until the frequency of the bus service between the Site and the town centre is increased to the extent that the operator confirms it is viable to do so.~~

1.11 ~~1.12~~ Not to Occupy more than ~~5,348~~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

1.12 ~~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 ~~5,348~~4,107 Dwellings.

~~1.14 Not to Occupy more than 5,348 Dwellings until the frequency of the bus service between the Site and the town centre is increased to at least every 10 minutes provided however that this obligation shall not apply if the Owners provide evidence from the bus service operator (which is accepted by the Council acting reasonably) that it is not viable to~~

~~operate the service at that frequency in which case the Owner shall not Occupy more than 5,348 Dwellings until the frequency of the bus service between the Site and the town centre is increased to the extent that the operator confirms it is viable to do so~~

1.13 ~~1.15~~ Not to Occupy more than ~~5,500~~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 approved and (ii) a maintenance scheme for the measures and infrastructure has been approved in writing by the Council.

1.14 ~~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 ~~5,500~~5,000 Dwellings.

~~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 not having to subsidise the bus service.~~

1.15 To maintain the bus priority measures and bus related infrastructure in accordance with the relevant approved maintenance scheme.

## 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 2,399~~

~~1.1.3 5,649~~

~~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 Subject to paragraph 3 to ensure that no more than 2499 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 Subject to paragraph 3 to ensure that no more than 5749 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. Subject to paragraph 3 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 2,500th 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 5750th Dwelling on the Site.~~

~~3. If the monitoring data passed to the Council and the County Council in respect of any of the ten locations listed in paragraph 1.1 demonstrates that the traffic on that road is not more than 10% above the Predicted Traffic Level , the figure of £408,498.00 (four hundred and eight thousand four hundred and ninety eight pounds) ( Index Linked) referred to in paragraph 2 shall be reduced by £40,850 ( forty thousand eight hundred and fifty pounds ) (Index Linked for each such road and the figure of £204,249.00 (two hundred and four thousand two hundred and forty nine pounds) Index Linked referred to in paragraphs 1.2, 1.3 , 2.1 and 2.2 shall be reduced by £20,425 (twenty thousand four hundred and twenty five pounds ) (Index Linked for each such road~~

~~4. The Predicted Traffic Level means the pre-commencement surveyed traffic adjusted to future years using the DfT's TEMPRO growth rates~~

**Not used**

**SCHEDULE 22**

**Not used**

## 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 as follows:-

2.1.1 no later than 40 days following the cumulative number of dwellings within Reserved Matters Applications first reaching 2475 Dwellings to submit via the Owners' Agent to the Council for the Council's approval a Viability Review Submission for Viability Review Phase Five and pay a further Viability Review Fee; and

2.1.2 no later than 40 days following the cumulative number of dwellings within Reserved Matters Applications first reaching 2975 Dwellings to submit via the Owners' Agent to the Council for the Council's approval a Viability Review Submission for Viability Review Phase Six and pay a further Viability Review Fee; and

2.1.3 no later than 40 days following the cumulative number of dwellings within Reserved Matters Applications first reaching 3475 Dwellings to submit via the Owners' Agent to the Council for the Council's approval a Viability Review Submission for Viability Review Phase Seven and pay a further Viability Review Fee; and

2.1.4 no later than 40 days following the cumulative number of dwellings within Reserved Matters Applications first reaching 4034 Dwellings to submit via the Owners' Agent to the Council for the Council's approval a Viability Review Submission for Viability Review Phase Eight and pay a further Viability Review Fee; and

2.1.5 no later than 40 days following the cumulative number of dwellings within Reserved Matters Applications first reaching 4534 Dwellings to submit via the Owners' Agent to the Council for the Council's approval a Viability Review Submission for Viability Review Phase Nine and pay a further Viability Review Fee; and

2.1.6 no more than 40 days following the cumulative number of dwellings within Reserved Matters Applications first reaching 5034 Dwellings to submit via the Owners' Agent to the Council for the Council's approval a Viability

Review Submission for Viability Review Phase Ten and pay a further Viability Review Fee.

2.2 For the avoidance of doubt:-

2.2.1 there is no obligation on the Owners or the Owners to submit a Viability Review Submission in respect of Viability Phase One, Viability Phase Two and Viability Phase Three and the Council shall not consider a viability review or a Viability Review Submission of Viability Review Phase One, Viability Phase Two or Viability Phase Three 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 and Viability Phase Two and Viability Phase Three and Viability Phase Four unless and until all of the events described by paragraph 3.7 have occurred OR all of the events detailed by paragraph 3.8 and paragraph 3.9 and paragraph 3.11 have occurred OR all of the events in paragraph 3.8 and paragraph 3.10 and paragraph 3.11 have occurred OR all of the events detailed by paragraph 3.12 have occurred OR all the events detailed in paragraph 3.13 have occurred for and in respect of Viability Review Phase Five.

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 Phase Two and Viability Phase Three and Viability Phase Four and Viability Review Phase Five unless and until all of the events described by paragraph 3.7 have occurred OR all of the events detailed by paragraph 3.8 and paragraph 3.9 and paragraph 3.11 have occurred OR all of the events in paragraph 3.8 and paragraph 3.10 and paragraph 3.11 have occurred OR all of the events detailed by paragraph 3.12 have occurred OR all the events detailed in paragraph 3.13 have occurred for and in respect of Viability Review Phase Six.

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 Phase Two and Viability Phase Three and Viability Phase Four and Viability Review Five and Viability Review Phase Six unless and until all of the events described by paragraph 3.7 have occurred OR all of the events detailed by paragraph 3.8 and paragraph 3.9 and paragraph 3.11 have occurred OR all of the events in paragraph 3.8 and paragraph 3.10 and paragraph 3.11 have occurred OR all of the

events detailed by paragraph 3.12 have occurred OR all the events detailed in paragraph 3.13 have occurred for and in respect of Viability Review Phase Seven.

3.4 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 Phase Two and Viability Phase Three and Viability Phase Four and Viability Review Five and Viability Review Phase Six and Viability Review Phase Seven unless and until all of the events described by paragraph 3.7 have occurred OR all of the events detailed by paragraph 3.8 and paragraph 3.9 and paragraph 3.11 have occurred OR all of the events in paragraph 3.8 and paragraph 3.10 and paragraph 3.11 have occurred OR all of the events detailed by paragraph 3.12 have occurred OR all the events detailed in paragraph 3.13 have occurred for and in respect of Viability Review Phase Eight.

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 Phase Two and Viability Phase Three and Viability Phase Four and Viability Review 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 3.7 have occurred OR all of the events detailed by paragraph 3.8 and paragraph 3.9 and paragraph 3.11 have occurred OR all of the events in paragraph 3.8 and paragraph 3.10 and paragraph 3.11 have occurred OR all of the events detailed by paragraph 3.12 have occurred OR all the events detailed in paragraph 3.13 have occurred for and in respect of Viability Review Phase Nine.

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 Phase Two and Viability Phase Three and Viability 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 3.7 have occurred OR all of the events detailed by paragraph 3.8 and paragraph 3.9 and paragraph 3.11 have occurred OR all of the events in paragraph 3.8 and paragraph 3.10 and paragraph 3.11 have occurred OR all of the events detailed by paragraph 3.12 have occurred OR all the events detailed in paragraph 3.13 have occurred for and in respect of Viability Review Phase Ten.

3.7 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 the Council from the Owners' Agent) and in particular the Viability Review Template Results the full details of the Proposed Additional Affordable Housing Provision (if any) and the Residual Surplus (if any) for the relevant Viability Review Phase either within the 30 Working Day period referred to in paragraph 3.17 or after that 30 Working Day Period has elapsed including during the process of Expert Determination.

3.8 The Council has rejected the content of the Viability Review Submission for the relevant Viability Review Phase (which for the avoidance of doubt is not a Premature Viability Submission) in writing to the Owners' Agent; and

3.8.1 the Owners via the Owners' Agent have responded in full to all written request/s for reasonable clarification further information and/or further evidence related to the Viability Review Submission for the relevant Viability Review Phase made by the Council to the Owners' Agent within 60 Working Days of the date on which the Council receives the Viability Review Submission (if any) and the Owners via the Owners' Agent have provided such clarification and/or further information and/or further evidence to the Council in full and in writing and any related amendment to the Viability Review Submission for the relevant Viability Review Phase; and

3.8.2 the Owners have reflected any variation to and/or clarification of the Viability Review Submission discussed with Council and/or referred to in the Owner's response to a request made by the Council for reasonable clarification and/or further information and/or further evidence as referred to in paragraph 3.8.1 in an updated/amended Viability Review Submission (the substance of which is otherwise unchanged from the original Viability Review Submission other than to reflect such variation and/or clarification) and have submitted such amended/updated Viability Review Submission to the Council via the Owners' Agent; and

3.8.3 60 Working Days have elapsed since the date on which the Council serves its written notification of its rejection of the content of the Viability Review Submission for the relevant Viability Review Phase for the first time pursuant to paragraph 3.8 above; and

3.8.4 the Owners' Agent has offered to the Council in writing at least 6 times and dates during the 60 Working Days referred to at paragraph 3.8.3 above (to be between 9am to 5pm inclusive on any day that is a Working Day) on which appropriately qualified representatives of the Owners including the Owners' Agent (with sufficient authority to make relevant decisions on behalf the Owners) are available to attend meetings of at least 4 hours in duration at the Council's Offices to try and obtain the Council's approval of the content of the Viability Review Submission (or such updated/amended version of the Viability Review Submission as may have been submitted to the Council via the Owners' Agent) for the relevant Viability Review Phase and that such representatives attend all meetings at the Council's Offices on the dates and times confirmed as accepted by the Council in writing to the Owners' Agent.

3.9 After all the events detailed in paragraph 3.8 have occurred the Council does not confirm that it either approves of or rejects the content of the Viability Review Submission for the relevant Viability Review Phase (or such updated/amended version of the Viability Review Submission that is in accordance with the requirements of paragraph 3.8.2 as it may have received from the Owners' Agent) in writing to the Owners' Agent within a further 20 Working Days after the 60 Working Days referred to in paragraph 3.8.3 above has elapsed or within 20 Working Days after the date on which the last updated/amended version of the Viability Review Submission that is in accordance with the requirements of paragraph 3.8.2 and/or the last item of information evidence or clarification that is requested by the Council during the 60 Working Days referred to in paragraph 3.8.3 and is received by the Council from the Owners' Agent (whichever is later).

3.10 After all the events detailed in paragraph 3.8 have occurred the Council confirms that it rejects the content of the Viability Review Submission for the relevant Viability Review Phase (or such updated/amended version of the Viability Review as it may have received from the Consortium Agent) to the Owners' Agent in writing within the same 20 Working Days.

3.11 After either all of the events detailed in paragraph 3.8 and detailed in paragraph 3.9 have occurred the Owners have referred the matter of the Viability Review Submission for the relevant Viability Review Phase to the Expert (the identity of which must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Deed.

3.12 the Council has referred the matter of the Viability Review Submission for the relevant Viability Review Phase to the Expert (the identity of which must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Deed.

3.13 30 Working Days have lapsed since the date on which the Council receives the Viability Review Submission (for the avoidance of doubt it not being Premature Viability Review Submission) for the relevant Viability Review Phase and the Council has not confirmed

in writing to the Owners' Agent whether it approves of or rejects the content of the Viability Review Submission within same 30 Working Days in which case the content of the Viability Review Submission for the relevant Viability Review Phase as submitted to the Council by the Owners' Agent shall be deemed to be approved by the Council and in particular the Viability Review Template Results the full details of the Proposed Additional Affordable Housing Provision (if any) and the Residual Surplus (if any) for the relevant Viability Review Phase as detailed by the submitted Viability Review Submission.

3.15 The Owners covenant with the Council that:-

3.15.1 in the event that the matter of the content of a Viability Review Submission in relation to Viability Review Phase Five is referred to the Expert (the identity of whom must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Schedule and the Expert fails to determine such matter within 80 Working Days and/or the Council does not approve the content of the Viability Review Submission within the same 80 Working Day Period that no more than 25% of the Dwellings within Viability Review Phase Five shall be Occupied unless and until either the Expert has determined the matter or the Council approves the content of the Viability Review Submission in writing; and

3.15.2 in the event that the matter of the content of a Viability Review Submission in relation to Viability Review Phase Six is referred to the Expert (the identity of whom must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Schedule and the Expert fails to determine such matter within 80 Working Days and/or the Council does not approve the content of the Viability Review Submission within the same 80 Working Day Period that no more than 25% of the Dwellings within Viability Review Phase Six shall be Occupied unless and until either the Expert has determined the matter or the Council approves the content of the Viability Review Submission in writing; and

3.15.3 in the event that the matter of the content of a Viability Review Submission in relation to Viability Review Phase Seven is referred to the Expert (the identity of whom must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Schedule and the Expert fails to determine such matter within 80 Working Days and/or the Council does not approve the content of the Viability Review Submission within the same 80 Working Day Period that no more than 25% of the Dwellings within Viability Review Phase Seven shall be Occupied unless and until either the Expert has determined the matter or the Council approves the content of the Viability Review Submission in writing; and

3.15.4 in the event that the matter of the content of a Viability Review Submission in relation to Viability Review Phase Eight is referred to the Expert (the identity of whom must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Schedule and the Expert fails to determine such matter within 80 Working Days and/or the Council does not approve the content of the Viability Review Submission within the same 80 Working Day Period that no more than 25% of the Dwellings within Viability Review Phase Eight shall be Occupied unless and until either the Expert has determined the matter or the Council approves the content of the Viability Review Submission in writing; and

3.15.5 in the event that the matter of the content of a Viability Review Submission in relation to Viability Review Phase Nine is referred to the Expert (the identity of whom must be agreed between the Owners and the Council or

decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Schedule and the Expert fails to determine such matter within 80 Working Days and/or the Council does not approve the content of the Viability Review Submission within the same 80 Working Day Period that no more than 25% of the Dwellings within Viability Review Phase Nine shall be Occupied unless and until either the Expert has determined the matter or the Council approves the content of the Viability Review Submission in writing; and

3.15.6 in the event that the matter of the content of a Viability Review Submission in relation to Viability Review Phase Ten is referred to the Expert (the identity of whom must be agreed between the Owners and the Council or decided by the Royal Institute of Chartered Surveyors) pursuant to paragraph 4 of this Schedule and the Expert fails to determine such matter within 80 Working Days and/or the Council does not approve the content of the Viability Review Submission within the same 80 Working Day Period that no more than 25% of the Dwellings within Viability Review Phase Ten shall be Occupied unless and until either the Expert has determined the matter or the Council approves the content of the Viability Review Submission in writing.

3.16 For the avoidance of doubt the Council shall not consider at all and is under no obligation to confirm to the Owners' Agent that it rejects a Premature Viability Review Submission .

3.17 The Council covenants with the Owners that it shall confirm in writing to the Owners' Agent whether it approves of or rejects the content of the Viability Review Submission for each Viability Review Phase within 30 Working Days of receiving the same and if it rejects the content of a Viability Review Submission it shall give reasons why it is doing so and shall request such reasonable clarification and/or further information and/or further evidence relating to the relevant Viability Review Submission that it considers appropriate to do so.

3.18 The Council covenants with the Owners that it shall:-

3.18.1 Take into account the most recent relevant housing need in the borough of Ashford as shown by the results of the most recently completed Strategic Housing Market Assessment (or such other assessment of housing need in the borough of Ashford as may supplement or succeed the Strategic Housing Market Assessment) conducted by the Council prior to serving the Affordable Housing Information Reply relating to each Viability Review Phase on the Owners' Agent and shall also take into account any consultation undertaken by the Council with Registered Providers relating to the provision of Affordable Housing Units on the Site; and

3.18.2 that in considering whether it requires the Additional Affordable Housing Provision (if any) to be extra care Affordable Housing Units or other forms of specialist housing when compiling an Affordable Housing Information Reply for any given Viability Review Phase the Council shall have particular regard to 1) the need for any such housing to reach a certain size and scale appropriate to its occupants to be cost effective and readily fundable and the advice of its housing officer and Registered Providers as to the necessary size and scale of developments comprising such Dwellings and 2) the proximity or otherwise of local facilities to serve such a development.

4. **Expert Determination in relation to Viability Review Submissions Only.**

4.1 The Owners and/or the Council may refer the matter of the content of a Viability Review Submission in respect of a Viability Review Phase relating to that Viability Review Submission (and in particular the Viability Review Template Results the full details of the Proposed Additional Affordable Housing provision (if any) the Surplus (if any) and the Residual Surplus (if any)) to an independent expert ("the Expert") for determination

in the circumstances and within the timescales outlined in paragraph 3 of this Schedule only and provided that the party referring such matter to the Expert gives notice to the other party of its wish to do so, such notice containing a summary of all of the issues in dispute.

4.2 The Expert shall have at least 10 years' post-qualification experience in the subject matter of viability issues relating to residential development and be a qualified surveyor with the Royal Institute of Chartered Surveyors and shall be agreed upon between the Owners and the Council or, if not agreed within 20 Working Days of the of the notice of the party's wish to refer the matter to dispute resolution being served on the other party pursuant to paragraph 4.1, then at the request and option of either of the parties the Expert shall be nominated by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors .

4.3 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 by the party who referred the matter of the relevant Viability Review Submission to him notwithstanding whether or not his decision on the dispute is in favour of that party.

4.4 For the avoidance of doubt (other than in respect of his costs) the decision of the Expert shall be binding on the parties.

4.5 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 dispute and in any event not more than 60 Working Days from the date of his appointment to act.

4.6 The Expert shall be required to give notice to each of the parties to the dispute 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.

4.7 For the avoidance of doubt this process of expert determination shall not apply and not be used in relation to a dispute in relation to any other matter other than the matter of the content of a Viability Review Submission in respect of a Viability Review Phase.

4.8 Nothing in this paragraph 4 shall prevent any party from seeking recourse to the High Court or any other court in England of competent jurisdiction or from exercising any right to take alternative action.

5. **Confidentiality of Content of Viability Review Submissions and further information relating to Viability Review Submissions**

5.1 Where information or documentation provided to the Council pursuant to this Agreement including the content of Viability Review Submission/s and/or further information relating to Viability Review Submission/s is of a confidential nature or may be (in the reasonable opinion of the Owners) exempt from disclosure to any other person other than the officers and members of the Council on a confidential basis under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (or any other relevant legislation relating to the disclosure of confidential information or contractual documentation) the Owners shall via the Owners' Agent identify in writing to the Council at the same time as and accompanying the disclosure of the information or documentation in question precisely which information is or may be so exempt and under which provision(s) of the said Act and Regulations/legislation and to give reasons for such opinion in order to assist the Council should they receive a request under the said Act and Regulations/legislation and need to make a determination in relation to any such exemption.

6. **Payment of Residual Surplus in last Viability Review Submission and relating to Viability Review Phase Ten (if any) as a contribution to the Council.**

6.1 The Owners covenant with the Council that in the event the Viability Review Submission relating to Viability Review Phase Ten is approved by the Council or determined by an Expert pursuant to paragraph 3 or paragraph 4 of this Schedule (as appropriate) and a Residual Surplus is identified as one of the Viability Review Template Results relating to that Viability Review Phase as approved by the Council or determined by the Expert (as appropriate) no more than 5600 Dwellings shall be Occupied until such Residual Surplus is paid to the Council and the Owners shall pay such Residual Surplus to the Council prior to the date on which the 5600th Dwelling to be Occupied is Occupied.

6.2 The Council covenants to use any Residual Surplus paid to it as a financial contribution pursuant to paragraph 6.1 above for the provision of affordable housing within the borough of Ashford.

## SCHEDULE 24

### Public Art

1. The Owners covenant with the Council as follows:

   1.1 Not to Occupy more than 999 Dwellings unless £100,000.00 (one hundred thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners 1

   1.2 Not to Occupy more than 1999 Dwellings unless £150,000.00 (one hundred and fifty thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners

   1.3 Not to Occupy more than 2999 Dwellings unless £150,000.00 (one hundred and fifty thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners

   1.4 Not to Occupy more than 3999 Dwellings unless £150,000.00 (one hundred and fifty thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners

   1.5 Not to Occupy more than 4999 Dwellings unless £150,000.00 (one hundred and fifty thousand pounds) Index Linked has been spent on the provision of public art within the Site by the Owners

2. The Paying Owners covenant with the Council to spend the total sum of £700,000.00 (seven hundred thousand pounds) Index Linked on the provision of public art within the Site in the following instalments:

   2.1 £100,000.00 (one hundred thousand pounds) Index Linked to be spent prior to Occupation of the 1000th Dwelling

   2.2 £150,000.00 (one hundred and fifty thousand pounds) Index Linked to be spent prior to Occupation of the 2000th Dwelling

   2.3 £150,000.00 (one hundred and fifty thousand pounds) Index Linked to be spent prior to the Occupation of the 3000th Dwelling

   2.4 £150,000.00 (one hundred and fifty thousand pounds) Index Linked to be spent prior to the Occupation of the 4000th Dwelling

   2.5 £150,000.00 (one hundred and fifty thousand pounds) Index Linked to be spent prior to the Occupation of the 5000th Dwelling

3. The Council covenants with the Owners:

   To pay back to the Paying Owners the sum of £169,672.12 (one hundred and sixty nine thousand six hundred and seventy two pounds twelve pence ) towards Public Art already paid to the Council prior to Commencement. within 28 days

## SCHEDULE 25

## Heritage Interpretation

**Archaeological and Heritage Contributions**

**COUNTY COUNCIL COVENANTS**

1. The County Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £151,768.98 ( one hundred and fifty one thousand seven hundred and sixty eight pounds ninety eight pence ) being the Archaeological Archiving Contribution, the Heritage Interpretation Contribution and the Archaeologist Contribution already paid to the Council within 28 days.

## SCHEDULE 26

### Quality Agreement

1. The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £157,297.30 ( One hundred and fifty seven thousand two hundred and ninety seven pounds thirty pence) being the Quality Agreement payments already paid to the Council within 28 days

## SCHEDULE 27

### Travel Plan Monitoring Fee

1. The Paying Owners covenant with the Council and the County Council as follows:

   1.1 On the date the first travel plan is approved by the Council under condition 22 to pay to the County Council £1000.00 (one thousand pounds) Index Linked

   1.2 On each anniversary of the date the first travel plan was approved by the Council under condition 22 to pay to the County Council £1000.00 (one thousand pounds) Index Linked until and including the 24th anniversary

   1.3 In relation to every travel plan approved by the Council under condition 22, (i) to review each such travel plan with the County Council every year for 5 years starting with the date of its approval and thereafter on reasonable request by the County Council, (ii) not to unreasonably refuse to make amendments requested by the County Council and (iii) to supply the Council with any such amendments

2. The County Council covenants with the Owners to only use the monies received for the monitoring and review of the travel plans (which may include the recovery of costs previously incurred) for the specific purposes for which they were intended under this Deed.

## SCHEDULE 28

## Monitoring Fee

1. The Owners covenant with the Council as follows:

1.1 Not to Occupy more than 299 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.2 Not to Occupy more than 599 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.3 Not to Occupy more than 899 Dwellings until a contribution of £5,000.00 ( five thousand pounds) Index Linked has been paid to the Council.

1.4 Not to Occupy more than 1199 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.5 Not to Occupy more than 1499 Dwellings until a contribution of £5,000.00 ( five thousand pounds) Index Linked has been paid to the Council.

1.6 Not to Occupy more than 1799 Dwellings until a contribution of £5,000.00 ( five thousand pounds) Index Linked has been paid to the Council.

1.7 Not to Occupy more than 2099 Dwellings until a contribution of £5,000.00 ( five thousand pounds) Index Linked has been paid to the Council.

1.8 Not to Occupy more than 2399 Dwellings until a contribution of £5,000.00 ( five thousand pounds) Index Linked has been paid to the Council.

1.9 Not to Occupy more than 2699 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.10 Not to Occupy more than 2999 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.11 Not to Occupy more than 3299 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.12 Not to Occupy more than 3599 Dwellings until a contribution of 5,000 (five thousand pounds) Index Linked has been paid to the Council.

1.13 Not to Occupy more than 3899 Dwellings until a contribution of 5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.14 Not to Occupy more than 4199 Dwellings until a contribution of £5,000 ( five thousand pounds) Index Linked has been paid to the Council.

1.15 Not to Occupy more than 4499 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.16 Not to Occupy more than 4799 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.17 Not to Occupy more than 5099 Dwellings until a contribution of £5,000.00 ( five thousand pounds) Index Linked has been paid to the Council.

1.18 Not to Occupy more than 5399 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

1.19 Not to Occupy more than 5699 Dwellings until a contribution of £5,000.00 (five thousand pounds) Index Linked has been paid to the Council.

2. The Paying Owners covenant with the Council as follows:

2.1 To pay to the Council on the first anniversary of the Commencement of Development £50,000.00 (fifty thousand pounds) Index Linked.

2.2 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 300th Dwelling.

2.3 To pay £25,000.00 five thousand pounds) Index Linked to the Council prior to the Occupation of the 600th Dwelling.

2.4 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 900th Dwelling.

2.5 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 1200th Dwelling.

2.6 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 1500th Dwelling.

2.7 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 1800th Dwelling.

2.8 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 2100th Dwelling.

2.9 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 2400th Dwelling.

2.10 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 2700th Dwelling.

2.11 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 3000th Dwelling.

2.12 To pay £5,000.00 ( five thousand pounds) Index Linked to the Council prior to the Occupation of the 3300th Dwelling.

2.13 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 3600th Dwelling.

2.14 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 3900th Dwelling.

2.15 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 4200th Dwelling.

2.16 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to Occupation of the 4500th Dwelling.

2.17 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 4800th Dwelling.

2.18 To pay £5,000.00 five thousand pounds) Index Linked to the Council prior to the Occupation of the 5100th Dwelling.

2.19 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to he Occupation of the 5400th Dwelling.

2.20 To pay £5,000.00 (five thousand pounds) Index Linked to the Council prior to the Occupation of the 5700th Dwelling.

3. The covenant by the Paying Owners in paragraph 2 to pay £5,000.00 ( five thousand pounds) Index Linked ( and the associated prohibitions on Occupation in paragraph 1) are conditional

on the Council providing evidence to the Paying Owners ( in the form of a schedule of monitoring activities carried out) which demonstrates that the payment in question reasonably reflects the costs which the Council will incur before the next payment is due in performing the tasks described in paragraph 4. .

4. The Council covenants with the Owners to only use the monies for monitoring compliance with this agreement and the planning conditions, including liaison with interested parties, attendance at CMO meetings and reviewing viability under Schedule 23.

5. The Council covenants with the Paying Owners to pay back to the Paying Owners the sum of £110,810.80 ( one hundred and ten thousand eight hundred and ten pounds eighty one pence) being the monitoring payments triggered on the anniversary of Commencement of the Development already paid to the Council within 28 days

## SCHEDULE 29

## ABC Bank Accounts

Council Contributions Bank Account

1. The Owners covenant with the Council not to Occupy the number of Dwellings specified in column two of the table in Schedule 29A or more than that number, nor to Commence Development nor to start construction of any Dwelling as the case may be unless the corresponding amount has been paid to the Council with the payments being Index Linked to the date specified in column two (in the case of Dwellings, the date being the Occupation of that number of Dwellings)

2. The Paying Owners covenant with the Council to pay to the Council on the date specified in column two of the table in Schedule 29A the amount specified in column three with the payments being Index Linking to the date specified in column two (in the case of Dwellings, the date being the Occupation of that number of Dwellings)

3. The Owners covenant with the Council not to Occupy the number of Dwellings specified in column two of the table in Schedule 29B or more than that number or to carry out any further development after the period specified or to start construction of the first Dwelling as the case may be unless the corresponding indexation payment has been paid to the Council. The indexation payment shall be calculated by Index Linking the specified amount up to the date specified in column two (in the case of Dwellings, the date being the Occupation of that number of Dwellings) and deducting the corresponding index linked amount previously paid under paragraph 2 above.

4. The Paying Owners covenant with the Council to pay to the Council on the date specified in column two of the table in Schedule 29B the indexation payment in respect of the amount specified in column three. The indexation payment shall be calculated by Index Linking the specified amount up to the date specified in column two (in the case of Dwellings, the date being the Occupation of that number of Dwellings) and deducting the corresponding index linked amount previously paid under paragraph 2 above.

5. The Council covenants with the Paying Owners to pay the monies received under paragraphs 2 and 4 above into the Council Contributions Bank Account upon receipt.

6. The Council covenants with the Paying Owners not to withdraw any money from the Council Contributions Bank Account otherwise than in accordance with the table in Schedule 29C.

Effect of Payments

7. Upon payment of the amounts due under paragraphs 2 and 4 above, the Paying Owners' corresponding obligations specified in Schedules 29A and 29B shall be satisfied and any restrictions in paragraphs 1 and 3 above specified in schedules 29A and 29B which mirror those corresponding obligations shall also be immediately and automatically released.

8. In the event that by the time for payment under the relevant positive obligation in the other Schedules to this Deed only part of the amounts due have been paid then without prejudice to the Council's ability to enforce this Schedule 29, the Council will be able to enforce the corresponding positive obligation to pay the relevant sum in accordance with the terms of this Deed, but only in respect of the amount due under the corresponding positive obligation less the amount paid to the Council under this schedule.

## Schedule 29A – Payments into Council Contributions Bank Account

| PAYMENTS INTO COUNCIL CONTRIBUTIONS BANK ACCOUNT | | | | | |
|---|---|---|---|---|---|
| | **Date of payment** | **Amount payable plus Index Linking** | **Obligation** | **Subject** (for reference only) | **Phase to Which Obligation relates** (for reference only) |
| 1. | On the start of construction of the first Dwelling | £20,000 | Schedule 10, paragraph 1.1 | Discovery Park | Phase 1 |
| 2. | 300 Dwellings | £5,000 | Schedule 28, paragraph 2.3 | Monitoring Fee | Phase 1 |
| 3. | 600 Dwellings | £5,000 | Schedule 28, paragraph 2.4 | Monitoring Fee | Phase 1 |
| 4. | 900 Dwellings | £5,000 | Schedule 28, paragraph 2.5 | Monitoring Fee | Phase 1 |
| 5. | 1,200 Dwellings | £5,000 | Schedule 28, paragraph 2.6 | Monitoring Fee | Phase 1 |
| 6. | 1,500 Dwellings | £5,000 | Schedule 28, paragraph 2.7 | Monitoring Fee | Phase 1 |
| 7. | 1,800 Dwellings | £5,000 | Schedule 28, paragraph 2.8 | Monitoring Fee | Phase 2 |
| 8. | 2,100 Dwellings | £5,000 | Schedule 28, paragraph 2.9 | Monitoring Fee | Phase 2 |
| 9. | 2,400 Dwellings | £5,000 | Schedule 28, paragraph 2.10 | Monitoring Fee | Phase 2 |
| 10. | 2,700 Dwellings | £5,000 | Schedule 28, paragraph 2.11 | Monitoring Fee | Phase 3 |
| 11. | 3000 Dwellings | £5,000 | Schedule 28, paragraph 2.12 | Monitoring Fee | Phase 3 |
| 12. | 3,300 Dwellings | £5,000 | Schedule 28, paragraph 2.13 | Monitoring Fee | Phase 3 |
| 13. | 3,600 Dwellings | £5,000 | Schedule 28, paragraph 2.14 | Monitoring Fee | Phase 3 |

| PAYMENTS INTO COUNCIL CONTRIBUTIONS BANK ACCOUNT | | | | | |
|---|---|---|---|---|---|
| | **Date of payment** | **Amount payable plus Index Linking** | **Obligation** | **Subject** (for reference only) | **Phase to Which Obligation relates** (for reference only) |
| 14. | 3,900 Dwellings | £5,000 | Schedule 28, paragraph 2.15 | Monitoring Fee | Phase 3 |
| 15. | 4,200 Dwellings | £5,000 | Schedule 28, paragraph 2.16 | Monitoring Fee | Phase 4 |
| 16. | 4,500 Dwellings | £5,000 | Schedule 28, paragraph 2.17 | Monitoring Fee | Phase 4 |
| 17. | 4,800 Dwellings | £5,000 | Schedule 28, paragraph 2.18 | Monitoring Fee | Phase 4 |
| 18. | 5,100 Dwellings | £5,000 | Schedule 28, paragraph 2.19 | Monitoring Fee | Phase 4 |
| 19. | 5,400 Dwellings | £5,000 | Schedule 28, paragraph 2.20 | Monitoring Fee | Phase 4 |
| 20. | 5,700 Dwellings | £5,000 | Schedule 28, paragraph 2.21 | Monitoring Fee | Phase 4 |

**Schedule 29B – Indexation Payments into Council Contributions Bank Account**

| INDEXATION PAYMENTS INTO COUNCIL CONTRIBUTIONS BANK ACCOUNT | | | | | |
|---|---|---|---|---|---|
| | **Restriction and date of payment** | **Amount on which further indexation payable** | **Obligation** | **Subject** (for reference only) | **Phase to Which Obligation relates** (for reference only) |
| 1. | 1 Dwelling | £20,000 | Schedule 10, paragraph 1.1 | Discovery Park | Phase 1 |
| 2. | 300 Dwellings | £5,000 | Schedule 28, paragraph 2.3 | Monitoring Fee | Phase 1 |
| 3. | 600 Dwellings | £5,000 | Schedule 28, paragraph 2.4 | Monitoring Fee | Phase 1 |
| 4. | 900 Dwellings | £5,000 | Schedule 28, paragraph 2.5 | Monitoring Fee | Phase 1 |
| 5. | 1,200 Dwellings | £5,000 | Schedule 28, paragraph 2.6 | Monitoring Fee | Phase 1 |
| 6. | 1,500 Dwellings | £5,000 | Schedule 28, paragraph 2.7 | Monitoring Fee | Phase 1 |
| 7. | 1,800 Dwellings | 5,000 | Schedule 28, paragraph 2.8 | Monitoring Fee | Phase 2 |
| 8. | 2,100 Dwellings | £5,000 | Schedule 28, paragraph 2.9 | Monitoring Fee | Phase 2 |
| 9. | 2,400 Dwellings | £5,000 | Schedule 28, paragraph 2.10 | Monitoring Fee | Phase 2 |
| 10. | 2,700 Dwellings | £5,000 | Schedule 28, paragraph 2.11 | Monitoring Fee | Phase 3 |
| 11. | 3,000 Dwellings | £5,000 | Schedule 28, paragraph 2.12 | Monitoring Fee | Phase 3 |
| 12. | 3,300 Dwellings | £5,000 | Schedule 28, paragraph 2.13 | Monitoring Fee | Phase 3 |
| 13. | 3,600 Dwellings | £5,000 | Schedule 28, paragraph 2.14 | Monitoring Fee | Phase 3 |

| INDEXATION PAYMENTS INTO COUNCIL CONTRIBUTIONS BANK ACCOUNT | | | | | |
|---|---|---|---|---|---|
| | **Restriction and date of payment** | **Amount on which further indexation payable** | **Obligation** | **Subject** (for reference only) | **Phase to Which Obligation relates** (for reference only) |
| 14. | 3,900 Dwellings | £5,000 | Schedule 28, paragraph 2.15 | Monitoring Fee | Phase 3 |
| 15. | 4,200 Dwellings | £5,000 | Schedule 28, paragraph 2.16 | Monitoring Fee | Phase 4 |
| 16. | 4,500 Dwellings | £5,000 | Schedule 28, paragraph 2.17 | Monitoring Fee | Phase 4 |
| 17. | 4,800 Dwellings | £5,000 | Schedule 28, paragraph 2.18 | Monitoring Fee | Phase 4 |
| 18. | 5,100 Dwellings | £5,000 | Schedule 28, paragraph 2.19 | Monitoring Fee | Phase 4 |
| 19. | 5,400 Dwellings | £5,000 | Schedule 28, paragraph 2.20 | Monitoring Fee | Phase 4 |
| 20. | 5,700 Dwellings | £5,000 | Schedule 28, paragraph 2.21 | Monitoring Fee | Phase 4 |

**Schedule 29C – Council Withdrawals from Council Contributions Bank Account**

| COUNCIL WITHDRAWALS FROM COUNCIL CONTRIBUTIONS BANK ACCOUNT | | | | | |
|---|---|---|---|---|---|
| | **Point when withdrawal will be made** | **Amount which will be withdrawn (plus corresponding indexation increase)** | **Purpose** | **Subject** (for reference only) | **Phase in which withdrawal made** (for reference only) |
| 1. | 12 months after Commencement | £50,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 1 |
| 2. | On the start of construction of the 1st Dwelling | £20,000 | Schedule 10, paragraph 3.3 | Discovery Park | Phase 1 |
| 3. | Occupation of the 300th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 1 |
| 4. | Occupation of the 600th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 1 |
| 5. | Occupation of the 900th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 1 |
| 6. | Occupation of the 1,200th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 1 |
| 7. | Occupation of the 1,500th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 1 |
| 8. | Occupation of the 1,800th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 2 |
| 9. | Occupation of the 2,100th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 2 |
| 10. | Occupation of the 2,400th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 2 |
| 11. | Occupation of the 2,700th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 3 |
| 12. | Occupation of the 3,000th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 3 |

Schedule 29C

| COUNCIL WITHDRAWALS FROM COUNCIL CONTRIBUTIONS BANK ACCOUNT | | | | | |
|---|---|---|---|---|---|
| | **Point when withdrawal will be made** | **Amount which will be withdrawn (plus corresponding indexation increase)** | **Purpose** | **Subject** (for reference only) | **Phase in which withdrawal made** (for reference only) |
| 13. | Occupation of the 3,300th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 3 |
| 14. | Occupation of the 3,600th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 3 |
| 15. | Occupation of the 3,900th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 3 |
| 16. | Occupation of the 4,200th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 4 |
| 17. | Occupation of the 4,500th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 4 |
| 18. | Occupation of the 4,800th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 4 |
| 19. | Occupation of the 5,100th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 4 |
| 20. | Occupation of the 5,400th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 4 |
| 21. | Occupation of the 5,700th Dwelling | £5,000 | Schedule 28, paragraph 4 | Monitoring Fee | Phase 4 |

## SCHEDULE 30

## KCC Bank Accounts

Owners' Negative Planning Obligations

The Owners and the Paying Owners (as appropriate in accordance with the below) covenant with the Council and with the County Council as follows:

1. The Paying Owners shall pay to the County Council the sum specified in Column 2of each row of the table in Schedule 30A, on or before the date on which the total number of Dwellings specified in Column 1 of that row have been Occupied on the Site .

2. The Owners shall ensure that no more than the total number of Dwellings specified in each row of Column 1 of the table in Schedule 30A have been Occupied on the Site (unless the corresponding sum specified in Column 2 of the same row of the table has been paid to the County Council. In that regard:

   (a) It shall be the responsibility of each of the Owners to check with the other Owners how many Dwellings have been Occupied on land within the Site that is in the control of the other Owners, and to check whether payments have been made.

   (b) No Owner shall Occupy any further Dwelling so as to take the total number of Occupied Dwellings on the Site above that specified in Column 1 of any row of the table, nor allow it to remain Occupied thereafter, unless and until the corresponding sum has been paid to the County Council in full.

3. The Paying Owners shall pay to the County Council the indexation payment element of the contribution specified in Column 2 of each row of the table in Schedule 30B on or before the date on which the total number of Dwellings specified in Column 1 of that row have been Occupied on the Site. The indexation payment shall be calculated in accordance with Clause 27 using the Final Index Value at the date on which the total number of Dwellings specified in the corresponding entry in Column 1 have been Occupied on the Site.

4. The Owners shall ensure that no more than the total number of Dwellings specified in each row of Column 1 of the table in Schedule 30B have been Occupied on the Site unless the indexation payment element of the corresponding Index-Linked contribution specified in Columns 2 and 3 of the same row of the table has been paid in full to the County Council with the indexation payment calculated using the date on which the total number of Dwellings specified in Column 1 have been Occupied on the Site. In that regard:

   (a) It shall be the responsibility of each of the Owners to check with the other Owners how many Dwellings have been Occupied on land within the Site that is in the control of the other Owners.

   (b) No Owner shall Occupy any further Dwelling so as to take the total number of Occupied Dwellings on the Site above that specified in Column 1 of any row of the table, nor allow it to remain Occupied thereafter, unless and until the corresponding sum has been paid to the County Council in full.

County Council's Covenants

The County Council covenants with the Paying Owners to pay the monies received under paragraphs 3 and 5 above into the County Council Contributions Bank Account upon receipt.

Effect of Payments to the County Council

5. Upon payment in full of each of the amounts due under this Schedule, the Paying Owners' corresponding obligation shall be satisfied and the restriction on development works or Occupations shall be immediately and automatically released.

6. The County Council covenants with the Paying Owners not to withdraw any money from the County Council's Contributions Bank Account otherwise than in accordance with the table in Schedule 30C.

## Schedule 30A – Payments in County Council Contributions Bank Account

| PAYMENTS INTO COUNTY COUNCIL CONTRIBUTIONS BANK ACCOUNT |
|---|

| **COLUMN 1**<br>**Number of Dwellings** | **COLUMN 2**<br>**Amount payable (plus Index Linking)** | **COLUMN 3**<br>**Obligation/Subject** | **Schedule** | **Phase to Which Obligation relates** (for reference only) |
|---|---|---|---|---|
| 900 | £150,000 | Primary school 2 contribution 1 | 15 | 1 |
| ~~2499~~ | ~~£204,249 ( or such reduced figure as is payable under Schedule 21)~~ | ~~Traffic calming 1~~ | ~~21~~ | ~~1~~ |
| ~~5749~~ | ~~£204,249 ( or such reduced figure as is payable under Schedule 21)~~ | ~~Traffic calming 2~~ | ~~21~~ | ~~2~~ |
| 2880 | £150,000 | Primary school 3 contribution 1 | 15 | 3 |

## Schedule 30B – Indexation Payments into County Council Contributions Bank Account

**INDEXATION PAYMENTS INTO COUNTY COUNCIL CONTRIBUTIONS BANK ACCOUNT**

| **COLUMN 1**<br><br>**Restriction and date of indexation** | **COLUMN 2**<br><br>**Amount on which the indexation payment is payable** | **COLUMN 3**<br><br>**Obligation/Subject** | **Schedule** | **Phase to Which Obligation relates** (for reference only) |
|---|---|---|---|---|
| 900 dwellings | £150,000 | Primary school 2 contribution 1 | 15 | 1 |
| ~~2499~~ | ~~£204,249 (or such reduced figure as is payable under Schedule 21)~~ | ~~Traffic calming 1~~ | ~~21~~ | ~~1~~ |
| ~~5749~~ | ~~£204,249 ( or such reduced figure as is payable under Schedule 21)~~ | ~~Traffic calming 2~~ | ~~21~~ | ~~2~~ |
| 2880 dwellings | £150,000 | Primary school 3 contribution 1 | 15 | |

**Schedule 30C – County Council Withdrawals from County Council Contributions Bank Account**

| **COUNTY COUNCIL WITHDRAWALS FROM COUNTY COUNCIL CONTRIBUTIONS BANK ACCOUNT** |
|---|

| **COLUMN 1**<br>**Number of Occupations of Dwellings upon which withdrawal will be made** | **COLUMN 2**<br>**Amount which will be withdrawn (plus the amount of its corresponding indexation payment)** | **COLUMN 3**<br>**Obligation/Subject** | **Schedule** | **Phase to Which Obligation relates** (for reference only) |
|---|---|---|---|---|
| 900 dwellings | £150,000 | Primary school 2 contribution 1 | 15 | 1 |
| ~~2500~~ | ~~£204,249 (or such reduced figure as is payable under Schedule 21)~~ | ~~Traffic calming 1~~ | ~~21~~ | ~~1~~ |
| ~~5750~~ | ~~£204,249 (or such reduced figure as is payable under Schedule 21)~~ | ~~Traffic calming 2~~ | ~~21~~ | ~~2~~ |
| 2880 dwellings | £150,000 | Primary school 3 contribution 1 | 15 | |

**SCHEDULE 31**

**Rentcharge Deed**

DATED 20[ ]

[MANAGER]

and

[OWNER]

---

ESTATE RENTCHARGE DEED

[Plot No.]

---

Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham

B3 2ES

Reference : JMT.20232.0003



**DATE:** **20[ ]**

**PARTIES:**

(1) **"The Manager":** [NAME] [(company number [NUMBER] )] [of] [whose registered office is at] [ADDRESS];

(2) **"The Owner":** [NAME] [ADDRESS];

1. **Definitions**

1.1 In this deed the following terms shall have the meanings specified:

| | |
|---|---|
| **"Base Figure"** | means [the RPI for the month immediately preceding the start of the First Service Charge Year]. |
| **"Certificate"** | means the certificate referred to in clause 5.2. |
| **"Community Buildings"** | means all those buildings that are provided on the Estate for the benefit of the owners and occupiers of the Estate including without limitation any buildings in which the Manager has a freehold or leasehold interest including the buildings transferred to the Manager under the terms of an agreement dated [ ] pursuant to Section 106 of the Town and Country Planning Act 1990 between (1) [ ] and (2) [ ] or such agreement as may be varied from time to time |
| **"Estate"** | means the land edged green on the Plan now and formerly comprised in title numbers (numbers) known as (name) at (address). |
| **"Estate Rentcharge"** | means a perpetual yearly estate rentcharge of a sum computed annually to the end of each Service Charge Year equal to the amounts payable pursuant to clause 3.2 for the purposes of securing payment of the Service Charge. |
| **"Estate Services"** | means all the services which are specified in Part 1 of Schedule 1. |
| **"Excess Service Charge"** | means any sum payable from time to time pursuant to clause 3.2.4. |
| **"Expenditure"** | means the aggregate of all costs, charges, expenses and outgoings whatsoever incurred by the Manager specified in or in relation to the matters specified in Schedule 1. |
| **"Fixed Rentcharge"** | means a perpetual yearly estate rentcharge of £1 forever charged on and issuing out of the Property. |
| **"Increase"** | means the amount, if any, by which [the Index for the month immediately preceding the start of the relevant Service Charge Year exceeds the Base Figure]. |
| **"Index"** | means 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) subject to clause 6.3. |
| **"Interest"** | means interest at the rate of four per cent above the base rate from time to time of Royal Bank of Scotland (compounded with quarterly rests on the usual quarter days) during the period from the date on which the expenditure is incurred or from which the interest is expressed to run to the date of payment (before and after any judgement) and if such base rate shall for any reason cease to be used or published then interest calculated by reference to such other comparable commercial rate as may be determined by the Manager acting reasonably or in the event of dispute as may be determined by an independent person (acting as an expert and not as an arbitrator) to be nominated in the absence of agreement by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of either the Manager or the Owner. |
| **"Interim Charge"** | means such sum as shall be payable from time to time on account of the Service Charge in respect of each Service Charge Year as the Manager shall specify to be a fair and reasonable interim payment and if no sum shall be so specified there shall be paid on account a sum equal to such sum last specified by the Manager provided that the Interim Charge shall not exceed the Service Charge Cap. |
| **"Management Areas"** | means [all parts of the Estate (other than a Plot) provided or intended for the common use and/or benefit of the owners or occupiers of the Estate or any of them including without limitation all parts of the Estate the subject of the [Estate Services]. |
| **"Plan"** | means the plan annexed to this deed **[**and if numbered plans are annexed any reference to a numbered plan is to the annexed plan so numbered**]**. |
| **"Plot"** | means [land now or formerly forming part of the Estate which has been or shall be the subject of a deed in equivalent terms (mutatis mutandis) to this deed]. |
| **"Property"** | means **[**Plot number (number) **[**and garage plot number (number)**]]**/**[**Block number (number)**]** as shown edged red on the Plan. |
| **"Rentcharges"** | means the Fixed Rentcharge and the Estate Rentcharge. |
| **"Rentcharge Payment Dates"** | means 1 April 1 July 1 October and 1 January in each year or such other date as the Manager shall determine and "Rentcharge Payment Date" shall be interpreted accordingly. |
| **"Reserve Fund"** | means the aggregate of the sums of money referred to in paragraph [5] of Part 2 of Schedule 1. |
| **"Service Charge"** | means (subject to clause 5.5) a fair and proper proportion from time to time attributable to the Property of the Expenditure in respect of each and every Service Charge |

Year and (in respect of the Service Charge Year current at the date of this deed) such part thereof as is attributable to the period from the date of this deed up to and including March 31 next Provided that such fair and proper proportion shall be determined according to the relative gross internal floor area of each Plot on the Estate or such other basis as the Manager may reasonably propose from time to time).

**"Service Charge Cap"** means

a) for the Service Charge Year current at the date of this deed (the "First Service Charge Year") the sum of £[ ] (the "Initial Service Charge Cap"); and

b) during each Service Charge Year thereafter [the Initial Service Charge Cap plus a sum that bears the same proportion to the Initial Service Charge Cap as the Increase bears to the Base Figure;

and in each year shall be inclusive of VAT.

**"Service Charge Year"** means the period commencing on April 1 in every year and ending on the following March 31 or such other annual period as the Manager may in its reasonable discretion from time to time determine as being the period in respect of which the accounts of the Manager either generally or relating to the Estate shall be made up.

1.2 Words importing one gender shall be construed as importing any other gender.

1.3 Words importing the singular shall be construed as importing the plural and vice versa.

1.4 Words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa.

1.5 Where any party comprises more than one person the obligations and liabilities of that party under this deed shall be joint and several obligations and liabilities of those persons.

1.6 Any provision by the Owner not to do any act or thing shall be deemed to include an obligation not to agree to or suffer or permit such act or thing to be done.

1.7 References to "Owner" shall include those deriving title to the Property through or under the Owner and references to "Manager" shall include the owner or owners for the time being of the Rentcharges or any part of them.

1.8 The clause and schedule headings do not form part of this deed and shall not be taken into account in its construction or interpretation.

1.9 Any reference to a clause is to one so numbered in this deed unless otherwise stated.

1.10 References to a statute shall include any statutory extension or modification or re-enactment of such statute or any regulations or orders made under the statute.

1.11 References to VAT be construed as a reference to value added tax or any tax of a similar nature which may be substituted for value added tax or levied in addition to value added tax and wherever there is an obligation imposed on the Owner to make a payment then there shall be implied an additional obligation to pay all VAT due on that payment.

2. **Rentcharges**

2.1 The Owner grants out of the Property for the benefit of the Manager in fee simple the Fixed Rentcharge and the Estate Rentcharge to be forever charged on and issuing out of the Property and to be paid without deduction (except for credit being given for any prior payments on account) in accordance with this deed.

2.2 The Manager shall have all of the powers and remedies conferred by the Law of Property Act 1925 or otherwise to enable it to recover and compel the payment of the Fixed Rentcharge and the Estate Rentcharge. In addition:

2.2.1 If the Fixed Rentcharge or the Estate Rentcharge (or any part of it) is unpaid in whole or in part 3 months after the date that payment has been demanded (having become due); or

2.2.2 If the Owner shall fail to observe any covenant on the part of the Owner contained in this deed

then notwithstanding the waiver of any previous default the Manager may enter on the Property (but without affecting any right of action or remedy in respect of any earlier breach of any of the Owner's covenants) and at the Manager's discretion either:

2.2.3 do anything which is necessary or prudent to make good any default and remain in possession of the Property or the rents and profits from it until all money due and the costs incurred by the exercise of this power are fully discharged; or

2.2.4 hold possess and enjoy the Property in fee simple free from incumbrances except for matters subsisting prior to the date of this deed

PROVIDED THAT before any such right to enter the Property is exercised the Manager shall give notice of its intention to do so to any mortgagee of the Property whose interest has been notified to the Manager in writing and shall not exercise the right concerned until 28 days have elapsed since the notice was sent to the relevant mortgagee and then only to the extent that the breach has not been remedied by that date.

3. **Owner's Covenants**

3.1 The Owner covenants with the Manager to pay the Fixed Rentcharge to the Manager in advance on the Rentcharge Payment Dates.

3.2 The Owner covenants with the Manager:

3.2.1 To pay the Estate Rentcharge to the Manager in accordance with this clause 3.2 by way of the Interim Charge and the Excess Service Charge.

3.2.2 The Interim Charge shall be paid to the Manager (in the absolute discretion of the Manager) either:

3.2.2.1 by equal quarterly instalments in advance on the Rentcharge Payment Dates (and the first such payment (on account of the Service Charge for the period from and including the date of this deed to and including the day immediately preceding the Rent Payment Date next thereafter) shall be made on the date of this deed); or

3.2.2.2 by annual payments in advance on the first Rentcharge Payment Date in each Service Charge Year (and the first such payment (on account of the Service Charge for the First Service Charge Year) shall be made on the date of this deed);

and for the avoidance of doubt the Manager may vary the basis of payment of the Interim Charge from time to time throughout the period of this deed from quarterly to annual payments in its absolute discretion subject to not less than [six] months prior notice in writing having been provided to the Owner.

3.2.3 If the Interim Charge paid by the Owner in respect of any Service Charge Year exceeds the Service Charge for that Service Charge Year the surplus of the Interim Charge so paid over and above the Service Charge shall be carried forward by the Manager and credited to the account of the Owner in computing the Interim Charge in succeeding Service Charge Years.

3.2.4 If the Service Charge in respect of any Service Charge Year exceeds the Interim Charge paid by the Owner in respect of that Service Charge Year together with any surplus from previous years carried forward as aforesaid then the Owner shall pay a sum equal to the amount of the excess to the Manager within 14 days of the service of the Certificate on the Owner or such longer period as the Manager shall specify.

3.2.5 In this clause 3.2.5 any surplus carried forward from previous years shall not include any sums set aside for the purpose of the Reserve Fund.

3.2.6 If and whenever the Owner shall fail to pay the Interim Charge and/or the Excess Service Charge on the due dates the Owner shall pay to the Manager Interest on the amount of the unpaid Interim Charge and/or the unpaid Excess Service Charge (as the case may be).

3.3 The Owner covenants with the Manager not to dispose of the Property (other than by way of an assured shorthold tenancy for a term of five years or less or a mortgage) unless the disponee enters into and delivers a direct covenant with the Manager in the form of the deed set out at Schedule 2. The costs payable to The Manager pursuant to clause 2 of the said form of deed shall not exceed £175 per deed increased by the percentage (if any) by which the Index for the month immediately preceding the date of the deed exceeds the Base Figure.

4. **Manager's Covenants**

The Manager covenants with the Owner subject to the payment of the Estate Rentcharge to use all reasonable endeavours to supply the Estate Services provided that:

4.1 The Manager may suspend any of the Estate Services for such period as may be reasonably necessary for repair replacement modernisation or otherwise.

4.2 The Manager shall be under no liability in respect of any failure to perform or observe any such obligation unless it is attributable to the wilful default of the Manager.

4.3 The Manager shall be under no liability in respect of any failure to perform or observe any such obligation until it has been notified of the failure concerned in writing and has then failed to remedy it within a reasonable period and any liability which nonetheless arises shall be limited to the period after written notification was received by the Manager:

4.4 The Manager may but shall not be obliged to supply the Estate Services in respect of any part of the Estate in which the Manager does not hold a freehold or leasehold interest or the Manager does not benefit from a licence to enter on reasonable terms that enable it to carry out the relevant Estate Services.

5. **Calculation of Service Charge**

5.1 Before the commencement of each Service Charge Year or as soon as possible thereafter, the Manager or its managing agent shall provide the Owner with an estimate of the Expenditure anticipated to be incurred in that Service Charge Year and the amount of the Interim Charge for that Service Charge Year.

5.2 As soon as reasonably practicable after the expiration of each Service Charge Year the Manager shall provide the Owner with a certificate containing the following information:

5.2.1 The amount of the Expenditure for that Service Charge Year; and

5.2.2 The amount of the Interim Charge paid by the Owner in respect of that Service Charge Year together with any surplus carried forward from the previous Service Charge Year; and

5.2.3 The amount of the Service Charge in respect of that Service Charge Year and of any excess or deficiency of the Service Charge over the Interim Charge and any accrued surplus; and

5.2.4 The amount of the Reserve Fund at the commencement of the Service Charge Year the expenditure from it during the Service Charge Year and the contributions to it during the Service Charge Year.

5.3 The Certificate shall be conclusive and binding on the Manager and the Owner as to matters of fact but the Owner shall be entitled at any time within three months after service of the Certificate at the discretion of the Manager either to inspect the receipts and vouchers relating to payment of the Expenditure or to receive a copy of the audited accounts of the Manager in relation to such Expenditure.

5.4 Any omission by the Manager to include in the Certificate for any Service Charge Year a sum expended or a liability incurred in that Service Charge Year shall not preclude the Manager from including such sum or the amount of such liability in the Certificate for any subsequent Service Charge Year.

5.5 The Service Charge in respect of any Service Charge Year shall not exceed the Service Charge Cap for the relevant Service Charge Year.

5.6 The Manager shall hold the Reserve Fund and all interest accrued thereon in a separate designated deposit account on trust to expend the same in subsequent years and subject to that on trust for the residents of the Estate absolutely.

6. **Agreements and declarations**

It is agreed and declared as follows:

6.1 If at any time the Manager considers that it would be in the general interest of the owners of the properties on the Estate receiving a service from the Manager to do so, the Manager may discontinue that service, provided that in deciding whether or not to discontinue any service the Manager is to give proper consideration to the views and wishes of the majority of the owners of such properties.

6.2 The Manager (acting reasonably) may make and at any time on prior notice to the Owner vary or waive any regulations relating to the Estate as it thinks fit in the general interest of the owners of the properties on the Estate.

6.3 The Manager may at any time and from time to time in its reasonable discretion determine that any land or facility then forming part of the Management Areas shall cease to be part of the Management Areas and/or that any land or facility not then being included in the Management Areas shall become part of the Management Areas.

6.4 In the event of:

6.4.1 any material change after the date of this deed in the reference base used to compile the Index, the figure taken to be shown is the figure which would have been shown in the Index if the reference base current at the date of this deed had been retained; or

6.4.2 it becoming impossible to utilise the Index by reason of any change after the date of this deed in the method used to compile the Index or the Index being

abolished or for any other reason then the Manager may refer the matter to an independent expert who shall be a member of the Royal Institution of Chartered Surveyors (or any person acting on his behalf) whose costs shall form part of the Expenditure and who shall have full power;

6.4.2.1 to determine what would have been the movement in the Index had it continued; and

6.4.2.2 to select the nearest equivalent index to Index to apply for the remainder of the term of this deed.

6.5 If any provision of this deed is found or held to be illegal invalid or unenforceable the legality validity and/or enforceability of the remaining provisions of this deed shall be unaffected.

7. **Land Registry application**

7.1 The parties apply to the Registrar for entry of a restriction on the register of the title to the Property in standard form L in Schedule 4 of the Land Registration Rules 2003, namely:

"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 entry of this restriction, is to be registered without a certificate signed by (*name of Manager*) of (*address*) or their conveyancer that the provisions of clause [ ] of a deed dated (date) and made between (*name of Manager*) (1) and (*name of Owner*) (2) have been complied with or that they do not apply to the disposition".

7.2 The Owner consents to an Agreed Notice [on Land Registry Form AN1] being entered in the Charges register of the title to the Property at the Land Registry in relation to the Rentcharges and the provisions of this deed.

## SCHEDULE 1

## Expenditure

**Part 1**

1. Maintenance management repair and renewal or replacement of the public realm within the Estate including but not limited to the verges to roads and pathways and street furniture

2. Maintenance and management repair and renewal or replacement of sustainable urban drainage features

3. Maintenance and management repair and renewal or replacement of sport facilities play spaces and other recreational areas managed farmland woodland and ecology areas within the Estate

4. Maintenance repair and renewal or replacement of allotments within the Estate (not including the plots which are let or held under licence by individual allotment holders)

5. Maintenance management repair and renewal or replacement of the Community Buildings

**Part 2**

1. The costs incurred in the running of the Community Buildings including without limitation staff costs utility costs rates and other outgoings

2. All other costs associated with the provision of the Estate Services including without limitation staffing and equipment costs and such proportion of the internal overhead costs of the Manager properly attributable to the provision of the Estate Services

3. All rates taxes and other outgoings chargeable in respect of the Management Areas

4. The fees payable to any managing agents in connection with the provision of the Estate Services or other matters referred to in this deed and the fees of any accountant or surveyor employed to determine the Expenditure and/or to prepare the Certificate

5. Such sums of money as the Manager reasonably requires to be set aside to meet such future costs as the Manager shall reasonably expect to incur in connection with the Estate Services and other matters referred to in this deed

6. The costs of enforcing the provisions of rentcharges relating to the Property or other Plots against any persons who fail to observe and perform their terms and provisions (but only to the extent that those costs are not recovered from the person defaulting on their obligations)

7. Without limiting the foregoing all other expenses reasonably incurred by the Manager in or incidental to or for the purpose of providing or maintaining services facilities or amenities of or to the Estate in keeping with the principles of good estate management including reasonable interest and fees on monies borrowed to finance the provision of the Estate Services and other matters referred to in this deed

## SCHEDULE 2

## Deed of Covenant

THIS DEED OF COVENANT is made on (*date*)

PARTIES

(*name of new owner*) of (*address*) ('the New Owner'); and

(name of Manager) **[**Company Registration no...**]** the registered office of which is situate at (*address*) ('**the Manager'**).

**Background**

This Deed is supplemental to a deed dated (date) made between (1) the Manager and (2) (the Owner) (the **'Estate Rentcharge Deed'**) in respect of (insert details) formerly plot (insert details) (development name) ('the Property').

THIS DEED WITNESSES:

1. The New Owner covenants with the Manager to observe and perform the covenants on the part of the New Owner in the Estate Rentcharge Deed as if the New Owner were a party to the Estate Rentcharge Deed.

2. The New Owner shall pay the reasonable costs of the Manager in connection with this Deed.

3. Where any party comprises more than one person the obligations and liabilities of that party under this Deed shall be joint and several obligations and liabilities of those persons.

[*Executed as a Deed by the New Owner on the day and date above written*.]

**EXECUTED AS A DEED** by
[*MANAGER*]
acting by [ ]

**SIGNED AS A DEED** by
Name [OWNER] ……
Signature ……

[and

Name [*OWNER*] ……
Signature ……]

In the presence of:
Witness signature: ……
Name: ……
Address: ……
Occupation: ……

## SCHEDULE 32

### List of Matters to be included in Design Brief and Specification for the CMO First Operating Premises

1. Introduction

   (a) This brief (who it is prepared by and who for, its purpose and a summary of inclusions)

   (b) Location of the CMO First Operating Premises

   (c) Budget for the construction of the First CMO Operating Premises

   (d) Scope of the design for the First CMO Operating Premises

2. The site and its uses

   (a) Context of the site on which the CMO First Operating Premises is located

   What buildings or type of buildings will be adjacent to the CMO First Operating Premises (at the time the brief is prepared or as planned in the future), and how the First CMO Operating Premises relates to the overall development and to other CMO facilities.

   (b) Context of the building comprising the CMO First Operating Premises

   Details of what the CMO First Operating Premises are likely to be used for and how the design of the building car parking and pedestrian and vehicular accesses will facilitate and accommodate those uses.

3. Requirements for the site on which the first CMO Operating Premises will be located to include:-

   (a) details of what vehicular parking is to be provided; and

   (b) details of physical links to other features e.g. to parking, to other CMO facilities and surrounding housing with details of what form such links will take e.g. footpath; and

   (c) details and the design of the vehicular and pedestrian accesses to and from the CMO First Operating Premises including vehicular access to an adopted public highway or a road that is in the process of being adopted as public highway by the Highways Authority or will be in the process of being adopted as a public highway by the Highways Authority; and

   (d) for the avoidance of doubt confirmation that all details requirements and features as set out in the definition of "CMO First Operating Premises" are to be provided and how they are to be provided with details of such provision;

   (e) details of any existing services or rights of way on the site of the CMO First Operating Premises that will need to be diverted

4. The Building

   The Design Brief and Specification for the CMO First Operating Premises shall include details of the internal layout of the building comprising such facility (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 to be provided to the CMO First Operating Premises 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 an explanation of how internal space has been optimised and confirmation of which use classes within the UCO 1987 and uses the building will be designed to accommodate.

5. Planning requirements

(a) The Design Brief and Specification for the CMO First Operating Premises shall identify those design elements of the design of the CMO First Operating Premises that ensure compliance with overall Chilmington Design Code; and

(b) The Design Brief and Specification for the CMO First Operating Premises shall identify those elements of the design of the CMO First Operating Premises that ensure compliance with Design Code approved pursuant to condition 17 of the Planning Permission that is specific to the site on which the CMO First Operating Premises will be located; and

(c) The Design Brief and Specification for the CMO First Operating Premises shall identify:- i) all planning requirements that the Council are likely to require the design for the CMO First Operating Premises to comply with when determining a Reserved Matters Application for the CMO First Operating Premises and ii) demonstrate how the Design Brief and Specification for the CMO First Operating Premises complies with such requirements (e.g. how the brief complies with the Council's parking standards at the time the brief is prepared).

6. Design and materials standards

6.1 The Design Brief and Specification for the CMO First Operating Premises shall include:-

(a) details of those collateral warranties and/or other guarantees provided by the person constructing the CMO First Operating Premises (including vehicular and pedestrian access car parks and landscaping) to the CMO that the CMO may confirm it reasonably requires (if any) and confirmation that such collateral warranties and guarantees will be provided to the CMO; and

(b) details of Building design and standards which shall meet best practice guidelines for the CMO First Operating Premises at the time of its construction; and

(c) details of the appearance of the building comprising the CMO First Operating Premises, landscaping, pedestrian and vehicular accesses to the CMO First Operating Premises; and

(d) details of the materials to be used in the construction of the CMO First Operating Premises (including all fixtures, fittings and equipment, landscaping, vehicular parking and vehicular and pedestrian accesses) and details of the performance and durability of such materials which shall comply with all relevant current British and European Standards and Codes of Practice; and

(e) confirmation that the design of the building comprising the CMO First Operating Premises will comply with the requirements of the Design Code and all legislative requirements; and

(f) details of the landscaping of the site on which the CMO First Operating Premises is to be located; and

(g) details of any features that increase the sustainability of the CMO First Operating Premises.

6.2 Full details of the budget for the construction of the CMO First Operating Premises to include a full detailed costing for the provision of the facility and a full costed explanation of 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" are to be delivered within the budget referred to at paragraph 4 of this agreement.

6.3 Summary of key considerations to include:-

(a) a plan of the site on which the CMO First Operating Premises is to be located (to provide spatial context and specific location).

(b) a consultation findings report, including views and opinions of the CMO Board in relation to the proposed brief for the CMO First Operating Premises.

**SCHEDULE 33**

**Not used**

## SCHEDULE 34

**Heads of Terms ~~for the~~For The Lease ~~of~~Of the CMO's First Operating Premises**

1. **LANDLORD**

[NAME]

Country of incorporation/registration:

Company number:

Registered office address:

2. **TENANT**

CMO

Country of incorporation/registration: [ ]

Company number: [ ]

Registered office address: [ ]

3. **PROPERTY**

3.1 The CMO's First Operating Premises comprising the building and car parking to be provided pursuant to paragraph 4 of Schedule 4 of the agreement pursuant to Section 106 of the Town and Country Planning Act 1990 dated [Note: insert date of s106 agreement] and relating to the application for planning permission under Ashford Borough Council's reference 12/00400/AS (the "Section 106 Agreement").

3.2 The property will include 12 car parking spaces (including one disabled car parking space) and an area of grass capable of accommodating at least 3 further cars.

4. **TERM**

4.1 The lease will be for a term of ~~2~~20 years~~, with an option for the tenant to extend the lease until completion of new premises in the Community Hub~~.

4.2 The lease will exclude the security of tenure provisions of Part II of the Landlord and Tenant Act 1954.

4.3 The tenant will have the right to break the lease on a rolling basis throughout the term of the lease. To exercise the right to break, the tenant must give the landlord 2 months' prior written notice to the Landlord.

4.4 The landlord will have the right to break the lease on a rolling basis but no earlier than after three years of the term of the lease have lapsed and provided that the landlord gives the tenant 6 months prior written notice and the ~~Community Hub~~CMO's Second Operating Premises (as defined by the Section 106 Agreement) has been completed and the lease of the ~~Community Hub~~CMO's Second Operating Premises has been granted to the CMO in accordance with paragraph 5 of Schedule ~~12~~4 of the Section 106 Agreement prior to the date on which the Landlord gives the Tenant notice of its intention to terminate the lease.

5. **RENT AND RENT REVIEW**

5.1 The rent will be a peppercorn exclusive of VAT, rates, insurance premiums and all other outgoings.

5.2 In addition to rent, the tenant must also pay VAT (including any VAT on the rent), rates, insurance premiums and all other outgoings.

5.3 There will be no rent-free period.

5.4 There will be no provision for the rent to be reviewed either upwards or downwards.

6. **RENT DEPOSIT**

6.1 There will be no rent deposit.

7. **SERVICES AND SERVICE CHARGE**

7.1 The tenant will not pay any service charge.

8. **INSURANCE**

8.1 The landlord will insure the property and the tenant will refund the premiums on demand.

8.2 The tenant will be able to terminate the lease if the property is damaged or destroyed by an uninsurable risk so that the tenant cannot occupy the property.

9. **USE**

9.1 The property can only be used as offices and as a Chilmington community facility (including but not limited to use as a classroom, for marketing purposes, community consultation and community meetings) and for storage and ancillary uses.

9.2 The tenant can change the use of the property only with the landlord's prior written consent which shall not be unreasonably withheld or delayed.

10. **ASSIGNMENTS AND UNDERLEASES**

10.1 The tenant can assign the lease with the landlord's prior written consent, which shall not be unreasonably withheld or delayed.

10.2 The tenant can underlet the whole or part of the property with the landlord's prior written consent, which shall not be unreasonably withheld or delayed.

10.3 The tenant can share occupation of the property with any other local authority or other public body.

10.4 For the avoidance of doubt the tenant shall not be restricted from making available the property or part of the property to community groups or private individuals either on an informal basis free of charge or for hire.

11. **REPAIR**

11.1 The landlord shall be responsible for the repair of the exterior of the property, services to the property, the boiler and central heating system, the plumbing and electrical wiring and associated conduits/wiring within the property, car parking and all exterior hard and soft landscaping.

11.2 The tenant shall be responsible for the repair of the interior of property except to the extent that damage to the interior of the property is covered by insurance and except to the extent that the landlord is responsible for the repair of the services within the property as detailed by 11.1 above.

11.3 The tenant will not be obliged to repair damage to the interior of the property caused by an uninsurable risk.

11.4 In the event of damage occurring to the property the landlord shall make a claim under insurance and then to apply all of the insurance monies received in reinstatement of the demised property.

## 12. ALTERATIONS

12.1 The tenant can make structural or external alterations to the property with the landlord's prior written consent, which cannot be unreasonably withheld or delayed.

12.2 The tenant can make internal alterations to the property without the landlord's consent written or otherwise.

## 13. RIGHTS FOR THE BENEFIT OF THE CMO'S FIRST OPERATING PREMISES

13.1 The lease shall be granted with all rights over neighbouring and adjacent land for the benefit of the property that are necessary and appropriate to enable the property to be used for its intended uses and purposes.

**SCHEDULE 35**

**Not used**

**SCHEDULE 36**

**Not used**

**SCHEDULE 37**

**Not used**

**SCHEDULE 38**

**Framework Agreement**

**DATED 2017**

**CHILMINGTON GREEN COMMUNITY MANAGEMENT ORGANISATION (1)**

**ASHFORD BOROUGH COUNCIL (2)**

**HODSON DEVELOPMENTS (ASHFORD) LIMITED (3)**
**BDW TRADING LIMITED (4)**

**PENTLAND KENT LIMITED (5)**

**HODSON DEVELOPMENTS (CG ONE) LIMITED (6)**

**HODSON DEVELOPMENTS (CG TWO) LIMITED (7)**

**CHELMDEN LIMITED (8)**

**PENTLAND HOMES LIMITED (9)**

**CHILMINGTON GREEN DEVELOPMENTS LIMITED (10)**

**MALCOLM JARVIS HOMES LIMITED (11)**

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**FRAMEWORK AGREEMENT**

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Anthony Collins Solicitors LLP

134 Edmund Street

Birmingham

B3 2ES

SLP 20232.0003

**CHILMINGTON GREEN COMMUNITY MANAGEMENT ORGANISATION**

**FRAMEWORK AGREEMENT**

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Schedule 38 – Framework Agreement

**THIS AGREEMENT** is made the day of 2017

BETWEEN

(1) **CHILMINGTON GREEN COMMUNITY MANAGEMENT ORGANISATION** ("the Company") incorporated and registered in England with company number [xxxxxxx] whose registered office is [YYYYYYYYYYYYYYYYYY];

(2) **ASHFORD BOROUGH COUNCIL** ("the Council"), whose principal office is at the Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL;

(3) **HODSON DEVELOPMENTS (ASHFORD) LIMITED** incorporated and registered in England and Wales with company number 07468189 whose registered office is Suite 9, 55 Office, 55 Park Lane, London, W1K 1NA;

(4) **BDW TRADING LIMITED** incorporated and registered in England and Wales with company number 03018173 whose registered office is Barrett House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF;

(5) **PENTLAND KENT LIMITED** incorporated and registered in England and Wales with company number 01031651 whose registered office is the Estate Office, Canterbury Road, Etchinghill, Folkestone CT18 8FA; and

(6) **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”)

(7) **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”)

(8) **CHELMDEN LIMITED** (company registration number 10321428) whose registered office is at Bartlett Farmhouse Great Chart Ashford Kent TN23 3DW (“Chelmdean”)

(9) **PENTLAND HOMES LIMITED** (company registration number 01031651) whose registered office is at The Estate Office, Canterbury Road, Etchinghill, Folkestone, CT18 8FA ("Pentland Homes”)

(10) **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")

(11) **MALCOLM JARVIS HOMES LIMITED** incorporated and registered in England and Wales with company number 04470416 whose registered office is Great Chilmington Farmhouse, Great Chart, Ashford, Kent, TN23 3DP.

**RECITALS**

1. The Council has been working on the development of Chilmington Green as a strategic urban extension as identified in the Council’s Core Strategy and the Local Development Framework. The proposal is to establish a new community of over 5,500 homes with associated community, leisure and retail and employment uses ("the Development").

2. Hodson Developments (Ashford) Limited, Chilmington Green Developments Limted, Hodson (CG One) Limited Hodson (CG Two) Limited, BDW Trading Limited, Pentland Kent Limited. Pentland Homes Limited, Chelmden Limited and Malcolm Jarvis Homes Limited are the ten main developers in the consortium that have been appointed to build the new Chilmington Green Site (collectively referred to as "the Developers").

3. The Council and the Developers have worked together on the development of the Company as a community management organisation, as it has been recognised in the Area Action Plan that an effective management organisation with local accountability will be vital for the long term sustainability of Chilmington Green.

4. The Company has been created as a charitable company limited by guarantee with each of the other parties to this Agreement having the right to appoint Directors on to the Company's Board. The Company has been established to hold, maintain and manage community land and buildings, support and co-ordinate the delivery of a range of community services to meet the needs of local residents, and to promote and support environmental and community sustainability.

5. As the major strategic partners in the development of the site, the Council, County Council and the Developers seek to be actively involved in the key decisions of the Company and to protect the development, maintenance and management of the site.

6. This Agreement sets out the range of decisions of the Company with which the Council, County Council and the Developers are to be involved, and the mechanism for that involvement.

1. **Definitions and Interpretations**

**IN** this Agreement (which expression shall be deemed to include the Schedules)

1.1 unless there be something in the subject or context inconsistent therewith the following expressions have the following meanings:-

| | |
|---|---|
| **"Area of Benefit"** | means the area so defined in the Articles |
| **"Articles"** | means the articles of association of the Company as amended from time to time (and any reference to an Article shall be a reference to that article of the said articles of association) |
| **"associate"** | means, in relation to any person, a person who is connected with that person (and whether a person is so connected shall be determined in accordance with Section 286 of the Taxation of Chargeable Gains Act 1992) |
| **"Built Assets"** | means any building or structure the maintenance or management of which has or is to be transferred to the Company by the Developers or the owner thereof |
| **"Business"** | means the ownership, maintenance and management of community land and buildings, the supporting and co-ordination of the delivery of a range of community services to meet the needs of local residents within the Area of Benefit, and the promotion and supporting environmental and community sustainability by the Company in accordance with the Company's charitable aims and objectives |
| **"Business Plan"** | means the framework for the business of the Company agreed by the Directors on an annual basis |
| **"Commencement Date"** | means the date shown on the front of this Agreement |
| **"Community Asset"** | means any land or building within the Area of Benefit ownership of which is transferred or leased to the Company |
| **"Companies Act"** | means the Companies Act 2006, save where the relevant provisions of the Companies Act 1985 or the Companies Act 1989 still apply, where it shall mean the relevant provisions in question |

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| **"County Council"** | means Kent County Council |
| **"Deadlock Situation"** | where the board of the Company is unable to reach a decision on any particular matter and a Party or Parties notifies the Company that the Party or Parties in question is of the view that a decision is required in order to allow the Development to proceed in a timely and effective manner or for any other material reason |
| **"Development"** | the development within the Area of Benefit pursuant to the Planning Permission |
| **"Director"** | means a director for the time being of the Company or, as the case may be, of any other company in the Group |
| **"Director's Undertaking"** | means a deed in the form set out in Schedule 1 or a deed in such other form as the Directors of the Company may agree |
| **"disposal"** | in clause 4.2.10 includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or a right over, any property |
| **"Dispute Procedure"** | a mechanism for resolving disputes between the Parties or any of them before using more formal routes as set out in Schedule 2 |
| **"Essential Activities"** | means the activities set out in Schedule 3 and such other activities as may be agreed between the Parties |
| **"Estate Rentcharge"** | means any rentcharge secured on individual properties as part of the Development to be paid to the Company |
| **"Final Completion"** | means the date 12 months following the sale and occupation of the final dwelling in the Development |
| **"group"** | means, in relation to a company, that company or any company which is a holding company of that company or a subsidiary of that company or of such holding company |
| **"the Group"** | means the Company and its holding company (if any) and/or its subsidiaries (if any) for the time being |
| **"the Hamlet"** | the area identified as such in the Section 106 Agreement |
| **"Insured Risks"** | means risks of loss or damage by fire, aircraft, articles dropped from aircraft, explosion, earthquake, riot, civil commotion, storm, lightning, flood, escape of water, impact, malicious damage (but excluding acts of terrorism and any other risk that the Company reasonably considers cannot be insured against in the UK market at a reasonable rate) and such other risks against which the Company insures |

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| **"Maintenance Standards"** | incorporates both the Maintenance Standards (Open Spaces) and the Maintenance Standards (Built Assets) |
| **"Maintenance Standards (Open Spaces)"** | means the standards for management and maintenance for each element of the Open Spaces in the Area of Benefit that will be transferred to the Company pursuant to the terms of the Section 106 Agreement or the Company may otherwise assume responsibility for which shall as a minimum comply with the maintenance requirements as may be imposed by the conditions of the Planning Permission and the Section 106 Agreement (if any) |
| **"Maintenance Standards (Built Assets)"** | means the standards for management and maintenance for each building within the Area of Benefit that will be transferred to the Company pursuant to the terms of the Section 106 Agreement or the Company may otherwise assume responsibility for which shall as a minimum comply with the following:-<br><br>keep the relevant premises in question in good and substantial repair and condition;<br><br>keep all plant and conduits comprised in the relevant premises in good working order;<br><br>maintain the relevant premises at all times in a clean, neat and tidy condition;<br><br>keep the relevant premises in good repair and decorative condition; and<br><br>maintain the relevant premises in accordance with such requirements as may be imposed by the conditions of the Planning Permission and the Section 106 Agreement (if any). |
| **"Member"** | means a member of the Company and/or of any other company in the Group |
| **"Membership"** | includes all rights and duties attributable to a person being a Member |
| **"Open Spaces"** | means all open space sports and recreation areas woodlands grasslands allotments parks including amenity areas play spaces play areas unadopted verges ecological and wildlife areas in the Development (other than those forming part of any private curtilage or communal gardens relating to or for the exclusive use of the residents of any group of dwellings) the maintenance or management of which has or is to be transferred to the Company by the Developers or the owner thereof |
| **"Party"** | means a party to this Agreement, and 'Parties' shall mean all of them |

**"Planning Application"** application number 12/00400/AS for outline planning permission for a mixed use development of a site comprising the Area of Benefit and other land 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 Proposed Development 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"** means: the outline planning permission granted by the Council pursuant to the Planning Application for outline planning permission submitted to the Council and registered under the Council's reference 12/00400/AS;

and all other planning permissions in substitution therefor in variance thereof or by way of amendment thereto as may subsequently be granted by the Council (including planning permissions in substitution therefor in variance thereof or by way of amendment thereof as granted by the Council pursuant to Section 73 73A and 96A of the Planning Act varying the terms or conditions to such planning permission) and by the Secretary of State on appeal for development within the Area of Benefit

**S106 Agreement** means the agreement dated [ ] pursuant to section 106 of the Town and Country Planning Act 1990 between 1) [ ] and 2) [ ] as it may be varied from time to time

1.2 Reference to any statute or statutory provision includes a reference:

1.2.1 to any Regulations made under this Agreement; and

1.2.2 to that statute or statutory provision as from time to time amended extended or re-enacted.

1.3 Words and phrases the definitions of which are contained or referred to in the Companies Act shall be construed as having the meaning thereby attributed to them but excluding any statutory modification of it not in force on the date of this Agreement.

1.4 Words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa and words importing persons shall include bodies corporate, unincorporated associations and partnerships.

1.5 References to clauses, schedules and recitals are references to clauses, schedules and recitals of this Agreement and references to sub-clauses, paragraphs and sub-paragraphs are (unless otherwise stated) references to sub-clauses of the clause, or paragraphs of the sub-clause (or, as the case may be, schedule) or sub-paragraph in which the reference appears.

1.6 All warranties, representations, indemnities, covenants, agreements and obligations given or entered into by more than one person are given or entered into severally unless otherwise specified.

1.7 The headings to the clauses and paragraphs are inserted for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2. **Consideration**

In consideration of the mutual agreements and undertakings set out in the Agreement, the Parties have granted the rights and accepted the obligations herein.

3. **General Obligations**

3.1 None of the Parties to this Agreement shall nominate, appoint or approve any person to act as a Director unless such person shall first have duly executed and delivered to the Company a Director's Undertaking.

3.2 Each of the Parties shall use their reasonable endeavours to ensure that:

3.2.1 where they are invited to appoint a Director to the Company, they fill the position without unreasonable delay;

3.2.2 in the case of the Developers, there are at all times prior to Final Completion at least two Directors appointed to the Company by the Developers;

3.2.3 the Directors appointed by the relevant Party shall attend each meeting of the Directors and if for 3 consecutive meetings of the Directors properly convened in accordance with the Articles, a Director shall not so attend, then the relevant appointing Party shall appoint some other person to act as their appointed Director if requested to do so by the Company.

3.3 Prior to the transfer to the Company of any element of either the Built Assets or the Open Spaces, the Parties shall use their reasonable endeavours to agree the Maintenance Standards for that element.

3.4 The Parties acknowledge that the Company shall not be required to maintain or manage any element of the Built Assets or the Open Spaces unless the Maintenance Standards for that element have been agreed under clause 3.3.

4. **Matters Requiring Approval of all the Parties**

4.1 To the extent that it can lawfully do so, the Company undertakes to the Council and the Developers that the Company (acting by its Board) will not take a decision on any of the matters listed in Clause 4.2 unless the criteria set out in Clauses 4.3 and 4.4 are met.

4.2 The matters referred to in Clause 4.1 (above) are:-

4.2.1 approving any proposed amendment to the Articles (such amendment to then be put before the Members in accordance with company law);

4.2.2 entering into varying, or terminating any contract or arrangement insofar as that contract relates to the expansion of the work of the Business beyond the Area of Benefit. For the avoidance of doubt, this Clause 4.2.2 does not extend to contracts of employment between the Company and its employees;

4.2.3 resolving to change the classification or status of the Company whether pursuant to the Companies Acts or otherwise;

4.2.4 changing the nature or scope of the Business or commence any new business not being ancillary or incidental to the Business;

4.2.5 undertaking any activity or doing anything which is likely to prejudice the status of the Company as a registered charity;

4.2.6 the entering into or altering or replacing of any bank mandate given by the Company to its bankers relating to the operation of any account of the Company;

4.2.7 the acquisition or creation by the Company of any subsidiary undertaking or the participation by the Company with any person in any partnership or other unincorporated association joint venture or consortium or agreement or arrangements for sharing commissions or other income;

4.2.8 approving any proposal which relates to:

4.2.8.1 the winding up of the Company;

4.2.8.2 the insolvency of the Company;

4.2.8.3 the making of any composition, arrangement or assignment for the benefit of its creditors; or

4.2.8.4 any transaction the effect of which is either that the Business is to be operated by another person outside of the Group or more than 50% of the membership of the Company or the Group is transferred or held (as the case may be) by persons who

currently hold less than 50% of the membership of the Company;

4.2.8.5 approving any proposed amendments or revisions to the Maintenance Standards;

4.2.8.6 approving any proposed amendments or revisions to the Business Plan;

4.2.9 approving any procurement strategy for the Company, including but not limited to contracts relating to the Maintenance Standards;

4.2.10 approving any proposal which relates to the disposal of any Community Asset.

4.3 Subject to Clause 4.4, the Company may make a decision on any of those matters listed at Clause 4.2 above where the Directors appointed by the Council and each of the Developers are:

4.3.1 present at the meeting at which the decision is made;

4.3.2 vote in favour of that decision; and

4.3.3 the resolution of the Board is otherwise taken in accordance with the Articles.

4.4 The Company may only make a decision on the matters set out in Clauses 4.2.1, 4.2.3, 4.2.4 and 4.2.8 where the prior written consent of the Council and each of the Developers has been obtained.

5. **Obligations of the Company**

5.1 The Company shall:

5.1.1 use reasonable endeavours to prepare, agree and adopt a Business Plan incorporating the Maintenance Standards as agreed from time to time in accordance with clause 3.3 in consultation with, and with the formal approval of, the Council and the Developers;

5.1.2 carry on and conduct its business and affairs in a proper and efficient manner, in accordance with any agreed Maintenance Standards and with any agreed Business Plan;

5.1.3 in particular and without prejudice to the foregoing, keep and maintain the Open Spaces and the Built Assets to the Maintenance Standards agreed under clause 3.3 across the Area of Benefit;

5.1.4 maintain with a well-established and reputable insurer adequate insurance against all risks usually insured against by a commercial property company;

5.1.5 effect and maintain insurance with a reputable insurer subject to such excesses, exclusions and limitations as may apply covering all buildings owned by the Company against the Insured Risks for the full reinstatement cost including all applicable VAT and ancillary costs (including site clearance and professional fees) and appropriate allowance for inflation;

5.1.6 in particular, take out and maintain public liability insurance at all times in respect of any loss cost or damage of whatever kind to persons or property arising out of the Company's activities or the use and occupation of its land works properties and facilities;

5.1.7 following any damage by an Insured Risk affecting properties owned by the Company and on receipt of monies from the insurer:

5.1.7.1 take reasonable steps to obtain any consents necessary for making good such damage; and

5.1.7.2 subject to obtaining such consents, apply the insurance monies received for that purpose in making good such damage as soon as reasonably practicable (but the accommodation and any facilities need not be identical in layout or design so long as they are reasonably equivalent to that previously provided at the premises)

5.1.8 keep books of account and therein make true and complete entries of all its dealings and transactions of and in relation to its business;

5.1.9 prepare its accounts on an historical cost basis and adopt such accounting policies as may from time to time be generally accepted for charities in England and Wales;

5.1.10 at least [28] days before the end of each financial year prepare an annual budget for the succeeding financial year;

5.1.11 prior to [28] days before the end of each financial year, review the Business Plan in particular in relation to any Maintenance Standards agreed under clause 3.3 during the relevant financial year in consultation with the Council, County Council and the Developers, and submit a copy of any revised Business Plan to the Parties;

5.1.12 not use any part of the Estate Rentcharge other than for the Essential Activities;

5.1.13 to prepare its accounts showing the Estate Rentcharge and the Essential Activities as a separate and ring fenced cost centre;

5.1.14 in the event of there being a surplus from the Company's trading activities or other sources of income to apply them towards any deficit in Estate Rentcharge income in carrying out the Essential Activities and making appropriate payments to any agreed contingency fund for the long term maintenance and refurbishment of assets held by the Company prior to using those surplus funds for any other of the Company's activities.

6. **Joint Obligations**

6.1 Each of the Parties to this Agreement shall:

6.1.1 use their reasonable endeavours to further the reputation and to maintain and improve the business of the Company and its subsidiaries (if any) and work in the spirit of partnership in relation to the Business;

6.1.2 use reasonable endeavours to cooperate in the preparation, agreement and implementation of:

6.1.2.1 the Business Plan; and

6.1.2.2 the Maintenance Standards; and

6.1.2.3 the detailed design of any non-residential Built Assets that are to be transferred to the Company; and

6.1.2.4 any other documentation created in the implementation of the Business Plan;

6.1.3 act at all times in accordance with the documents referred to in Clause 6.1.2 above;

6.1.4 use their reasonable endeavours to ensure continuing liaison in relation to the Development between the Developers, the local community in the Area of Benefit, the Council and the County Council;

6.1.5 assist the Company where relevant with the holding of workshops or similar activities for the community in the Area of Benefit;

6.1.6 cooperate and work together in good faith in the fulfilment of the Company's objects contained within its Articles.

6.2 Where a Deadlock Situation exists then each Party shall use its reasonable endeavours to ensure that:

6.2.1 the Company calls a further board meeting within 7 days;

6.2.2 the Directors appointed by each Party attend that further board meeting;

6.2.3 the Directors present at the meeting use their respective reasonable endeavours to reach a decision on the matter which is the subject of the Deadlock Situation before the meeting is concluded.

7. **Consents**

Where this Agreement provides that any particular transaction or matter requires the consent, approval or agreement of a Party to this Agreement, such consent approval or agreement may be given subject to such terms and conditions as that Party may reasonably impose and any breach of such terms and conditions by any person subject thereto, shall ipso facto be deemed to be a breach of the terms of this Agreement.

8. **The Articles**

8.1 If, whilst this Agreement is in force, during the continuance of this Agreement there shall be any conflict between the provisions of this Agreement and the provisions of the Articles or of the articles of association of any company in the Group, then during such period the provisions of this Agreement shall prevail.

8.2 Nothing contained in this Agreement shall be deemed to constitute an amendment of the Articles or of the articles of association of any company in the Group or of any previous articles of association of the Company or of any company in the Group.

9. **Winding Up and Insolvency**

9.1 In the event of the winding up or insolvency of the Company, the Company will consult with the Charity Commission and the Parties (and obtain the formal consent of the Council and the Developers) regarding any proposals for the distribution of any remaining assets of the Company.

10. **Confidentiality**

10.1 Subject to clauses 10.2 and 10.3, each Party will keep the following matters confidential, namely:

10.1.1 any information concerning the activities or financial affairs of the other Parties which in the ordinary course of business would be considered confidential or sensitive;

10.1.2 any information concerning the Company or the activities in relation to this Agreement which, in the ordinary course of business would be considered confidential or sensitive; and

10.1.3 any information concerning another Party which that Party, by notice to the others, determines to be of a confidential nature.

10.2 Subject to clause 10.3, no Party is to disclose any such confidential information without the prior written consent of the other Party to which it relates.

10.3 No Party will be in breach of its obligations under clauses 10.1 or 10.2 if the information concerned:

10.3.1 is already in the public domain other than as a consequence of a prior breach by the Party concerned; or

10.3.2 is required by law or by any court of competent jurisdiction or public body having appropriate legal powers to be divulged to or any authority, court, body or individual; or

10.3.3 is required to be disclosed to a regulatory agency or is disclosed to professional adviser on a confidential basis.

11. **Developer changes**

11.1 The Parties acknowledge that there may be changes to the Developers from time to time in respect of the Development.

11.2 Any proposal to accept an additional Developer shall be discussed and decided upon by the Developers for the time being.

11.3 A Deed of Adherence shall be executed by any additional Developer agreed upon as a new Developer and Party to this Agreement and by the Council on behalf of itself and of all existing Parties to this Agreement.

11.4 Each Party confirms the irrevocable authority of the Council to execute a Deed of Adherence on its behalf.

11.5 Upon so entering into a Deed of Adherence that organisation or person (as the case may be) shall be deemed to be a party to this Agreement.

12. **General**

**Notices**

12.1 All notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this sub-clause. Any such notice may be delivered personally or by first class prepaid letter or facsimile transmission and shall be deemed to have been served if by personal delivery when delivered if by first class post 48 hours after posting and if by facsimile transmission when despatched.

**Successors Bound**

12.2 This Agreement shall be binding on and shall endure for the benefit of the successors and assigns and personal representatives (as the case may be) of each of the Parties.

**Assignment**

12.3 None of the Parties may assign their rights and obligations in whole or in part under this Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed) PROVIDED THAT this sub-clause shall not prevent a transfer of Membership pursuant to the Articles.

**Good Faith**

12.4 Each of the Parties undertakes to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and the Articles.

**Further Assurance**

12.5 Each of the Parties shall, and shall use their respective reasonable endeavours to procure that any necessary third parties shall, do execute and perform all such further deeds, documents, assurances, acts and things as the other Parties may reasonably require to carry out the provisions of this Agreement and the Articles into full force and effect.

**Counterparts**

12.6 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts each of which when executed and delivered will be an original.

**Variation**

12.7 No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by the Parties.

**Law**

12.8 This Agreement shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or connected with this Agreement.

**No Partnership**

12.9 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties and none of them shall have any authority to bind the others in any way.

**Duration**

12.10 **The** terms of this Agreement shall remain in full force and effect from the Commencement Date.

**Termination**

12.11 The Parties may terminate this Agreement with immediate effect in relation to the participation of another Party ("the Leaving Party") if the Leaving Party:

12.11.1 being one of the Developers, serves written notice on the other Parties that the Party in question has ceased to have involvement in the Development;

12.11.2 has been guilty of a persistent or material breach of its obligations under this Agreement which is either not capable of remedy or which has not been remedied within 30 days after the other parties have issued the Leaving Party with written notice identifying such breach and requiring its remedy (referring specifically to this provision); or

12.11.3 goes into liquidation or winding up, is struck off by Companies House or the Financial Conduct Authority (as the case may be) or has an administrator, administrative receiver, receiver or manager appointed in respect of all or any of its assets and undertakings or is unable to pay its debts as these fall due (within the meaning of Section 123 of the insolvency Act 1986); or

12.11.4 is found to have conducted itself in such a way as to bring the Company or the other parties into disrepute.

12.12 Expulsion of the Leaving Party in accordance with clauses 12.11.2 to 12.2.4 will be effected by serving written notice on the Leaving Party signed by all the other Parties.

12.13 In the case of expulsion on the grounds set out in clauses 12.11.1 to 12.11.44 where there are bona fide grounds for a dispute concerning interpretation of the conduct, obligations or duties of the party in default, no notice may be served until the Dispute Procedure has been exhausted or otherwise waived by the parties concerned.

12.14 The termination of this Agreement however caused, shall be without prejudice to any obligations or rights of the Leaving Party which shall have accrued prior to such termination of this Agreement which is expressly or by implication provided to come into effect on, or to continue in effect after, such termination.

**Waiver**

12.15 No failure to exercise, and no delay in exercising on the part of either Party, any right, power or privilege under this Agreement shall operate as a waiver of it nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or the exercise of any other right power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies otherwise provided by law.

**Severability**

12.16 Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable the remaining provisions of this Agreement shall continue in full force and effect.

**Exercise of Powers**

12.17 Where any person is required under this Agreement to exercise his powers in relation to the Company and/or any company in the Group to procure a particular matter or thing such obligation shall be deemed to include an obligation to exercise his powers both as a Member and as a Director (where applicable) of the Company and/or any company in the Group and to procure that any Member or Director nominated, appointed or approved by him (whether alone or jointly with any other person) shall procure such matter or thing.

**Costs**

12.18 Each of the Parties shall pay their own costs and expenses incurred in relation to the negotiation, preparation and execution of this Agreement.

**Third Party Rights**

12.19 The terms of this Agreement are not enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person not a Party.

**SCHEDULE 1**

**Director's Undertaking**

To: Chilmington Green Community Management Organisation (the Company), Ashford Borough Council (the Council), Hodson Developments (Ashford) Limited, Hodson Devlopments (CG One) Limited, Hodson Developments (CG Two) Limited , BDW Trading Limited, Pentland Kent Limited, Chilmington Green Developments Limited, Chelmden Limited and Malcolm Jarvis Homes Limited, (collectively known as "the Developers")

From: [name of director]

Dated:

**I HEREBY CONFIRM** that I have been supplied with a copy of an agreement ("the Agreement") made between (1) the Company, (2) the Council, and (3) the Developers dated the ■ day of ■ 2015 and **UNDERTAKE** to each of the persons to whom this Undertaking is addressed above that I will so far as may be permitted by law and so long as I remain a Director of the Company comply with the terms and conditions of the Agreement insofar as the same relate to me and act in all respects as contemplated by the Agreement and will (so far as aforesaid) do all within my power as a Director to ensure that the Company complies with its obligations under the Agreement.

**EXECUTED** as a deed the day and year first before written

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| **SIGNED** by the said | ) | [name of Director] |
| | ) | |
| as a Deed in the presence of:- | ) | [witness] |

## SCHEDULE 2

## Resolution of Disputes

1. In the event of any dispute, disagreement or claim arising between the Parties then the Parties shall follow the steps below ("the Procedure") in an attempt to resolve it. The Parties agree to act in good faith throughout.

2. The Procedure shall not impose any precondition on any Party or otherwise prevent or delay any Party from commencing proceedings in any court of competent jurisdiction to obtain either:

   2.1 an order (whether interlocutory, interim or final) restraining the other Party from doing any act or compelling any other party to do any act; or

   2.2 summary judgment pursuant to CPR Part 24 for a liquidated sum.

3. If any Party to this Agreement ("the Complainant") wishes to raise a dispute concerning any other Party to this Agreement, then the Complainant will notify the relevant Party in writing, setting out the grounds for the complaint.

4. Following the receipt of a notice of dispute under clause 3 of this Schedule, the Parties in question will use their reasonable endeavours to resolve the dispute within 28 days.

5. If the dispute or complaint cannot be resolved, then the matter will be referred to a designated representative of each Party, who will use their respective reasonable endeavours to meet within 14 days of the matter being referred to them in accordance with this clause.

6. Any dispute not resolved through negotiation under clauses 4 or 5 of this Schedule shall at the request of either Party within 10 Working Days of the meeting in clause 5, be referred to mediation.

7. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party shall within 14 (fourteen) days from the date of the proposal to appoint a mediator or within 14 (fourteen) days of notice to either Party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a mediator.

8. The Parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure ("the Model Procedure"). The cost of such mediation shall be split equally between the Parties or as otherwise determined by the Parties during the mediation process.

9. The mediation will be conducted on a without prejudice basis and in strict confidence.

10. If a dispute is settled through mediation, the terms of the settlement will be recorded in writing in a legally binding form signed by a duly authorised representative of each of the Parties. If a settlement is reached while proceedings are pending, the Parties acknowledge that an appropriate application must be made to the courts to render the terms of the settlement as a consent order or award.

11. If, within 28 calendar days of the mediator being appointed, the mediation has not resulted in the settlement of the dispute being reached, then the mediation procedure shall, unless otherwise agreed, be terminated. In that event, any proceedings, which have been stayed, will resume.

12. If either Party withdraws from the mediation at any time, the mediation procedure will be terminated and either will be free to refer the dispute to arbitration under clause 13 of this Schedule, unless proceedings have already been commenced but stayed pending the outcome of the mediation, in which case those proceedings will resume.

13. In the event that the dispute or complaint is not capable of being resolved through the Dispute Procedure then it shall be subject to arbitration.

## SCHEDULE 3

## Essential Activities

**The following are the essential activities to be carried out by the Company using the Estate Rentcharge:**

Where this schedule refers to the "Section 106 Agreement" this means the agreement dated [ ] pursuant to section 106 of the Town and Country Planning Act 1990 between 1) [ ] and 2) [ ] but not that agreement as is or may be varied from time to time

The maintenance renewal and replacement of the following:-

- Soft landscaping (as part of open spaces owned by the Company only)
- Bins for dog waste and litter including emptying bins (everywhere within the Area of Benefit)
- Footpaths (within open spaces owned by the Company only and to the extent they are not adopted by the highways authority)
- Cycleways (within open spaces owned by the Company only to the extent that they are not adopted by the highways authority)
- Railings and fencing (on Company owned property only)
- Public Art required pursuant to the terms of the Section 106 agreement and the Planning Permission only
- Site Interpretation and information boards
- Trees and tree grills (located on all land owned by the Company only)
- Safety and welcome signage (located on open space owned by the Company only)
- The fabric of all buildings transferred to the Company via the Section 106 agreement
- Seating (on Company owned property only)
- Vehicular Parking Spaces (on Company owned property only)
- Litter picking (on Company owned property only)
- Street lighting (on Company owned property only and to the extent it is not adopted by the highways authority)
- Informal natural green space transferred to the Company pursuant to the terms of the Section 106 agreement
- Discovery Park Outdoor Sports Pitches transferred to the Company pursuant to the terms of the Section 106 agreement
- Children and Young People's Play Spaces transferred to the Company pursuant to the terms of the Section 106 agreement and strategic parks transferred to the CMO pursuant to the terms of the Section 106 agreement.
- Allotments (excluding individual allotments plots which are held under licence by individual allotment holders) transferred to the Company pursuant to the terms of the Section 106 agreement
- Land comprising ecological mitigation that is transferred to the Company pursuant to the terms of the Section 106 Agreement
- Land comprising woodland that is transferred to the Company pursuant to the terms of the Section 106 Agreement
- Land comprising the advance planting belts that is transferred to the Company pursuant to the terms of the Section 106 Agreement
- Sports Facilities at the Hamlet to be transferred to the Company pursuant to the terms of the Section 106 Agreement

Reasonable apportionment of staff and other management overheads and costs associated with all of the above essential activities

Purchase lease replacement and maintenance of equipment and any management buildings as overheads associated with carrying out the above essential activities

**IN WITNESS** whereof the Parties have executed this document as the deed of such parties the day and year first before written

EXECUTED AS A DEED by )
[Name] for and on behalf of )
Chilmington Green Community )
Management Organisation )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
Ashford )
Borough Council )
by the affixing of its Common Seal )
in the presence of: )

Mayor

Solicitor

EXECUTED AS A DEED by )
The Kent County Council )
by the affixing of its Common Seal )
in the presence of: )

Authorised Signatory

EXECUTED AS A DEED by )
[Name] for and on behalf of Hodson )
Developments (Ashford) Limited] )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by [Name] )
for and on behalf of Hodson )
Developments (CG One) Limited )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of Hodson )
Developments (CG Two) Limited] )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of BDW )
Trading Limited )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of )
Pentland Kent Limited )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of )
Pentland Homes Limited )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of )
Malcom Jarvis Homes Limited )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of Chilmington Green )
Developments Limited )
and signed by:- )

Director

Director/Secretary

EXECUTED AS A DEED by )
[Name] for and on behalf of )
Chelmden Limited )
and signed by:- )

Director

Director/Secretary

**SCHEDULE 39**

**Articles of Association**

**COMPANY NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

**CHILMINGTON GREEN COMMUNITY MANAGEMENT ORGANISATION**

## PART A. INTRODUCTION

### 1. INTERPRETATION

1.1 In these Articles:

| | |
|---|---|
| "the Acts" | means the Companies Acts (as defined in Section 2 of the Companies Act 2006) insofar as they apply to the Company and any statutory modification or re-enactment thereof for the time being in force |
| "Area of Benefit" | means Chilmington Green in Ashford, Kent as delineated on the plan attached |
| "the Articles" | means these Articles of Association of the Company |
| "the Board" | means the board of Directors of the Company and (where appropriate) includes a Committee and the Directors acting by written resolution |
| "Board Meeting" | means a meeting of the Board |
| "Business Day" | means any day other than a Saturday, Sunday, bank holiday or public holiday |
| "Chair" | means (subject to the context) either the person elected as chair of the Company under Article 19 or where the chair of the Company is not present or has not taken the chair at a meeting means the person who is chairing a Board Meeting or General Meeting at the time |
| "Charity Commission" | means the Charity Commission for England and Wales |
| "Clear Days" | in relation to a period of notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect |
| "Committee" | means a committee of the Board exercising powers delegated to it by the Board |
| "Companies House | means the office of the Registrar of Companies |

| | |
|---|---|
| "the Company" | means the company intended to be regulated by the Articles |
| "Company Member" | means a member for the time being of the Company who is admitted under Article 6 |
| "the Council" | means Ashford Borough Council of Civic Centre, Tannery lane, Ashford, Kent, TN23 1PL |
| "the Councils" | means the Council and Kent County Council |
| "the Developers" | means Hodson Developments (Ashford) Limited, Hodson (CG One) Limited, Hodson (CG Two) Limited, Chilmington Green Developments Limited, Chelmden Limited, BDW Trading Limited, Malcolm Jarvis Homes Limited, Pentland Homes Limited and Pentland Kent Limited and other organisations that have or acquire a legal interest in land in the Area of Benefit and are involved in the development of the site and are identified as such by a Developer by notice in writing served on the company by that Developer |
| "Director" | means any director of the Company who is appointed under Article 19 |
| "Dwelling" | the residential units to be constructed as part of the Development pursuant to the Planning Permission and "Dwellings" shall be construed accordingly |
| "General Meeting" | means a meeting of Company Members |
| "Housing Associations | means those registered providers of social housing owning properties in the Area of Benefit |
| "including" | means "including without limitation" and "include" and "includes" are to be construed accordingly |
| "Kent County Council" | means Kent County Council of County Hall, Maidstone Kent, ME14 1XQ |
| "the Memorandum" | means the Memorandum of Association of the Company |
| "the Objects" | means the objects of the Company set out in Article 3 |
| "Observers" | means those persons (other than Directors) present under Article 29at a Board Meeting |
| "Occupation" | means the beneficial occupation (excluding squatters and trespassers) of any building comprising part of the Development for its designated planning use but for the avoidance of doubt shall not include occupation or occupants who occupy for the purposes of construction, fitting out, decoration, commissioning, advertising, marketing, security, display, management of the |

| | |
|---|---|
| | Site or parking relating to those purposes and "Occupy" "Occupiers" "Occupancy" and "Occupied" shall be construed accordingly |
| "Parish Councils" | means Great Chart with Singleton Parish Council, Kingsnorth Parish Council, and Shadoxhurst Parish Council |
| "Planning Act" | the Town and Country Planning Act 1990 |
| "Planning Permission" | means the outline planning permission granted by the Council pursuant to the application for outline planning permission submitted to the Council and registered under the Council's reference 12/00400/AS |
| "Registered Office" | means the registered office of the Company |
| "Resident" | means a person who occupies a property within the Area of Benefit |
| "Secretary" | means the secretary of the Company including a joint, assistant or deputy secretary |
| "Senior Officers" | means the Chief Executive and such other senior members of staff as the Board may designate as such |
| **"Tenants"** | means individuals occupying a property in the Area of Benefit under an assured or assured shorthold tenancy |
| **"United Kingdom"** | means Great Britain and Northern Ireland |
| **"Vice-Chair"** | means a person elected as a Vice-Chair of the Company under Article 19 |
| **"Working Party"** | means a body established by the Board to make recommendations to the Board but without decision-making powers, including community groups or for a |

1.2 In the Articles:

1.2.1 terms defined in the Act are to have the same meaning;

1.2.2 references to the singular include the plural and vice-versa and to the masculine include the feminine and neuter and vice-versa;

1.2.3 references to "organisations" or "persons" include corporate bodies, public bodies, unincorporated associations and partnerships;

1.2.4 references to legislation, regulations, determinations and directions include all amendments, replacements or re-enactments and references to legislation (where appropriate) include all regulations, determinations and directions made or given under it;

1.2.5 references to articles are to those within the Articles; and

1.2.6 headings are not to affect the interpretation of the Articles.

1.3 For the avoidance of doubt the system of law governing the Memorandum and the Articles is the law of England and Wales.

1.4 None of the model articles in the Companies (Model Articles) Regulations 2008 applies to the Company.

2. **NAME**

The name of the Company is Chilmington Green Community Management Organisation.

3. **OBJECTS**

The Company's Objects are specifically restricted to the following:-

3.1 to provide maintain and equip parks gardens landscaped areas woodlands open spaces playing fields playgrounds recreational amenity spaces and other elements of the public realm within the Area of Benefit for the benefit of the inhabitants thereof;

3.2 to advance public education in the Area of Benefit for the benefit of the inhabitants thereof with particular regard to horticulture arboriculture wild plants and wildlife;

3.3 to provide or assist in the provision of facilities for recreation or other leisure time occupation in the interests of social welfare and with the object of improving the conditions of life for the inhabitants of the Area of Benefit;

3.4 to promote the conservation, protection management maintenance and improvement of the physical and natural environment in the Area of Benefit for the benefit of the inhabitants thereof;

3.5 to promote, protect, preserve and advance all or any aspects of the health of the inhabitants of the Area of Benefit; and

3.6 to establish, manage or assist with the establishing and management of health facilities, community centres, arts centre, workshops, groups for educational play, deprived youth and old people in need and centres residential or otherwise for activities in the Area of Benefit all being for the benefit of the inhabitants thereof.

4. **POWERS**

The Company may do anything that a natural or corporate person can lawfully do which is not expressly prohibited by the Articles in order to further the Objects (but not otherwise) and in particular it has powers:

**Staff and Volunteers**

4.1 to employ staff or engage consultants and advisers on such terms as the Board thinks fit and to provide pensions to staff, their relatives and dependants;

4.2 to recruit or assist in recruiting and managing voluntary workers, including paying their reasonable expenses;

**Property**

4.3 to purchase, lease, exchange, hire or otherwise acquire any real or personal property rights or privileges (including shared or contingent interests);

4.4 to construct, alter, improve, convert, maintain, equip, furnish and/or demolish any buildings, structures or property;

4.5 to sell, lease, license, exchange, dispose of or otherwise deal with property (subject to the restrictions in the Charities Act 2011);

4.6 to provide accommodation for any other charitable organisation on such terms as the Board decides (including rent-free or at nominal or non-commercial rents) subject to the restrictions in the Charities Act 2011;

**Borrowing**

4.7 to borrow and give security for loans;

**Grants and Loans**

4.8 to make and receive grants, donations or loans, to give guarantees and to give security for those guarantees (subject to the restrictions in the Charities Act 2011);

**Fund Raising**

4.9 to raise funds, to invite and receive contributions;

**Trading**

4.10 to trade in the course of carrying out the Objects and to charge for services;

**Publicity**

4.11 to hold, conduct or promote meetings, conferences, lectures, exhibitions or training courses and to disseminate information to publicise the work of the Company and other organisations operating in similar fields;

4.12 to promote or carry out research and publish the results of it;

**Contracts**

4.13 to co-operate with and enter into contracts with any person;

**Bank or building society accounts**

4.14 to draw, make, accept, endorse, discount, execute and issue promissory notes, bills, cheques and other instruments and to operate bank or building society accounts in the name of the Company;

**Investments**

4.15 to:-

4.15.1 deposit or invest funds;

4.15.2 employ a professional fund-manager; and

4.15.3 arrange for the investments or other property of the Company to be held in the name of a nominee

in the same manner and subject to the same conditions as trustees of a trust are permitted to do by the Trustee Act 2000;

**Insurance**

4.16 to insure the assets of the Company to such amount and on such terms as the Board decides, to pay premiums out of income or capital and to use any insurance proceeds as the Board decides (without necessarily having to restore the asset);

4.17 to insure and to indemnify the Company's employees and voluntary workers from and against all risks incurred in the proper performance of their duties;

4.18 to take out insurance to protect the Company and those who use premises owned by or let or hired to the Company;

4.19 to provide indemnity insurance for the Directors in accordance with, and subject to the conditions in, the Charities Act 2011;

**Other Organisations**

4.20 to establish, promote, assist or support (financially or otherwise) any trusts, companies, registered societies, associations or institutions which have purposes which include the Objects or to carry on any other relevant charitable purposes;

4.21 to co-operate or join with any charity, voluntary body or public or statutory authority or any other organisation in any location whatsoever in furthering the Objects or allied charitable purposes, to exchange information and advice and to undertake joint activities with them;

4.22 to amalgamate with any charity which has objects similar to the Objects;

4.23 to undertake and execute any charitable trusts;

4.24 to affiliate, register, subscribe to or join any organisation;

4.25 to act as agent or trustee for any organisation;

**Reserves**

4.26 to accumulate income in order to set aside funds for special purposes or as reserves against future expenditure;

**Formation expenses**

4.27 to pay the costs of forming the Company and of complying with all relevant registration requirements; and

**General**

4.28 to do anything else within the law which is incidental and conducive to the Objects.

## 5. APPLICATION OF FUNDS

### 5.1 General

The income and property of the Company must be applied solely towards promoting the Objects and (except to the extent authorised by this Article 5):

5.1.1 no part may be paid or transferred directly or indirectly by dividend bonus or profit to a Company Member; and

5.1.2 a Director may not directly or indirectly receive any payment of money or benefit from the Company.

### 5.2 Benefits to Members

Notwithstanding Article 5.1, the Company may make the following payments or grant the following benefits to Company Members:-

**Interest and Rent**

5.2.1 reasonable and proper interest on money lent by any Company Member to the Company;

5.2.2 reasonable rent, service charges or other payments properly payable under the provisions of any lease, agreement for lease or licence in respect of premises let by any Company Member to the Company or a reasonable hiring fee for premises hired by any Company Member to the Company;

**Supply of Goods or Services**

5.2.3 reasonable payments to a Company Member in return for goods and/or services supplied to the Company pursuant to a contract;

**Out of Pocket Expenses**

5.2.4 reasonable and proper out of pocket expenses to Company Members who are engaged by the Company as volunteers in the work of the Company and which are actually incurred by them in carrying out their work as volunteers; and

**Benefits to Company Members**

5.2.5 the grant of a benefit to a Company Member who is a beneficiary of the Company in the furtherance of the Objects.

5.3 **Benefits to Directors**

Notwithstanding Article 5.1, the Company may make the following payments or grant the following benefits to Directors:-

**Out of pocket expenses**

5.3.1 the reimbursement of reasonable and proper out-of-pocket expenses (including travel and dependants' care costs) actually incurred in enabling them to carry out their duties as Directors;

5.3.2 reasonable and proper out of pocket expenses to those Directors who are engaged by the Company as volunteers in the work of the Company and which are actually incurred by them in carrying out their work as volunteers;

**Indemnity**

5.3.3 an indemnity in respect of any liabilities properly incurred in running the Company (including the costs of a successful defence to criminal proceedings);

5.3.4 the benefit of indemnity insurance under Article 4.19;

**Fees to companies in which Directors have negligible interests**

5.3.5 a payment to a company in which a Director has no more than a 1% shareholding;

**Interest and Rent**

5.3.6 reasonable and proper interest on money lent by any Director to the Company;

5.3.7 reasonable rent, service charges or other payments properly payable under the provisions of any lease, agreement for lease or licence in respect of premises let by any Director to the Company or a reasonable hiring fee for premises hired by any Director to the Company;

**Beneficiaries**

5.3.8 benefits provided in furtherance of the Objects to Directors who are beneficiaries of the Company where those benefits are the same as or similar to benefits provided to other beneficiaries;

**Employment/Supply of Goods and Services**

5.3.9 payments to a Director who is employed by the Company or who enters into a contract for the supply of goods or services to the Company (other than for acting as a Director) provided that:-

5.3.9.1 the remuneration or other sums paid to the Director concerned do not exceed an amount that is reasonable in all the circumstances;

5.3.9.2 the Director is absent from the part of any meeting at which there is a discussion of his employment or remuneration or any matter concerning the contract, his performance in the employment or his performance of the contract, any proposal to enter into any other contract or arrangement with him or to confer any benefit upon him and/or any other matter relating to payment or the conferring any benefit to him;

5.3.9.3 the Director does not vote on any such matter and is not counted when calculating whether a quorum of Directors is present at the meeting;

5.3.9.4 the other Directors are satisfied that it is in the interests of the Company to employ or to contract with the Director rather than with someone who is not a Director. In reaching that decision the Directors must balance the advantage of employing or contracting with a Director against the disadvantages of doing so (especially the loss of the Director's services as a result of dealing with the Director's conflict of interest);

5.3.9.5 the reason for the Directors' decision is recorded in the minutes of the Board meeting; and

5.3.9.6 at no time shall a majority of the Directors receive payment pursuant to this Article 5.3.9.

The employment or remuneration of a Director pursuant to this Article includes the engagement or remuneration of any firm or company in which the Director is a partner, an employee, a consultant, a director or a shareholder, unless the shares of the company are listed on a recognised stock exchange and the Director holds less than 1% of the issued capital;

**Exceptional Circumstances**

5.3.10 other payments or benefits (approved in writing in advance by the Charity Commission) in exceptional cases.

5.4 The provisions in this Article 5 on the making of payments and the granting of benefits by the Company to Directors shall also extend to payments made to Directors by any other company in which the Company

5.4.1 holds more than 50% of the shares; or

5.4.2 controls more than 50% of the voting rights attached to the shares; or

5.4.3 has the right to appoint one or more directors to its board.

5.5 For the purposes of Article 5.3 a payment to or a benefit granted to a dependant relative or the spouse of the Director or any person living with the Director as his partner shall be deemed to be a payment to the Director and shall be permitted to the same extent that payments to or benefits granted to Directors are permitted.

5.6 **Amendments**

This Article may not be amended without the prior written consent of the Charity Commission.

## PART B. COMPANY MEMBERSHIP

### 6. COMPANY MEMBERS

6.1 The Company Members are:-

6.1.1 the subscribers to the Memorandum; and

6.1.2 others admitted to membership of the Company by the Board under the Articles.

### 7. ADMISSION OF COMPANY MEMBERS

7.1 A person may not be admitted by the Board as a Company Member:-

7.1.1 unless he has signed a written application to become a Company Member in such form as the Board requires;

7.1.2 for such period as the Board may deem appropriate if he has ceased to be a Company Member by reason of his having been removed as a Director under Article 21;

7.1.3 if he is in arrears of payments due to the Company by 45 days or more in respect of any estate rentcharge, service charge and/or any other charges or sums owed to the Company unless the Board resolves that there is good reason for the delay in making such payment;

7.1.4 unless he is either a Resident or appointed as a Director under Article 19;

7.1.5 If he is a Resident and there is already a Company Member that is a member of the same household;

7.1.6 7.1.6 unless he is aged 18 or over; or

7.1.7 7.1.7 if he would immediately cease to be a Company Member or Director under the Articles.

7.2 Subject to Article 7.1, if a person is a Resident and has signed a written application pursuant to Article 7.1.1 then the Board shall admit him as a Company Member.

7.3 Company membership is personal and not transferable.

### 8. TERMINATION OF COMPANY MEMBERSHIP

A person will cease to be a Company Member:-

8.1 on delivering written notice of resignation to the Registered Office;

8.2 if he dies, or being an organisation passes a resolution for winding up or otherwise ceases to exist;

8.3 if, having been a Resident on becoming a Company Member, he ceases to be a Resident;

8.4 if, not having been a Resident on becoming a Company Member, he ceases to be a Director;

8.5 if he is or becomes in arrears of payments due to the Company by 45 days or more in respect of estate rentcharge, service charge and/or any other charges or sums owed to the Company provided that he shall first have had reasonable opportunity to explain to the Board why he should not be removed; or

8.6 if the Board resolves to terminate his membership provided that he shall first have had reasonable opportunity to explain to the Board why he should not be removed.

## 9. LIABILITY OF COMPANY MEMBERS

9.1 The liability of the Company Members is limited.

9.2 Every Company Member promises, if the Company is wound up whilst he is a Company Member or within one year after ceasing to be a Company Member, to contribute such amount as is required up to a maximum of £1 towards:

9.2.1 winding up the Company;

9.2.2 the payment of the debts and the payment of the costs, charges and expenses of liabilities incurred whilst the contributor was a Company Member; and

9.2.3 the adjustment of the rights of the contributories among themselves.

# PART C. GENERAL MEETINGS

## 10. GENERAL MEETINGS

10.1 The Company shall hold an Annual General Meeting each calendar year, to be held at such time and place as the Board decides subject to Article 11. The business of the Annual General Meeting shall be:

10.1.1 to (re-)appoint Directors (if necessary);

10.1.2 to receive the annual Directors' report;

10.1.3 to consider the accounts and the auditors' report;

10.1.4 to appoint the auditors (if necessary); and

10.1.5 to transact any other business specified in the notice convening the meeting.

10.2 Any other meeting of the Members other than the Annual General Meeting shall be called a General Meeting. The Board may call a General Meeting at any time, to be held at such time and place as the Board decides subject to Article 11.

10.3 On receiving a requisition from the percentage of Company Members required under the Act the Board must promptly convene a General Meeting.

## 11. NOTICE OF GENERAL MEETINGS

11.1 Every General Meeting must be called by at least 14 Clear Days' notice.

11.2 A General Meeting may be called by shorter notice if this is agreed by a majority in number of the Company Members who may attend and vote and who together hold 90% or more of the total voting rights of all of the Company Members at the General Meeting.

11.3 The notice must specify:-

11.3.1 the time, date and place of the General Meeting;

11.3.2 if it is the Annual General Meeting, that it is such;

11.3.3 the general nature of the business to be transacted; and

11.3.4 if a special resolution is proposed, the fact that the proposed resolution is a special resolution and the wording of the resolution.

11.4 Subject to the Act no business may be transacted at a General Meeting except that specified in the notice convening the meeting.

11.5 Notice of a General Meeting must be given to all of the Company Members, the Directors, and to the Company's auditors (if any).

11.6 The accidental omission to give notice of a General Meeting to, or the non-receipt of notice of a General Meeting by, any person entitled to receive notice will not invalidate the proceedings at that General Meeting.

## 12. QUORUM

12.1 No business may be transacted at a General Meeting unless a quorum is present.

12.2 Subject to Article 12.3, the quorum for General Meetings is 5% or 75 of the Company Members for the time being present in person or by proxy whichever is the lower, provided always that a General Meeting shall only be quorate if:

12.2.1 at least one Company Member who is a Director appointed by the Councils is present; and

12.2.2 at least two other Company Members who are also appointed as Directors under Article 19.2 are also present.

12.3 At a General Meeting which has been called to consider any special resolution, the meeting shall only be quorate if the Company Members appointed by the Councils and at least two Company Members who are appointees of the Developers are present.

12.4 A Company Member may be part of the quorum at a General Meeting if he can hear, comment and vote on the proceedings through telephone, video conferencing or other communications equipment.

12.5 If a quorum is not present within 15 minutes from the time of the General Meeting or a quorum ceases to be present during a General Meeting it must be adjourned to such time and place as the Board decides.

12.6 If at the adjourned meeting there are again insufficient Company Members present within 15 minutes from the time of the adjourned General Meeting to constitute a quorum then the meeting shall be dissolved.

12.7 Reasonable notice of an adjournment of a General Meeting because of a lack of quorum and the time and place of the adjourned General Meeting must be given to all Company Members.

## 13. CHAIR AT GENERAL MEETINGS

13.1 The Chair is to chair General Meetings.

13.2 If the Chair is not present within 15 minutes from the time of the General Meeting or is unwilling to act then the Vice-Chair, if any, must chair the General Meeting.

13.3 If neither the Chair nor the Vice-Chair, if any, is present and willing to act within 15 minutes from the time of the General Meeting, the Company Members present must choose one of their number to chair the General Meeting.

## 14. ADJOURNMENT OF GENERAL MEETINGS

14.1 The Chair may, with the consent of a General Meeting at which a quorum is present (and must if so directed by the General Meeting), adjourn it to a time and place agreed by the General Meeting.

14.2 The Chair may also adjourn a General Meeting if it appears to the Chair that for any other reason an adjournment is necessary for the business of the meeting to be properly conducted.

14.3 The only business that may be transacted at an adjourned General Meeting is that left unfinished from the General Meeting that was adjourned.

14.4 It is not necessary to give notice of a General Meeting which is adjourned under Article 14.1 or 14.2 unless it is adjourned for 30 days or more in which case 7 Clear Days' notice must be given.

14.5 Resolutions passed at an adjourned General Meeting are to be treated as having been passed on the date on which they were actually passed.

## 15. VOTING AT GENERAL MEETINGS

15.1 Resolutions are to be decided on a show of hands unless a ballot is properly demanded.

15.2 Subject to Article 15.3, each Company Member present in person or by proxy has one vote both on a show of hands and a ballot.

15.3 On a ballot, the Company Members voting who are Residents shall have a maximum of 50% of the votes divided equally between them.

15.4 If there is an equality of votes on a show of hands or a ballot the Chair is not entitled to a second or casting vote.

15.5 An objection to the qualification of any voter may only be raised at the General Meeting at which the vote objected to is tendered. Every vote not disallowed at the General Meeting is valid. An objection made in time must be referred to the Chair whose decision is final.

15.6 A declaration by the Chair that a resolution has been carried (or not carried) unanimously, or by a particular majority, which is entered into the minutes of the meeting is conclusive evidence of the fact unless a ballot is demanded.

## 16. BALLOTS

16.1 A ballot may be demanded by the Chair or by any two Company Members before or on the declaration of the result of a show of hands.

16.2 A demand for a ballot may be withdrawn before the ballot is taken. If the demand for a ballot is withdrawn the result of the show of hands will stand.

16.3 The demand for a ballot will not prevent the General Meeting continuing to transact business other than in relation to the question on which the ballot is demanded.

16.4 A ballot is to be taken as the Chair directs. The Chair may appoint scrutineers (who need not be Company Members) and set a time and place to declare the result. The result will be the resolution of the General Meeting at which the ballot was demanded but will be treated as passed when the result is declared.

16.5 A ballot on the election of a chair or an adjournment must be taken immediately. A ballot on any other question may be taken either immediately or at such time and place as the Chair directs.

16.6 At least 7 Clear Days' notice must be given of the time and place at which the ballot is to be taken unless the time and place are announced at the General Meeting at which it is demanded.

17. **PROXIES**

17.1 A Company Member may validly appoint a proxy by notice in writing which

17.1.1 states the name and address of the member appointing the proxy;

17.1.2 identifies the person appointed to be that member's proxy and the General Meeting in relation to which that person is appointed;

17.1.3 is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the Directors may determine; and

17.1.4 is delivered to the Company in accordance with the articles and any instructions contained in the notice of the General Meeting to which they relate.

17.2 A proxy need not be a Company Member. The Board may from time to time prescribe a form to appoint a proxy by standing orders made under Article 38. A proxy may not appoint another proxy.

17.3 The document appointing a proxy may instruct the proxy which way to vote on particular resolutions.

17.4 A proxy will only be valid if the document appointing a proxy (and any power of attorney or other authority (if any) under which it is signed) or a properly certified copy is deposited at the Registered Office at least 24 hours before the starting time for the General Meeting or adjourned General Meeting at which the proxy proposes to vote.

17.5 No document appointing a proxy will be valid for more than 12 months.

17.6 A vote given or ballot demanded by proxy is to be valid despite:-

17.6.1 the revocation of the proxy; or

17.6.2 the death or insanity of the principal

unless written notice of the death, insanity or revocation is received at the Registered Office before the start of the General Meeting or adjourned General Meeting at which the proxy is used.

17.7 A proxy form will not be valid for any part of a General Meeting at which the Company Member who appointed the proxy is present.

18. **COMPANY MEMBERS' WRITTEN RESOLUTIONS**

18.1 A written resolution approved by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of eligible Company Members (provided that those Company Members would constitute a quorum at a General Meeting) is as valid as if it had been passed at a General Meeting provided that:

18.1.1 a copy of the proposed resolution has been sent to every eligible Company Member;

18.1.2 a simple majority (or in the case of a special resolution a majority of not less than 75%) of Company Members have signified their agreement to the resolution; and

18.1.3 such agreement is contained in an authenticated document that has been received at the Registered Office within the period of 28 days beginning with the circulation date.

18.2 A resolution under Article 18.1 may consist of several documents in similar form each approved by one or more Company Members.

## PART D. DIRECTORS

### 19. APPOINTMENT OF DIRECTORS

19.1 The first Directors shall be those named in the registration documents as sent to Companies House.

19.2 Subject to Article 19.3:

19.2.1 the Councils shall each have the right to appoint one person as a Director in accordance with Article 19.5;

19.2.2 subject to Article 19.7.3, the Developers shall have the right to appoint up to five Directors in accordance with Article 19.5;

19.2.3 the Housing Associations shall have the right collectively to appoint one person to as a Director in accordance with Article 19.5;

19.2.4 the Board shall use reasonable endeavours to ensure to invite Residents to be appointed as Directors in accordance with Article 19.7; and

19.2.5 the Board shall use reasonable endeavours to appoint one person with experience in the voluntary sector to serve as a Director.

19.3 No person may be appointed as a Director:

19.3.1 unless he/she is over 18;

19.3.2 if he/she would immediately cease to be a Director under Article 21.

19.4 The appointment of a Director is not to take effect until he has confirmed his consent to act as required by Companies House. The appointment of any person as a Director who has not done so within one month of appointment is to lapse unless the Board resolves that there is good cause for the delay.

19.5 Subject to Articles 19.3 and 19.4 the appointment or removal of a Director under the Articles is to take effect when the appointing body gives written notice of the appointment or removal to:

19.5.1 the Registered Office;

19.5.2 a Board Meeting; or

19.5.3 the Secretary in person.

19.6 Each Director appointed under Article 19.2 is to hold office until the start of the first Board Meeting after a term as near as possible to three years from his appointment, but is eligible for reappointment. In respect of Directors appointed in accordance with Articles 19.2.1 to 19.2.3, such reappointment to take place automatically if not opposed in writing by the relevant organisation in respect of their respective appointees.

19.7 The Board shall use its reasonable endeavours to ensure that Residents are appointed as follows:

19.7.1 an initial Resident shall be appointed as a Director by the Board, following such process of selection as the Board may determine, at any time prior to completion of the first development phase and will be subject to re-appointment at the next Annual General Meeting;

19.7.2 further Residents shall be appointed as Directors, following such process of selection as the Board may determine, at each Annual General Meeting as follows:

19.7.2.1 a maximum of 1 Resident prior to the end of the first development phase;

19.7.2.2 a maximum of 2 Residents prior to the end of the second development phase;

19.7.2.3 a maximum of 3 Residents prior to the end of the third development phase;

19.7.2.4 a maximum of 4 Residents prior to the end of the fourth development phase;

19.7.2.5 up to 5 Residents once the development phases are all complete.

19.7.3 Subject to Article 19.7.1, Residents appointed as Directors shall, subject to Article 21, hold office for a term as near as possible to three years so that each of the Directors shall stand down at the start of the third Annual General Meeting following their appointment. Residents appointed as Directors who are retiring at an Annual General Meeting may be re-appointed by the Annual General Meeting at which they are due to retire following such selection process as the Board may determine.

19.8 Subject to Article 7, each Director shall be a Company Member.

19.9 No Director may be appointed except as set out in the Articles.

20. **OBLIGATIONS OF DIRECTORS**

20.1 The Board shall set out in writing the principal obligations of every Director to the Board and to the Company. The statement of Directors' obligations is not intended to be exhaustive and the Board may review and amend it from time to time.

20.2 The statement of obligations may include:-

20.2.1 a commitment to its values and objectives including equal opportunities;

20.2.2 an obligation to contribute to and share responsibility for the Board's decisions;

20.2.3 an obligation to read Board papers and to attend meetings, training sessions and other relevant events;

20.2.4 an obligation to declare relevant interests;

20.2.5 an obligation (subject to any overriding legally binding requirement to the contrary) to keep confidential the affairs of the Board;

20.2.6 an obligation to comply with statutory and fiduciary duties, including:-

20.2.6.1 to act in the best interests of the Company;

20.2.6.2 to declare any interests a Director may have in matters to be discussed at Board meetings and not put himself in a position where his personal interest or a duty owed to another conflicts with the duties owed to the Company;

20.2.6.3 to secure the proper and effective use of the Company's property;

20.2.6.4 to act personally;

20.2.6.5 to act within the scope of any authority given;

20.2.6.6 to use the proper degree of skill and care when making decisions particularly when investing funds; and

20.2.6.7 to act in accordance with the Articles; and

20.2.6.8 a reference to obligations under the general law.

20.3 If required to do so by the Board, a Director must sign and deliver to the Board a statement confirming he/she will meet his obligations to the Board and to the Company.

21. **RETIREMENT AND REMOVAL OF DIRECTORS**

21.1 A Director will cease to hold office if he:-

21.1.1 comes to the end of his term of office and is not re-appointed;

21.1.2 is removed by the body which appointed him in accordance with Article 19.5;

21.1.3 dies;

21.1.4 being a Resident appointed as a Director in accordance with Article 19.7, ceases to be a Resident and/or a Company Member;

21.1.5 ceases to be a Director under the Act or is prohibited by law from being a Director or is disqualified from acting as a charity trustee under the Charities Act 2011;

21.1.6 becomes incapable of managing and administering his own affairs because of mental disorder illness or injury;

21.1.7 is declared bankrupt or makes any arrangement or composition with his creditors;

21.1.8 is in the opinion of the Board guilty of conduct detrimental to the interests of the Company and the Board resolves by a 75% majority of the Directors present and voting at a properly convened Board Meeting that he should be removed, provided that the Director concerned has first been given an opportunity to put his case and to justify why he should not be removed as a Director;

21.1.9 if he is or becomes in arrears of payments due to the Company by 45 days or more in respect of estate rentcharge, service charge and/or any other charges or sums owed to the Company provided that he shall first have had reasonable opportunity to explain to the Board why he should not be removed;

21.1.10 resigns by written notice to the Company at the Registered Office;

21.1.11 is absent without good reason from three consecutive Board Meetings held no more frequently than once per month and the Board resolves (by a 75%

majority of the Directors present and voting at a properly convened Board Meeting) that he should cease to be a Director; and/or

21.1.12 fails to sign a statement of his obligations under Article 20 within one month of being requested to do so and the Board resolves that he be removed.

## 22. CONFLICTS OF INTEREST AND BOARD MEMBER CONDUCT

### 22.1 Declaration of interests

22.1.1 If a Director is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the Company, he must declare the nature and extent of that interest to the other Directors.

22.1.2 In accordance with the Act, the declaration may be made at a Board Meeting or by written notice.

22.1.3 If a declaration of interest proves to be or becomes inaccurate or incomplete a further declaration must be made.

22.1.4 Any required declaration of interest must be made before the Company enters into the transaction or arrangement.

22.1.5 A declaration is not required in relation to an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question. For this purpose a Director is treated as being aware of matters of which he ought reasonably to be aware.

22.1.6 A Director need not declare an interest:-

22.1.6.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interests; or

22.1.6.2 if, and to the extent that, the other Directors are already aware of it (and for this purpose the other Directors are treated as being aware of anything of which they ought reasonably to be aware);

22.1.6.3 where he or she is appointed by the Developers, the Councils or the Housing Associations, in any transaction or arrangement with the appointing body in which the Director does not have an interest otherwise than as a director or as an employee of the relevant body provided the transaction or arrangement does not confer a personal benefit on the Director, and in such circumstances the Director concerned will be deemed not to have an interest for the purposes of the Act and these Articles.

### 22.2 Authorisation of direct conflicts of interests

A Director may enter into a transaction or arrangement with the Company only if and to the extent that such an arrangement is authorised by Article 5.

### 22.3 Authorisation of indirect conflicts of interest

22.3.1 Where, for whatever reason, a Director has any form of indirect interest in relation to a transaction or arrangement with the Company (which shall include a conflict of duty) and the transaction or arrangement is not authorised by virtue of any other provision in the Articles then it may be authorised by those Directors not having a conflict provided that:-

22.3.1.1 the Director with the conflict (and any other interested Director) is not counted when considering whether or not there is a valid

quorum for that part of the meeting and does not vote in relation to the matter giving rise to the conflict; and

22.3.1.2 the Directors who do not have a conflict in relation to the matter in question consider it is in the best interests of the Company to authorise the transaction.

22.3.2 The Directors who do not have a conflict in relation to the matter in question may, in their absolute discretion, determine that the Director with the conflict and/or any other interested Director should absent himself from the part of the meeting at which there is discussion concerning the transaction or arrangement giving rise to the conflict.

22.4 **Complaints about conduct**

22.4.1 If the Chair receives a written complaint identifying the complainant and alleging conduct by a Director that in his/her reasonable opinion is detrimental to the interests of the Company, and suggests that there is a prima facie case for the complaint to be investigated in accordance with the provisions of this Article, s/he may suspend the Director concerned.

22.4.2 Conduct detrimental to the interests of the Company includes:

22.4.2.1 any breach of a Director's obligations as set out in the statement of obligations of Directors signed by him/her under Article 20 or otherwise; and/or

22.4.2.2 conviction of any offence which has or is likely to bring the Company into disrepute.

22.4.3 Where the Chair is absent or unable or unwilling to act in relation to the complaint or the complaint is about the Chair then the Vice Chair may exercise the power to suspend the Chair or a Director under Article 22.4.1 in the same circumstances as the Chair.

22.4.4 The Director whose conduct is complained of must immediately be notified in writing either by the Secretary (if any) or by the Chair or the Vice Chair of the complaint and of any suspension which if exercised under Article 22.4.1 or Article 22.4.3 will be effective from the date of the notice. During the period of any suspension the Director must not:

22.4.4.1 participate in a Board Meeting or any other Company meeting;

22.4.4.2 authorise or incur expenditure on behalf of the Company;

22.4.4.3 make use of any property belonging to or in use by the Company in his/her capacity as a Director;

22.4.4.4 hold him/herself out as a Director of the Company; or

22.4.4.5 seek to commit the Company to any obligation.

22.4.5 On receipt of a complaint under Article 22.4.1 the Chair or the Vice Chair must immediately refer the matter for a fair process of investigation, which may be carried out by a panel established for the purpose, an independent person or persons, or such other body as the Chair or Vice Chair acting reasonably shall appoint, including under such procedure for dealing with complaints as the Board may from time to time approve.

## PART E. BOARD MEETINGS

### 23. FUNCTIONS OF THE BOARD

The Board must direct the Company's affairs in such a way as to promote the Objects. Its functions include:-

23.1 defining and ensuring compliance with the values and objectives of the Company;

23.2 establishing policies and plans to achieve those objectives;

23.3 approving each year's budget and accounts before publication;

23.4 establishing and overseeing a framework of delegation of its powers to Committees and Working Parties (under Article 28) and employees with proper systems of control;

23.5 monitoring the Company's performance in relation to its plans budget controls and decisions;

23.6 appointing (and if necessary removing) Senior Officers;

23.7 satisfying itself that the Company's affairs are conducted in accordance with generally accepted standards of performance and propriety; and

23.8 ensuring that appropriate advice is taken on the items listed in Articles 23.1 to 23.7 and in particular on matters of legal compliance and financial viability.

### 24. POWERS OF THE BOARD

24.1 Subject to the Act and the Articles, the business of the Company is to be managed by the Board who may exercise all of the powers of the Company.

24.2 An alteration to the Articles does not invalidate earlier acts of the Board which would have been valid without the alteration.

### 25. BOARD MEETINGS

25.1 Subject to the Articles, the Board may regulate Board Meetings as it wishes.

25.2 Board Meetings may be called by any Director or the Secretary (if appointed).

25.3 7 days' notice of Board Meetings must be given to each of the Directors but it is not necessary to give notice of a Board Meeting to a Director who is out of the United Kingdom.

25.4 A Board Meeting which is called on shorter notice than required under Article 25.3 is deemed to have been duly called if at least two Directors certify in writing that because of special circumstances it ought to be called as a matter of urgency.

25.5 Subject to Article 25.6, matters arising at a Board Meeting are to be decided by a simple majority of votes and each Director is to have one vote.

25.6 Prior to the sale and Occupation of the last Dwelling to be Occupied that is permitted to be constructed within the Area of Benefit pursuant to the Planning Permission and all other planning permissions granted by the Council (including planning permissions granted by the Council pursuant to Section 73 73A and 96A of the Planning Act varying the conditions to such planning permission) and by the Secretary of State on appeal for development within the Area of Benefit that include the provision of a Dwelling/s, however many Directors appointed by the Developers are present at a Board Meeting, they shall have 50% of the available votes divided equally between them.

25.7 If there is an equality of votes the Chair is not entitled to a second or casting vote.

25.8 A technical defect in the appointment of a Director or in the delegation of powers to a Committee of which the Board is unaware at the time does not invalidate decisions taken in good faith.

## 26. QUORUM FOR BOARD MEETINGS

26.1 Subject to Article 26.3 the quorum for Board Meetings is a minimum of four of the Directors for the time being provided that at least two Directors appointed by the Developers are present.

26.2 A Director may be part of the quorum at a Board Meeting if s/he can hear comment and vote on the proceedings through telephone, video conferencing or other communications equipment.

26.3 The Board may act despite vacancies in its number but if the number of Directors is less than four then the Board may act only to admit Directors under Article 19.

26.4 At a Board Meeting which remains inquorate for 15 minutes after its starting time or one which becomes inquorate for more than 15 minutes the Directors present may act only to:-

26.4.1 adjourn it to such other time and place as they decide; or

26.4.2 call a General Meeting; or

26.4.3 seek the appointment of Directors by the Participating Prisons under Article 19.

26.5 If at the adjourned meeting there are again insufficient Directors present within 15 minutes from the time of the adjourned Board Meeting to constitute a quorum then those Directors who are present (provided that they number at least two) shall constitute a quorum for the purpose of allowing any business of the adjourned meeting to be conducted.

## 27. CHAIR AND VICE-CHAIR

27.1 The Company must have a Chair and may have a Vice-Chair. The Chair and the Vice-Chair are to be appointed by the Board.

27.2 The Chair and Vice-Chair, if any, are to hold office until the start of the first Board Meeting after a term as near as possible to one year from their appointment but are eligible for reappointment.

27.3 The Chair and the Vice-Chair, if any, may be removed only at a meeting of the Board called for the specific purpose at which a resolution with a majority in favour is passed. The Chair or the Vice-Chair (as the case may be) must be given an opportunity to say why he should not be removed.

27.4 The Chair is to chair all Board Meetings and General Meetings at which he is present unless he does not wish or is not able to do so.

27.5 If the Chair is not present within 5 minutes after the starting time of a Board Meeting, or is unwilling or unable to chair a Board Meeting, then the Vice-Chair, if any, must chair the Board Meeting unless he is unwilling or unable to do so.

27.6 If both the Chair and the Vice-Chair, if any, are not present within 5 minutes after the starting time of a Board Meeting or both are unwilling or unable to chair the meeting then the Board must elect one of the Directors who is present to chair the Board Meeting.

27.7 The functions of the Chair are:-

27.7.1 to act as an ambassador for the Company and to represent the views of the Board to the general public and other organisations;

27.7.2 to ensure that Board Meetings and General Meetings are conducted efficiently;

27.7.3 to give all Directors an opportunity to express their views;

27.7.4 to establish a constructive working relationship with and to provide support for the employees;

27.7.5 where necessary (and in conjunction with the other Directors) to ensure that, where the post of any employee is or is due to become vacant, a replacement is found in a timely and orderly fashion;

27.7.6 to encourage the Board to delegate sufficient authority to its Committees to enable the business of the Company to be carried on effectively between Board Meetings;

27.7.7 to ensure that the Board monitors the use of delegated powers; and

27.7.8 to encourage the Board to take professional advice when it is needed and particularly before considering the dismissal of an employee.

27.8 The role of the Vice-Chair, if any, is to deputise for the Chair during any period of his absence and, for that period, his functions shall be the same as those of the Chair.

## 28. COMMITTEES AND WORKING PARTIES

28.1 The Board may establish Committees consisting of those persons whom the Board decide and:

28.1.1 delegate to a Committee any of its powers; and

28.1.2 revoke a delegation at any time.

28.2 The Board may establish Working Parties, community groups and fora consisting of those persons whom the Board decide. A Working Party may not take decisions on behalf of the Board but may consider issues in depth with a view to making recommendations to the Board.

28.3 The members of a Committee or a Working Party are to be appointed by the Board but the Board may give a Committee or a Working Party the right to co-opt individuals to its membership. The Board is to determine the chair of each Committee or Working Party.

28.4 Each member of a Committee or Working Party (including the chair) is to hold office from the date of his appointment until the term of office for which he has been appointed expires or until he resigns or is removed by the Board from the Committee or Working Party.

28.5 The Board must determine the quorum for each Committee and Working Party it establishes.

28.6 The Board must specify the financial limits within which any Committee may function. A Working Party can have no authority to incur expenditure.

28.7 Every Committee or Working Party must report its proceedings and decisions to the Board as the Board determines.

29. **OBSERVERS**

29.1 Subject to Articles 29.4 and 29.5, the Board may allow individuals who are not Directors to attend Board Meetings as Observers on whatever terms the Board decides.

29.2 Observers may not vote but may take part in discussions with the prior consent of the Chair.

29.3 The Board may exclude Observers from any part of a Board Meeting where the Board considers the business is private.

29.4 The Board must exclude an Observer from any Board Meeting at which a possible personal benefit to him is being considered.

29.5 The Board must allow the following to attend all meetings of the Board:

29.5.1 one individual selected by the Parish Councils; and

29.5.2 one individual selected by the Tenants.

29.5.3 The Board may allow a further independent advisor to attend meetings at its discretion.

30. **DIRECTORS' WRITTEN RESOLUTIONS**

30.1 A written resolution approved by all of the Directors entitled to receive notice of a Board Meeting (provided they would constitute a quorum at a Board Meeting) is as valid as if it had been passed at a Board Meeting.

30.2 A written resolution approved by a simple majority of the members of a Committee (provided they would constitute a quorum of that Committee) is as valid as if it had been passed at a meeting of that Committee.

30.3 A resolution under Articles 30.1 or 30.2 may consist of several documents in similar form each approved by one or more of the Directors or Committee Members.

## PART F. OFFICERS

31. **THE SECRETARY**

31.1 The Board may decide whether or not a Secretary is appointed.

31.2 Where appointed, a Secretary may be removed by the Board at any time.

31.3 If a Director is appointed as Secretary he may not receive any remuneration for acting in that capacity.

32. **INDEMNITIES FOR OFFICERS AND EMPLOYEES**

32.1 The Company may indemnify any officer or employee (other than a Director) against any liability incurred by him in his capacity as such except when that liability is due to his own dishonesty or gross negligence.

32.2 Subject to the Act (in particular sections 232-238 or any section of any other statute amending or replacing sections 232-238) and Article 32.3, the Company may indemnify any Director against any liability incurred by him in his capacity as such.

32.3 The indemnity provided to a Director in accordance with Article 32.2 may not include any indemnity against liability:-

32.3.1 to the Company or a company associated with it;

32.3.2 for fines or penalties; or

32.3.3 incurred as a result of his unsuccessful defence of criminal or civil proceedings.

32.4 The indemnity provided to a Director in accordance with Article 32.2 may include the provision of funds to cover his legal costs as they fall due on terms that the Director in question will repay the funds if he is unsuccessful in his defence of the criminal or civil proceedings to which these costs relate

32.5 In respect to its auditor the Company may:-

32.5.1 purchase and maintain insurance for his benefit against any liability incurred by him in his capacity as such; and

32.5.2 indemnify him against any liability incurred in defending any proceedings (whether civil or criminal) in which judgment is given in his favour or he is acquitted or in connection with any application under Section 1157 of the Act or any section of any other statute amending or replacing Section 1157 in which relief is granted to him by the Court.

## PART G. STATUTORY AND MISCELLANEOUS

### 33. MINUTES

33.1 The Board must arrange for minutes to be kept of all General Meetings and Board Meetings. The names of the Directors present must be included in the minutes.

33.2 Copies of the draft minutes of Board Meetings must be distributed to the Directors as soon as reasonably possible after the meeting and in any case seven days before the next Board Meeting (unless the next Board Meeting is an urgent Board Meeting).

33.3 Minutes must be approved as a correct record at the next General Meeting (as regards minutes of General Meetings) or Board Meeting (as regards minutes of Board Meetings). Once approved they must be signed by the person chairing the meeting at which they are approved.

33.4 The Board must keep minutes of all of the appointments made by the Board.

### 34. ACCOUNTS ANNUAL REPORT AND ANNUAL RETURN

34.1 The Company must comply with the Act and the Directors must comply with their obligations as charity trustees under the Charities Act 2011 in:-

34.1.1 preparing and filing an annual Directors' report and annual accounts and sending them to the Charity Commission; and

34.1.2 making an annual return to the Registrar of Companies and the Charity Commission.

34.2 The Company must comply with the Act in relation to the audit or examination of accounts (to the extent that the law requires).

34.3 The annual Directors' report and accounts must contain:-

34.3.1 revenue accounts and balance sheet for the last accounting period;

34.3.2 the auditor's report on those accounts (if applicable); and

34.3.3 the Board's report on the affairs of the Company.

34.4 The accounting records of the Company must always be open to inspection by a Director.

## 35. BANK AND BUILDING SOCIETY ACCOUNTS

35.1 All bank and building society accounts must be controlled by the Board and must include the name of the Company.

35.2 A cheque or order for the payment of money must be signed in accordance with the Board's instructions.

## 36. EXECUTION OF DOCUMENTS

36.1 Unless the Board decides otherwise, documents which are executed as deeds must be signed by:

36.1.1 two Directors; or

36.1.2 one Director and the Secretary (where appointed); or

36.1.3 one Director in the presence of a witness who attests the Director's signature.

## 37. NOTICES

37.1 Notices under the Articles must be in writing (which shall include facsimile transmission or email) except notices calling Board Meetings.

37.2 A Company Member present in person at a General Meeting is deemed to have received notice of the General Meeting and (where necessary) of the purposes for which it was called.

37.3 The Company may give a notice to a Company Member, Director or auditor either:

37.3.1 personally;

37.3.2 by sending it by post in a prepaid envelope;

37.3.3 by facsimile transmission;

37.3.4 by leaving it at his address; or

37.3.5 by email.

37.4 Notices under Article 37.3.2 to 37.3.5 may be sent:-

37.4.1 to an address in the United Kingdom which that person has given the Company;

37.4.2 to the last known home or business address of the person to be served; or

37.4.3 to that person's address in the Company's register of members.

37.5 Proof that an envelope containing a notice was properly addressed prepaid and posted is conclusive evidence that the notice was given 48 hours after it was posted.

37.6 Proof that a facsimile transmission was made is conclusive evidence that the notice was given at the time stated on the transmission report.

37.7 A copy of the notification from the system used by the Company to send emails, that the email has been sent to the particular person, will be conclusive evidence that the notice was sent and such notice will be deemed to have been delivered 24 hours after it was sent.

37.8 A notice may be served on the Company by delivering it or sending it to the Registered Office.

37.9 The Board may make standing orders to define other acceptable methods of delivering notices.

## 38. STANDING ORDERS

38.1 Subject to Article 38.4;

38.1.1 the Board may from time to time make, alter, add to or repeal standing orders for the proper conduct and management of the Company; and

38.1.2 the Company in General Meeting may alter, add to or repeal the standing orders.

38.2 The Board must adopt such means as they think sufficient to bring the standing orders to the notice of Company Members.

38.3 Standing orders are binding on all Company Members and Directors.

38.4 No standing order may be inconsistent with or may affect or repeal anything in the Articles.

## 39. WINDING UP

39.1 The Company Members may at any time before, and in expectation of, its dissolution resolve that any net assets of the Company after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the Company be applied or transferred directly for the Objects.

39.2 Subject to any such resolution of the Company Members, the Directors may at any time before and in expectation of its dissolution resolve that any net assets of the Company after all its debts and liabilities have been paid, or provision made for them, shall on dissolution of the Company be applied or transferred directly for the Objects, and the Directors shall use their reasonable endeavours to ensure that the work for which the Company was created continues.

39.3 In no circumstances shall the net assets of the Company be paid to or distributed among the Company Members (except to a Company Member that is itself a charity) and if no resolution is passed by the Company Members or the Directors the net assets of the Company shall be applied for charitable purposes as directed by the court or the Charity Commission.

**SCHEDULE 40**

**Content/Format of CMO Operating Business Plan**

1. Introduction

1.1 Background and Context

1.2 Community Management Organisations

1.3 Chilmington Development and Surrounds

1.4 Purpose and Parameters of this Business Plan

1.5 Strategic Issues Arising for Business Plan

1.6 A Description of the CMO Functions

2. Chilmington Community Management Organisation

2.1 Vision

2.2 Aims

2.3 Objectives

2.4 Governance Framework

3. Programme and Activities of Community Management Organisation

3.1 Landscape Management

3.2 Facilities Management

3.3 Community Engagement, consultation and Involvement

3.4 Community Events and Other Fund Raising Activities for the new community

3.5 Commercial Estate

4. Partnerships and People for Programme Delivery

4.1 Staff

4.2 Service Partners

4.3 Volunteers

4.4 Staff Training and Development

5. Finance

5.1 Financial Structure and Model

5.2 Income and Expenditure Budgets

5.3 Financial Management and Reporting

5.4 Role and purpose of estate rentcharge in CMO's finances

5.5 Duty to keep separate accounts in relation to collection expenditure and investment of money from service charges (if any) and estate rentcharges and income from other sources.

5.6 Scope of services and items of expenditure funded by proceeds of estate rentcharge.

5.7 Proposed Interim Charge for each type and size of Dwelling (including Dwellings in Blocks) and the method of calculating such Interim Charge

5.8 A proposed "Sum A" for each size and type of Dwelling (including Dwellings in Blocks) and the method of calculating Sum A

5.9 Predicted costs and incomes from Commercial Estate

6. Operational Management and Resources

6.1 Office

6.2 Equipment and Related Infrastructure

6.3 Suppliers and Sub-Contractors

7. Marketing and Communication

7.1 Promotion and Publicity

7.2 Community Engagement & consultation

8. Risk Analysis

8.1 Risks and Their Management

9. Action Plan

9.1 Timetabled Action Plan

9.2 Short Term Priorities

Appendices

A. Trust Board Director Role and Person specification

B. Job Descriptions

C. Terms of Reference of Sub-Committees

D. Trust Objects from Articles of Association

E. Income and Expenditure Budgets

F. Cash Flow Forecast

**SCHEDULE 41**

**Draft Planning Permission**

**SCHEDULE 42**

**Not used**

**SCHEDULE 43**

**Non Fixed Assumption Viability Review Inputs**

| Column 1 | Column 2 |
|---|---|
| Additional Services Costs | A sum of money for the relevant Viability Review Phase equivalent to the costs of installing those utilities within sections 2100 and 2200 of the EC Harris Cost Plan necessary to service the relevant Viability Review Phase (if any) over and above the allowance for the costs of installing such utilities made in the Infrastructure Costs such additional costs to be evidenced by appropriate surveys reports and documentation including from telecommunication providers/contractors. |
| Affordable Housing Capital Value | The reasonable total predicted income, excluding Social Housing Grant, to the developer for the relevant Viability Review Phase from the sale of all Affordable Housing Units to be provided within the relevant Viability Review Phase to Registered Provider/s to be calculated by reference to the following in the order listed below:-<br><br>a) accepted offer(s) from Registered Providers for the Affordable Housing Units in previous Viability Review Phases or the Current Viability Review Phase or the contract for the sale of the same to Registered Providers and taking into account whether the Affordable Housing Units to be provided in the relevant Viability Review Phase are flats or houses the number of bedrooms such Affordable Housing Units have and the tenure of such Affordable Housing Units; and<br><br>b) any information relating to the offers and sales referred to at a) above as provided by Registered Providers;<br><br>c) any information relating to the offers and sales referred to at a) above as provided by the Council;<br><br>d) in the absence of any accepted offer or contracts for sales referred to at a) above by reference to the predicted yields, initial sales and rents payable together with deduction of management and maintenance costs to derive capitalised values in relation to Shared Ownership Units and Affordable Rented Units with the input of a RICS qualified valuer with at least 5 years experience of advising in relation to Affordable housing matters. |

| | |
|---|---|
| Environmental Requirements Costs | Those costs (if any) incurred by the developer/s of the relevant Viability Review Phase in complying with relevant environmental performance standards that the construction of the Dwellings within the relevant Viability Review Phase are required to meet by virtue of compliance with statute regulation or other law or public policy including the requirements of the Planning Permission over and above the allowance for the costs of complying with such environmental performance standards made in the Base Build Costs (Affordable Housing Flats) Base Build Costs (Affordable Housing Houses) Base Build Costs (Open Market Flats) and Base Build Costs (Open Market Houses). |
| Incentives | The reasonable projected cost to the developer of providing incentives to induce persons to purchase Dwellings within the relevant Viability Review Phase which are deductible from the asking price for an individual dwelling to be backed up by evidence presented in a report containing comparable evidence of incentives given and accepted in respect of the sale of Dwellings on the Site to comprise of CML disclosure forms and to reflect the net sale proceeds in accordance with relevant RICS guidance. |
| Infrastructure Costs | A sum of money for the relevant Viability Review Phase equivalent to the costs of installing the infrastructure necessary to service the land comprising the relevant Viability Review Phase to include relevant roads sewers utilities engineering works the cost of such infrastructure to be derived from the EC Harris Cost Report and the quantity surveyor's cost plan for the relevant Viability Review Phase and to be supported by evidence from appropriate surveys and reports and for the avoidance of doubt excluding Section 106 Costs and to be indexed using the relevant index as detailed by the EC Harris Cost Report to the Valuation Date and to be less the Services Costs Savings attributable to the relevant Viability Review Phase (if any). Where relevant infrastructure applies to different Viability Review Phases its appropriate cost is to be spread across the relevant Viability Review Phases and apportioned between them by reference to the how such costs are apportioned across such Viability Review Phases by the EC Harris Cost Report. |
| Open Market Dwelling Capital Value | The reasonable predicted total net income to the developer of the relevant Viability Review Phase from all Open Market Dwellings within the relevant Viability Review Phase to be calculated by reference to the predicted sales values of each type of Dwelling net of Incentives (be they houses |

| | |
|---|---|
| | and/or flats and according to how many number of bedrooms each Dwelling shall have) or the capital value of each type of Dwelling (be they houses and/or flats and according to how many number of bedrooms each Dwelling shall have) intended to be made available on the open market for rent such sales values shall be net of Incentives (if any) and shall exclude consideration of Bulk Sales (if any) and the predicted sales values and/or capital values of such Dwellings shall be derived from the following sources of information in order of priority:-<br><br>1) sales prices or capital values (as appropriate) achieved for equivalent Dwellings located on land within the Site other than the land within the relevant Viability Review Phase;<br><br>2) the input of a RICS qualified valuer/s with at least 5 years experience of the housing market in the borough of Ashford;<br><br>3) the input of an estate agent/s who have at least 5 years experience of operating in the housing market in the borough of Ashford and selling/renting dwellings in the borough of Ashford. |
| Other Forms of Funding | Any other form of funding being a non - refundable grant/s and for the avoidance of doubt excluding loan/s at below-commercially available borrowing rates) from a public or private entity that ultimately reduces the cost of construction to the developer of the relevant Viability Review Phase (whether received directly by the developer or whether the non refundable grant is received by a third party and the developer derives indirect benefit therefrom) to include such sources of funding as non – refundable: HCA grants for infrastructure grants from the EU cross subsidy from a Registered Provider/s for the purchase of Affordable Units (if paid separately to the purchase price) and other sources of funding - the information regarding such funding to be provided and derived from the appropriate funding body. |
| Section 106 Costs | A sum of money for the relevant Viability Review Phase equivalent to the costs to the developer of the relevant Viability Review Phase of complying with the terms of this agreement to be indexed to the Valuation Date by reference to the relevant index as detailed by the EC Harris Cost Report and PROVIDED THAT if:-<br><br>1) a planning obligation/s under the terms of this agreement fell due and should have been complied with during the course of constructing and Occupying Dwellings |

| | |
|---|---|
| | located on land comprising the Previous Viability Review Phase and/or other earlier Viability Review Phase/s; and<br><br>2) such a planning obligation/s has not been complied with but the costs of complying with such planning obligation/s were taken into account in the Viability Review Submission/s of that/those Viability Review Phase/s as a cost to the developer/s of such Viability Review Phase/s ;<br><br>then the cost of complying with such outstanding planning obligation/s shall not be taken into account as a cost to the developer/s of the Current Viability Review Phase in the current Viability Review Submission and shall not be added to the costs to the developer/s of the Current Viability Review Phase of complying with the terms of this agreement as set out in the EC Harris Cost Report even if such developer/s are meeting the costs of complying with such outstanding planning obligation/s. |
| Services Costs Savings | A sum of money for the relevant Viability Review Phase equivalent to any savings to be realised by the developer of the relevant Viability Review Phase in installing those utilities within sections 2100 and 2200 of the EC Harris Cost Plan necessary to service the relevant Viability Review Phase (if any) to be calculated by comparing the predicted costs of installing such utilities to the allowance for the costs of installing such utilities made in the Infrastructure Costs such savings (if any) to be identified by reference to appropriate surveys reports and documentation including from telecommunication providers/contractors and subtracted from the Infrastructure Costs |
| Social Housing Grant | A sum of money for the relevant Viability Review Phase equivalent to any grant from central government to a Registered Provider to assist in the purchase of Affordable Units within the relevant Viability Review Phase evidence of which shall be provided and derived from the relevant Registered Provider and/or the HCA's investment team and to be taken into account as a source of revenue to the developer of the relevant Viability Review Phase. |

## SCHEDULE 44

### Fixed Assumption Viability Review Inputs

| Column 1 | Column 2 |
|---|---|
| Acquisition Costs | An allowance for those costs to be incurred by the developer in the acquisition of the land comprising the relevant Viability Review Phase reflecting legal fees Stamp Duty and agent's fees being 5.75% of the Benchmark Land Value of the relevant Viability Review Phase. |
| Affordable Housing Profit | A sum of money representing the return to the developer from Affordable Housing Units to be provided in the relevant Viability Review Phase being equal to 6% of the Affordable Housing Capital Value. |
| Affordable Housing Transaction Costs | An allowance for those costs incurred by the developer of the relevant Viability Review Phase in selling the Affordable Housing Units within that Viability Review Phase to a Registered Provider/s being a sum of money equivalent to 0.5% of the Affordable Housing Capital Value. |
| Base Build Costs (Affordable Housing Flats) | The projected building costs for all Affordable Units that are flats and are located within the relevant Viability Review Phase to be calculated by reference to the last median BCIS Rate (based on the 5 year age range of BCIS results rebased to the borough of Ashford) available prior to the date on which the relevant Viability Review Submission is submitted to the Council pursuant to paragraph 3 of this Schedule and with appropriate allowances for external works contingency and quality agenda items as set out in the BCIS tab of the Appraisal and for the avoidance of doubt excluding Infrastructure Costs and Section 106 Costs. |
| Base Build Costs (Affordable Housing Houses) | The projected building costs for all Affordable Units that are houses and are located within the relevant Viability Review Phase to be calculated by reference to the last median BCIS Rate (based on the 5 year age range of BCIS results rebased to the borough of Ashford) available prior to the date on which the relevant Viability Review Submission is submitted to the Council pursuant to paragraph 3 of this Schedule and with appropriate allowances for external works contingency and quality agenda items as set out in the BCIS tab of the Appraisal and for the avoidance of doubt excluding Infrastructure Costs and Section 106 Costs. |
| Base Build Costs (Open Market Flats) | The projected building costs for all Open Market Dwellings that are flats and are located within the relevant Viability Review Phase to be calculated by reference to the last median BCIS Rate (based on the 5 year age range of BCIS results rebased to the borough of Ashford) available prior to the date on which the relevant Viability Review Submission is submitted to the Council pursuant to paragraph 3 of this Schedule and with appropriate allowances for external works contingency and quality agenda items as set out in the BCIS tab of the Appraisal and for the avoidance of doubt excluding Infrastructure Costs and Section 106 Costs. |
| Base Build Costs (Open Market Houses) | The projected building costs for all Open Market Dwellings that are houses and are located within the relevant Viability Review Phase to be calculated by reference to the last median BCIS Rate (based on the 5 year age range of BCIS results rebased to the borough of Ashford) available prior to the date on which the relevant Viability Review Submission is submitted to the Council pursuant to paragraph 3 of this Schedule and with appropriate allowances for external works contingency and quality agenda items as set out in the BCIS tab of the Appraisal and for the avoidance of doubt excluding Infrastructure Costs and Section 106 Costs. |

<table>
<tr><td>Benchmark Land Value</td><td>A sum of money for the relevant Viability Review Phase representing the benchmark land value of all of the land comprised within the relevant Viability Review Phase to be calculated as follows:-<br><br>Total land comprised within the relevant Viability Review Phase expressed in gross acres and as detailed by column 2 of Table 4 for the corresponding Viability Review Phase in column 1 of Table 4 x £100,000.00 (one hundred thousand pounds)<br><br>to be indexed by reference to an average of the last available data from the Savills Development Land Index For Green Field Sites and the HM Land Registry index for green field sites or such other equivalent successor indices as may be approved by the Council in writing in the event either of those indices are no longer published.</td></tr>
<tr><td>Construction Fees</td><td>A sum being the equivalent of 7% of the Total Base Build Costs being the fees incurred by the developer in constructing the Development within the relevant Viability Review Phase (excluding the actual build costs) including architects fees quantity surveyors fees engineers fees project management fees the fees associated with compliance with the Construction (Design and Management) regulations 2007 (or such relevant successor to those regulations).</td></tr>
<tr><td>Construction Finance Costs</td><td>The cost to the developer of obtaining credit to finance the construction of the relevant Viability Review Phase being a sum equivalent to 3% of the sum of the Total Base Build Costs the Infrastructure Costs and the Construction Fees and the Benchmark Land Value.</td></tr>
<tr><td>Commercial Land Capital Value</td><td>The total notional income to be received by the developer from the assumed sale of all of the Commercial Land within the relevant Viability Review Phase – such notional income to be a sum equivalent to the total Commercial Land within the relevant Viability Review Phase (in acres) x £500,000.00 (five hundred thousand pounds) to be indexed to the Valuation Date by reference to the average percentage movement (if any ) in typical commercial retail and office rentals in the borough of Ashford (to be expressed as percentage) using an assumed current base rental level for such calculations of £20.00 per square foot for office rentals and £70 per square foot for retail floorspace using the following methodology by way of worked example only:
<table>
<tr><td>Agreed £/ per square foot (as at date of this agreement )</td><td>£ per square foot as at Valuation Date for Viability Review Submission of Viability Review Phase Two</td><td>% Movement</td></tr>
<tr><td>£20.00 Office<br><br>£70.00 Retail</td><td>£22.00<br><br>£80.00</td><td>10%<br><br>14%</td></tr>
<tr><td></td><td>average</td><td>12%</td></tr>
<tr><td colspan="2">Commercial Land Value per acre as at date of Agreement</td><td>£500,000</td></tr>
<tr><td colspan="2">Commercial Land Value per acre as at Valuation Date of Viability Review Submission of Viability review Two</td><td>£560,000</td></tr>
</table>
</td></tr>
</table>

| | |
|---|---|
| Commercial Land Profit | A sum of money representing the return to the developer/s of the relevant Viability Review Phase from the Commercial Land to be provided in the relevant Viability Review Phase being equal to 15% of the Commercial Land Capital Value. |
| Cost Plan Contingencies | Such allowance for contingencies for the construction of the relevant Viability Review as is identified by the EC Harris Cost Report to be indexed to the Valuation Date by reference to the relevant index as detailed by the EC Harris Cost Report. |
| Legal and Marketing Fees (Open Market Housing) | A sum of money for the relevant Viability Review Phase representing the legal and marketing fees to be incurred by the developer in disposing of Open Market Dwellings within the relevant Viability Review Phase being a sum equal to 3.5% of Open Market Housing Dwelling Capital Value. |
| Open Market Dwelling Profit | A sum of money representing the profit to the developer from Open Market Dwellings in the relevant Viability Review Phase being equal to 20% of the Open Market Dwelling Capital Value. |
| Transaction Cost (Affordable Housing Units) | All (fees including legal fees) incurred by the developer in disposing of Affordable Housing Units within the relevant Viability Review Phase to a Registered Provider being a sum equivalent to 0.5% of Affordable Housing Capital Value. |

**SCHEDULE 45**

**Table 1**

| **Column 1: Viability Review Phase.** | **Column 2: No of Dwellings the occupation of which must be notified via the service of an Occupation Notice on the Council** | **Column 3: Date by which request for Viability Review: Affordable Housing Information Request must be made by Owners' Agent to the Council** |
|---|---|---|
| Viability Phase Two | 500th Dwelling to be Occupied and the 800th Dwelling to be Occupied. | The date on which the 800th Dwelling to be Occupied is Occupied. |
| Viability Phase Three | 1200th Dwelling to be Occupied and the 1300th Dwelling to be Occupied. | The date on which the 1300th Dwelling to be Occupied is Occupied |
| Viability Phase Four | 1800th Dwelling to be Occupied and the 1900th Dwelling to be Occupied. | The date on which the 1900th Dwelling to be Occupied is Occupied |
| Viability Review Phase Five | 2324th Dwelling to be Occupied and the 2425th Dwelling to be Occupied. | The date on which the 2425th Dwelling to be Occupied is Occupied |
| Viability Review Phase Six | 2824th Dwelling to be Occupied and the 2925th Dwelling to be Occupied. | The date on which the 2925th Dwelling to be Occupied is Occupied |
| Viability Review Phase Seven | 3324th Dwelling to be Occupied and the 3425th Dwelling to be Occupied | The date on which the 3425th Dwelling to be Occupied is Occupied |
| Viability Review Phase Eight | 3883rd Dwelling to be Occupied and the 3984th Dwelling to be Occupied. | The date on which the 3984th Dwelling to be Occupied is Occupied |
| Viability Review Phase Nine | 4383rd Dwelling to be Occupied and the 4484th Dwelling to be Occupied. | The date on which the 4484th Dwelling to be Occupied is Occupied. |
| Viability Review Phase Ten | 4883rd Dwelling to be Occupied and the 4984th Dwelling to be Occupied. | The date on which the 4984th Dwelling to be Occupied is Occupied. |

**SCHEDULE 46**

**Table 2**

| **Column 1: Viability Review Phase/Viability Phase.** | **Column 2: Colour showing the corresponding Viability Review Phase in column 1 on the Viability Review Phase Plans submitted to the Council for its approval as part of the Viability Review Submissions.** |
|---|---|
| Viability Phase One | Yellow |
| Viability Review Phase Five | Orange |
| Viability Review Phase Six | Pink |
| Viability Review Phase Seven | Purple |
| Viability Review Phase Eight | Brown |
| Viability Review Phase Nine | Grey |
| Viability Review Phase Ten | Black |

**SCHEDULE 47**

**Table 3**

| **Column 1: Type of Affordable Housing Unit** | **Column 2: Proportion of the total quantum of Additional Housing Provision in the relevant Viability Review Phase to be provided as each type of Affordable Housing Unit detailed by column 1 expressed as a percentage** | **Column 3: Actual number of each type of Affordable Housing Unit comprising the Minimum Affordable Housing Provision for the relevant Viability Review Phase** |
|---|---|---|
| **Shared Ownership Units** | | |
| Affordable Units that are houses with 2 bedrooms and are to be provided as Shared Ownership Units | | |
| Affordable Units that are houses with 2 bedrooms and are to be provided as Shared Ownership Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 3 bedrooms and are to be provided as Shared Ownership Units | | |
| Affordable Units that are houses with 3 bedrooms and are to be provided as Shared Ownership Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision |
| Affordable Units that are houses with 4 bedrooms and are to be provided as Shared Ownership Units | | |
| Affordable Units that are houses with 4 bedrooms and are to be provided as Shared Ownership Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 5 bedroom and are to be | | |

| | | |
|---|---|---|
| provided as Shared Ownership Units | | |
| Affordable Units that are houses with 5 bedroom and are to be provided as Shared Ownership Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are flats with 1 bedroom and are to be provided as Shared Ownership Units | | |
| Affordable Units that are flats with 1 bedroom and are to be provided as Shared Ownership Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are flats with 2 bedrooms and are to be provided as Shared Ownership Units | | |
| Affordable Units that are flats with 2 bedrooms and are to be provided as Shared Ownership Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| **Affordable Rented Units** | | |
| Affordable Units that are houses with 2 bedrooms and are to be provided as Affordable Rented Units | | |
| Affordable Units that are houses with 2 bedrooms and are to be provided as Affordable Rented Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 3 bedrooms and are to be provided as Affordable Rented Units | | |
| Affordable Units that are houses with 3 bedrooms and are to be provided as Affordable Rented | | N/A to Minimum Affordable Provision. |

| | | |
|---|---|---|
| Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | |
| Affordable Units that are houses with 4 bedrooms and are to be provided as Affordable Rented Units | | |
| Affordable Units that are houses with 4 bedrooms and are to be provided as Affordable Rented Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 5 bedroom and are to be provided as Affordable Rented Units | | |
| Affordable Units that are houses with 5 bedroom and are to be provided as Affordable Rented Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are flats with 1 bedroom and are to be provided as Affordable Rented Units | | |
| Affordable Units that are flats with 1 bedroom and are to be provided as Affordable Rented Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are flats with 2 bedrooms and are to be provided as Affordable Rented Units | | |
| Affordable Units that are flats with 2 bedrooms and are to be provided as Affordable Rented Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| **Intermediate Affordable Housing Units** | | |

| | | |
|---|---|---|
| Affordable Units that are houses with 2 bedrooms and are to be provided as Intermediate Affordable Housing Units | | |
| Affordable Units that are houses with 2 bedrooms and are to be provided as Intermediate Affordable Housing Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 3 bedrooms and are to be provided as Intermediate Affordable Housing Units | | |
| Affordable Units that are houses with 3 bedrooms and are to be provided as Intermediate Affordable Housing Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 4 bedrooms and are to be provided as Intermediate Affordable Housing Units | | |
| Affordable Units that are houses with 4 bedrooms and are to be provided as Intermediate Affordable Housing Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are houses with 5 bedroom and are to be provided as Intermediate Affordable Housing Units | | |
| Affordable Units that are houses with 5 bedroom and are to be provided as Intermediate Affordable Housing Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are flats with 1 bedroom and are to be | | |

| | | |
|---|---|---|
| provided as Intermediate Affordable Housing Units | | |
| Affordable Units that are flats with 1 bedroom and are to be provided as Intermediate Affordable Housing Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |
| Affordable Units that are flats with 2 bedrooms and are to be provided as Intermediate Affordable Housing Units | | |
| Affordable Units that are flats with 2 bedrooms and are to be provided as Intermediate Affordable Housing Units and as extra care housing and/or accommodation for older persons and/or accommodation for vulnerable groups | | N/A to Minimum Affordable Provision. |

**SCHEDULE 48**

**Table 4**

| **Column 1: Viability Review Phase.** | **Column 2: Assumed gross acres in each Viability Review Phase for purposes of calculating the Benchmark Land Value for each Viability Review Phase** |
|---|---|
| Viability Review Phase Five | 81.26 gross acres |
| Viability Review Phase Six | 81.26 gross acres |
| Viability Review Phase Seven | 90.85 gross acres |
| Viability Review Phase Eight | 81.26 gross acres |
| Viability Review Phase Nine | 81.26 gross acres |
| Viability Review Phase Ten | 92.15 gross acres |

## SCHEDULE 49

## Viability Review Templates

**SCHEDULE 50**

**Form P1**

**ANNEX 1**

**Site Plan**

**ANNEX 2**

**Viability Phase One Plan**

## ANNEX 2A

## Viability Phase Two Plan

## ANNEX 2B

## Viability Phase Three Plan

## ANNEX 2C

## Viability Phase Four Plan

**ANNEX 3**

**Plan of OPA06R rev. P2**

**ANNEX 4**

**Plans 131065-A-24-Rev B, 131065-A-25-Rev B, 131065-A-59 and 131065-A-60-Rev A**

**ANNEX 5**

**Plan 131065/A/23 rev A**

**ANNEX 6**

**Land Ownership Plan One**

**ANNEX 7**

**Land Ownership Plan Two**

**ANNEX 8**

**Plan 131065/A/1012 and 131065/A/84**

**ANNEX 9**

**BDW Agreement To Acquire Plan One**

**ANNEX 10**

**BDW Agreement To Acquire Plan Two**

**ANNEX 11**

**BDW Agreement To Acquire Plan Three**

Annex 11

**EXECUTED AS A DEED BY**

**HODSON DEVELOPMENTS (ASHFORD) LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

**EXECUTED AS A DEED BY**

**HODSON DEVELOPMENTS (CG ONE) LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

Annex 11

**EXECUTED AS A DEED BY**

**HODSON DEVELOPMENTS (CG TWO) LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

**EXECUTED AS A DEED BY**

**CHILMINGTON GREEN DEVELOPMENTS LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

Annex 11

SIGNED AS A DEED by:

**MALCOLM COLIN JOHN JARVIS**

Signature……..

In the presence of:

……..

Signature of witness

Name in (BLOCK CAPITALS)

Address

SIGNED AS A DEED by:

**BEVERLEY JUNE JARVIS**

Signature……..

In the presence of:

……..

Signature of witness

Name in (BLOCK CAPITALS)

Address

Annex 11

EXECUTED AS A DEED BY

**MALCOLM JARVIS HOMES LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

**EXECUTED AS A DEED BY**

**PENTLAND KENT LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

Annex 11

**EXECUTED AS A DEED BY**

**PENTLAND HOMES LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

**EXECUTED AS A DEED BY**

**CHELMDEN LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

Annex 11

**EXECUTED AS A DEED BY**

**BDW TRADING LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

**THE COMMON SEAL OF**

**HOMES AND COMMUNITIES AGENCY**

Was hereunto affixed

In the presence of:

Authorised Officer

Annex 11

**EXECUTED AS A DEED BY**

**TITLESTONE PROPERTY LENDING LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

**EXECUTED AS A DEED BY**

**CLOSE BROTHERS LIMITED**

Acting by

Director

Print Name

Director/Secretary

Print Name

Annex 11

**THE COMMON SEAL OF**

**ASHFORD BOROUGH COUNCIL)**

Was hereunto affixed

In the presence of:

Mayor

Solicitor

THE COMMON SEAL OF

THE KENT COUNTY COUNCIL

Was hereunto affixed

In the presence of:

Authorised Officer

| Summary report:<br>Litera Compare for Word 11.5.0.74 Document comparison done on 21/01/2025 17:47:27 | |
|---|---|
| **Style name:** Default Style | |
| **Intelligent Table Comparison:** Active | |
| **Original DMS:** iw://fladgate-mobility.imanagework.co.uk/IMAN_NR/35094444/4 | |
| **Modified DMS:** iw://fladgate-mobility.imanagework.co.uk/IMAN_NR/35094444/7 | |
| **Changes:** | |
| Add | 77 |
| ~~Delete~~ | 85 |
| ~~Move From~~ | 1 |
| Move To | 1 |
| Table Insert | 6 |
| ~~Table Delete~~ | 7 |
| Table moves to | 0 |
| ~~Table moves from~~ | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| Format changes | 0 |
| **Total Changes:** | 177 |