

DATE:

2021

**(1) MEDWAY COUNCIL**

**and**

**(2) CLIVE ARTHUR GOATHAM, PAULINE LINDA GOATHAM  
AND ROSS MANSER GOATHAM**

**and**

**(3) BARCLAYS SECURITY TRUSTEE LIMITED**

Town and Country Planning Act 1990  
Section 106 Agreement

Land Off Pump Lane Rainham Kent ME8 7TJ

Perry Holmes  
Assistant Director Corporate Services  
Gun Wharf  
Dock Road  
Chatham  
ME4 4TR

Ref:  
MC/19/1566  
Appeal Ref: **APP/A2280/W/20/3259868**

**THIS DEED** is made the                      day of                      2021

## **1 PARTIES**

- 1.1 **MEDWAY COUNCIL** (“the Council”) whose address is Gun Wharf Dock Road Chatham ME4 4TR;
- 1.2 **CLIVE ARTHUR GOATHAM, PAULINE LINDA GOATHAM** and **ROSS MANSER GOATHAM** of Flanders Farm, Ratcliffe Highway, Hoo, Rochester ME3 8QE (together the “Owner”);
- 1.3 **BARCLAYS SECURITY TRUSTEE LIMITED** (Co. Regn. No. 10825314) of P.O. Box 16276, One Snowhill, Snowhill Queensway, Birmingham B2 2XE (“the Mortgagee”);

together (“the Parties”)

## **1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed the following words and phrases shall have the following meanings:

“Affordable Housing” means Intermediate Housing and Affordable Rented Housing or such other forms of Affordable Housing as defined in Annex 2 of the National Planning Policy Framework (February 2019) (NPPF) or any replacement or amendment thereof or as may be agreed from time to time by the Council (acting reasonably);

“Affordable Housing Land” means those parts of the Site as indicatively identified on the Approved Affordable Housing Plan on which the Affordable Housing Units, associated garden areas and parking spaces (if any), are to be provided subject to the Reserved Matters Approvals for the Development;

“Affordable Housing Plan” means outline plan(s) and scheme(s) relating to the provision of the Affordable Housing Units on each Phase of the

Development, prepared on the assumption that the Permission is fully implemented and which may be submitted at the time of submission of the Reserved Matters Application for the relevant Phase. The plan(s) to include:

- (i) The number of Affordable Housing Units that are expected to be provided within that Phase of the Development (being not less than 25% of the total number of Housing Units across the Development with an equal mix of Affordable Housing units across each Phase);
- (ii) The expected tenure mix of the Affordable Housing Units for that Phase which may include Intermediate Housing and/or Affordable Rented Housing or any other mix of tenures defined in Annex 2 of the NPPF as may be approved by the Council acting reasonably;
- (iii) The expected location of the Affordable Housing Units on that Phase;
- (iv) The expected size (number of bedrooms) of each Affordable Housing Unit on that Phase;
- (v) Indicative floor plans and a schedule of floor areas for the Affordable Housing Units in that Phase;
- (vi) The expected location of those Affordable Housing Units which are to be built to the current Building Regulations standards (if applicable) in that Phase;
- (vii) The expected location of those Affordable Housing Units which are to be built to be Wheelchair Accessible Housing on that Phase;
- (viii) The number of car parking spaces gardens and balconies available for the Affordable Housing Units (if applicable) for that Phase;

	<p>save that an approved plan(s) in respect of each Phase may be varied from time to time with the written approval of the Council (not to be unreasonably withheld or delayed) and FOR THE AVOIDANCE OF DOUBT it is declared that nothing required to be included in the plan(s) shall be construed as requiring anything that may be inconsistent with the Permission;</p>
“Affordable Housing Units”	<p>means 25% of the Housing Units provided on the Development which are to be constructed on the Affordable Housing Land as Affordable Housing which shall be more particularly detailed in the Approved Affordable Housing Plan(s) for each Phase of the Development;</p>
“Affordable Rented Housing”	<p>means rented housing provided by the Registered Provider to households who are eligible for Affordable Housing which shall be subject to rent controls of no more than 80% of the Market Rent such rent to be in accordance with guidance issued by Homes England (or any successor agency) from time to time and the NPPF;</p>
“Amenity Open Space”	<p>means those parts of the Development Site which shall be provided and used as open space within the meaning of section 336 of the TCPA 1990 as required by the Permission the detail of which shall be subject to Reserved Matters Approval and which shall include the village green to be provided within the Development.</p>
“Appeal”	<p>means the planning appeal made by the Owner to the Secretary of State following the refusal of the Application by the Council and ascribed reference APP/A2280/W/20/3259868;</p>
“Approved Affordable Housing Plan”	<p>means the Affordable Housing Plan(s) for each Phase of the Development approved pursuant to paragraph 1 of the</p>

Second Schedule subject to any amendments which may subsequently be approved by the Council subject to paragraph 3 of the Second Schedule and which for the avoidance of doubt may be submitted and approved at the time of submission of the Reserved Matters Application for a Phase;

“Bus Infrastructure Contribution” means the sum of Sixty four Pounds (£64) per Dwelling constructed on the Site towards bus shelter improvements along Lower Rainham Road including the provision of a shelter and LED lighting;

“Children and Young Peoples Space” means those parts of the Development Site which shall be provided and used as open space for children and young people and which will include where applicable the on-site Play Facilities and as may be approved in accordance with any subsequent Reserved Matters Approval;

“CIL Regulations” means the Community Infrastructure Levy Regulations 2010 as amended from time to time;

“Council’s Costs” means the sum of £1,500 (with no VAT) being payable being the agreed contribution to the Council’s proper and reasonable costs in the preparation execution and registration of this Deed;

“Commencement Date” means the date on which the Commencement of Development occurs;

“Commencement of Development” means commencement of the Development on the Site by the carrying out of a material operation within the meaning of s.56(4) of the Planning Act but for the purpose of this definition the carrying out of any works of demolition, works of site clearance,

ground investigation and site survey works, construction of boundary fencing or hoardings, construction of temporary accesses and/or highway works, archaeological investigation, site decontamination or remediation works landscaping works, laying and diversion of sewers and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation;

“Commencement Notice”

means a notice in the form which is attached to this Deed at Annex 1;

“Completion”

means the issue of a certificate of practical completion of the Development (or such part as may be specified) by the Owner’s architect or other project consultant appointed by the Owner and “Complete” and “Completed” shall be construed accordingly;

“Contributions”

means the Nursery Contribution; the Primary Education Contribution; the Secondary and Sixth Form Contribution; the Library Contribution; the Public Realm Contribution; the Public Rights of Way Contribution; the Public Rights of Way Signage Contribution; the Sports Facilities Contribution; the Open Space and Outdoor Sport Contribution; the Sustainable Transport Contribution; Waste and Recycling Contribution; Public Health Facilities Contribution; Habitats Mitigation Contribution; Highways England Contribution; Public Health Contribution; NHS Health Contribution and the Bus Service Contribution payable in accordance with the terms set out in the the First Schedule to this Agreement;

“Decision Letter”

means the letter by which the Secretary of State notifies his decision in respect of the Appeal;

“Development”

means the development of the Site to include residential development

	comprising of up to 1,250 residential units, a local centre, a village green, a two form entry primary school (including nursery provision), a 60 bed extra care facility, an 80 bed care home and associated access (vehicular, pedestrian, cycle) in accordance with the Permission;
“Disputes Resolution Procedure”	means the procedure referred to in clause 7.9 and set out in the Fourth Schedule hereto;
“Education Contribution”	means together the Nursery Contribution; the Primary Education Contribution and the Secondary and Sixth Form Contribution;
“Education Contribution Formula”	means the formula for calculating the Education Contribution set out in Schedule 5 to this Agreement.
“Extra Care Housing Units”	means a 60 bedroom extra care facility to be provided within Phase 1 of the Development or such other Phase as may be agreed in writing by the Council at the time of Reserved Matters Approval and which is designed and provided to people who require care and/or support to live in their own homes;
“Habitats Mitigation Contributions”	means the contributions as defined in Paragraphs 10 and 11 of Part 1 of the First Schedule hereto to be used towards mitigation measures and ecological enhancements to be provided at the North Kent SAMMS and the provision of a bespoke warden role;
Health Service Body	means NHS England or its successor body within the National Health Service or a nominee of the same or such other body commissioning health services in the vicinity of the Development as may be agreed by the Council;

“Highways England Contribution”	means the sum of Three Hundred and Thirty Nine Thousand (£339,000) payable in accordance with this Agreement towards the scheme of studies and improvement works to Junction 4 of the M2;
“Housing Unit”	means a residential dwelling (including any flat) erected on the Site pursuant to the Permission and shall include an Affordable Housing Unit and an Extra Care Housing Unit;
“HRA 2008”	means the Housing and Regeneration Act 2008;
“Indexation”	means the increase of any sum in accordance with the formula set out in clause 7.11;
“Inflation Index”	means the “all items” index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered;
“Intermediate Housing”	means those Affordable Housing Units to be provided as intermediate housing as defined in Annex 2 of the NPPF including Shared Ownership, relevant equity loans, and other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent).;
“LAP”	means a Local Area of Play to be provided within the Open Space and designed in accordance with the Play England publication “Design for Play – a guide to creating successful play spaces (2008)” or such other guidance or specification as may be agreed between



the Council and the Owner (acting reasonably) the detail of which shall be subject to Reserved Matters Approval;

“LEAP”

means a Local Equipped Area for Play to be provided within the Open Space and designed in accordance with the Play England publication “Design for Play – a guide to creating successful play spaces (2008)” or such other guidance or specification as may be agreed between the Council and the Owner (acting reasonably) the detail of which shall be subject to Reserved Matters Approval;

“Library Contribution”

means the sum of One Hundred and Sixty Five Pounds and Fifteen Pence (£165.15) per Dwelling constructed on the Site to be used towards the improvement of facilities and equipment at Rainham library

“Management Company”

means a company limited by shares or guarantee or trust and approved in writing by the Council (such approval not to be unreasonably withheld or delayed) that has, or shall have, full responsibility for maintaining and managing the Open Space and which shall make provision within its articles and/or constitutional documents for the involvement of individual owners and occupiers (or their nominated representatives) of each of the Dwellings in the operational activities and management of the company and for the avoidance of doubt separate management companies may be appointed in respect to the management of the Open Space in each Phase of the Development;

“Management Plan”

means a management plan(s) for the Open Space in each Phase of the Development which must contain:  
(a) an assessment of the estimated costs based on the information currently available of the permanent funding of the maintenance and repair of the Open

Space within that Phase which may include the creation of service charge arrangements (including details as to how such charges will be secured) (such assessment only to be included within the Management Plan once and if it is confirmed that the Open Space in that Phase will be transferred to the Management Company);

(b) any contracting of management or other activities to bodies having relevant and proven expertise in the relevant area;

(c) confirmation that the Management Company will be required to comply with the provisions of this Deed so far as they relate to future management and maintenance obligations such obligations to be directly enforceable by the Council against the Management Company;

(d) any reasonable restrictions on use including opening times; and

(e) the maintenance requirements for the Open Space within each Phase including all ongoing maintenance operations, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space (including any drainage features, sustainable drainage systems, watercourse, ditches, ponds, swales, drainage channels, measures to enhance flood prevention measures and flood defence measures Community Orchard and play equipment) and that any equipment provided on the Open Space shall be maintained to a reasonable and safe standard and shall be repaired or replaced as necessary;

“Monitoring Costs”

means the sum of £450.00 per Trigger Date payable not less than 28 days before the Commencement of Development

“Natural and Semi-Natural Green Space”

means those parts of the Development Site to be used as natural and semi-

natural green space and which may include designated dog walking routes and off lead dog exercise areas subject to Reserved Matters Approvals.

“Necessary Consents”

means all such statutory, regulatory and third party consents, agreements, approvals and licences as may be necessary in order to enable delivery of the required works, facility, service or activity in question PROVIDED THAT “Necessary Consents” shall not include acquiring any third party land interest;

“NHS Health Contribution”

means the sum of Six Hundred and thirty two pounds and thirty six pence (£632.36) per Dwelling constructed on the Site to be used towards the extension to, refurbishment of, or upgrade to existing premises within Medway South Primary Care Network

“Nominations Agreement”

means an agreement between the Council and the Registered Provider by which the occupation of the Affordable Housing Units is approved by the Council which shall be in a form approved by the Council such approval not to be unreasonably withheld or delayed;

“Nursery Contribution”

means the sum to be calculated for each Phase of the Development in accordance with the Education Formula and which shall not exceed a total across the whole Development of One Million Seven Hundred and Twenty Three Thousand Seven Hundred and Twenty Five Pounds (£1,723,725) to be used towards the provision of nursery facilities on Site

“Occupation”

means physical occupation for the intended beneficial purpose but does not include occupation for the purposes of construction fitting- out decoration landscaping marketing sales security or management of any part of the Development and for the avoidance of

doubt in the case of a sale of a freehold or a long leasehold interest to a third party Occupation commences on the date of legal completion of the sale rather than exchange of contracts;

“Open Space”

means together those parts of the Development comprising of 13.356 hectares of green open space the detail of which shall be confirmed through submission of Reserved Matters Applications for each Phase of the Development which is indicatively shown on the Parameters Plan annexed to this Agreement at Annex 5 and which may include the:

- (a) the Amenity Open Space, Children and Young Peoples Space including the Play Facilities and
- (b) land which shall be used as a landscape buffer, and habitat areas; and
- (c) Natural and Semi-Natural Green Space; and
- (d) the community orchard land;

“Open Space Specification”

a specification(s) for the carrying out of the works to set out the Open Space on each Phase of the Development the details of which shall include, if applicable (and unless otherwise agreed with the Council in writing):

- (a) a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities so as to enhance the nature conservation value of the site, including the use of locally native plant species;
- (b) the design and layout of the Open Space within each Phase;
- (c) the specification of any Play Facilities, to be provided (where applicable);
- (d) the surface treatment and fencing; and

(e) the drainage features, sustainable drainage systems, watercourse, ditches, ponds, swales and drainage channels to be provided as part of the Development.

“Open Space and Outdoor Sport Contribution”

the sum of One Thousand One Hundred and Forty Nine Pounds and Thirty Two Pence (£1,149.32) per Dwelling constructed on the Site to be paid to the Council towards the enhancement of open space facilities within the vicinity of the Development and at Medway’s Great Lines Heritage Park

“Permission”

means the planning permission to be granted by the Secretary of State pursuant to the Appeal for the Development including any subsequent Reserved Matters Approvals and any amendments or variations thereto permitted pursuant to Section 73 or 96 of the Planning Act where the Council has confirmed in writing that a deed of variation is not required;

“Phase”

means Phase 1, Phase 2, Phase 3 and/or Phase 4 of the Development as indicatively shown on Plan 2 or such other phasing of the Development as may be agreed pursuant to Reserved Matters Approval and references to “each Phase” shall be construed as a reference to each of Phase 1, Phase 2, Phase 3 and/or Phase 4 and “Phases” shall mean Phase 1, Phase 2, Phase 3 and Phase 4 collectively and “Phased” shall be construed accordingly;

“Phase 1”

means that part of the Development shown indicatively on Plan 2 as being Phase 1;

“Phase 2”

means that part of the Development shown indicatively on Plan 2 as being Phase 2;

“Phase 3”	means that part of the Development shown indicatively on Plan 2 as being Phase 3;
“Phase 4”	means that part of the Development shown indicatively on Plan 2 as being Phase 4;
“Plan 1”	the plan attached to this deed at Annex 3 detailing the Site location;
“Plan 2”	the plan attached to this deed at Annex 4 indicatively showing the Phases of the Development;
“Planning Act”	means the Town and Country Planning Act 1990 as amended;
“Planning Application”	means the outline planning application with some matters reserved (appearance, landscaping, layout and scale) for planning permission to carry out the Development on the Site and given reference MC/19/1566;
“Play Facilities”	means the children and young persons play facilities to be provided within the Development Site which subject to Reserved Matters Approvals may include up to three LAPs and/or LEAPs;
“Primary Education Contribution”	means the sum to be calculated for each Phase of the Development in accordance with the Education Formula and which shall not exceed a total across the whole Development of Four Million Two Hundred and Thirty Thousand Nine Hundred and Fifty Pounds (£4,230,950) towards the provision of primary education on Site
“Primary School Site”	means a prepared and Serviced parcel of land of 6 acres to accommodate Premises for a Primary School the general location of which is shown on shaded brown on Plan 2 entitled Phasing Plan or such other prepared and

Serviced parcel of land within the Development as the Council and the Owner shall agree pursuant to any Reserved Matters Approval;

“Primary School” means a two form primary school for educating children between the ages of four and eleven with nursery provision to be provided on the Primary School Site;

“Primary School Specification” means the specification for the construction and provision of the Primary School which shall be in accordance with the standard of accommodation necessary to accord with the Department for Education and Skills Building Bulletin 103: Area Guidelines for Mainstream Schools PROVIDED THAT the cost to the Owner of providing the Primary School in accordance with such specification shall not exceed the Primary Education Contribution and the Nursery Contribution;

“Primary School Site Transfer Terms” means the terms of transfer for the Primary School Sites which shall include those set out in Annex 2 to this Deed;

“Private Housing Units” means the Housing Units forming part of the Development but excluding the Affordable Housing Units and the Extra Care Units;

“Protected Tenant” means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; and/or
- (c) has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement

where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit.

“Public Health Facilities Contribution”

means the contribution defined in Part 1 of the First Schedule hereto

“Public Realm Contribution”

means the sum of Two Hundred and Forty Five Pounds (£245) per Dwelling to be constructed on the Site payable to the Council towards the development of a new square/civic space in Rainham Precinct Shopping Centre and improvements to the Precinct gateway by the car park and the High Street (greening project, bollards and signage)

“Public Rights of Way Contribution”

means the sum of Seventy Nine Pounds (£79.00) per Dwelling to be paid to the Council towards improvements to public rights of way within 1.6km of the Development

“Public Rights of Way Signage Contribution”

means the sum of Three Thousand Eight Hundred Pounds (£3800) to the Council towards the public rights of ways signage required at public rights of way in the area of the Development.

“Registered Provider”

means any body or company accredited by the Homes England; or any person or body or entity which is registered as a provider of social housing in accordance with section 80(2) and chapter 3 of the HRA 2008 or a housing company, trust or any other person, body or organisation whose object is the provision and/or management of Affordable Housing and



	who has been approved by the Council in writing;
“Reserved Matters Application”	means the submission of any applications for approval of any matters reserved pursuant to a condition imposed on the Permission;
“Reserved Matters Approval”	means an approval of a Reserved Matters Application;
“School Governing Body”	means: a) the governing body for the Primary School to be constituted under the Education Act 2002 and regulations made thereunder; or b) (if proposed is to be an academy school) the academy trust responsible for the Primary School; c) such trust or other body in whose ownership the relevant Primary School Site is to vest in order for the same to be held by the trust or such other body for the provision of the Primary School;
“Secondary and Sixth Form Contribution”	means the sum to be calculated for each Phase of the Development in accordance with the Education Formula and which shall not exceed a total across the whole Development of Four Million Two Hundred and Thirty Four Thousand Seven Hundred and Seventy Five Pounds (£4,234,775) towards secondary education (including Sixth Form) provision at Rainham Mark Grammar, Rainham Girls, Robert Napier, The Howard, or a new free school in the area of the Development
“Secretary of State”	means the Secretary of State for Housing, Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Housing, Communities and Local Government by the Planning Act.

“Serviced”	means having connections for mains water, sewerage, gas, electricity and telecommunications appropriate to the proposed use of the land adequate for the purposes of the prospective users of the land and either at the boundary of the site of the relevant facility or reasonably proximate to it to enable connections to be lawfully and reasonably made thereto and sufficient vehicular and pedestrian access to the land from a public highway;
“Shared Ownership Accommodation”	means Housing Units within the Development which are occupied by persons under shared ownership arrangements as defined by Section 70 (4) of the HRA 2008 where those persons have the opportunity to purchase all or substantially all the equity in the Housing Units at a later date or such other equity sharing or retention terms from time to time approved by the Council;
“Site”	means the land known as Land Off Pump Lane Rainham Kent ME8 7TJ and more particularly delineated edged red on the attached Plan 1 and registered at HM Land Registry under title numbers: K462070, TT2268, K549160, K550742, K574197, K982096 and TT85155 and for the avoidance of doubt excluding any land contained in title TT44350;
“Sports Facilities Contribution”	means the sum of Two Hundred and Forty Three Pounds and Forty Seven Pence (£243.47) per Dwelling constructed on the Site to be paid to the Council towards the costs of the refurbishment works at Splashes Leisure pool
“Statutory Undertaker”	has the meaning given to such term in the Planning Act and for the avoidance of doubt, shall include any public gas transporter water or sewerage undertaker

	electricity supplier or public telecommunications operator;
“SUDs”	means the sustainable drainage systems as shown on the plans and technical details approved pursuant to the Permission.
“Sustainable Transport Contribution”	sum of Five Hundred and Seventy Six Pounds (£576) per Dwelling constructed on the Development) towards interim assistance to support bus service provision until the Development is fully Occupied
“Transfer”	means, unless specified otherwise in this Deed or the contrary intention appears, the transfer of the freehold interest in the relevant land in a prepared and Serviced condition, and in the case of the Primary School Site by way of freehold transfer to the Council on terms that shall include the School Site Transfer Terms and (if the relevant School is not to be operated by the Council) by way of grant of a lease of at least 125 years to the proposed School Governing Body;
“Trigger Date”	means each date upon which an event occurs that triggers the payment of any Contribution by the Owner and/or the coming into effect of any other obligation under this Deed;
“Waste and Recycling Contribution”	means the contribution as defined in Part 1 of the First Schedule hereto;
“Wheelchair Accessible Housing”	means homes built to meet Building Regulations M4(3) category 3: Wheelchair user dwellings;
“Working Days”	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

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- 1.2 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council
- 1.3 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory instrument direction order regulation or byelaw made or issued under the statute or deriving validity from it
- 1.4 Words importing the masculine gender shall include the feminine gender and the neuter and vice versa
- 1.5 Words importing persons include companies, partnerships and corporations and vice versa
- 1.6 Unless the context otherwise requires words importing the singular shall include the plural and vice versa
- 1.7 Headings are for ease of reference only and shall not be construed as part of this Deed
- 1.8 Reference to any recital clause schedule or paragraph or any part thereof shall unless the context otherwise requires be reference to any recital clause schedule or paragraph or any part thereof in this Deed
- 1.9 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person

## **2 RECITALS**

- 2.1 The Council is the Local Planning Authority for the purpose of the Planning Act for the area in which the Site is situated
- 2.2 The Owner is the freehold owner of the Site and is registered as registered proprietor with title absolute of the Site at the Land Registry under title number(s) K462070, TT2268, K549160, K550742, K574197, K982096 and TT85155.
- 2.3 The Mortgagee has a legal charge dated the 20<sup>th</sup> February 2017 over that part of the Site comprised within title numbers: K462070, K549160, K550742, K574197, K982096 and a legal charge dated 7<sup>th</sup> July 2017 over that part of the Site comprised within title number TT2268 and registered at the Land Registry

- 2.4 The Owner hereby declares that as at the date hereof no other person other than those stated in this Deed holds a legal interest in the Site
- 2.5 The Planning Application has been submitted to the Council in relation to the Development
- 2.6 The Council resolved on the 12<sup>th</sup> of June 2020 to refuse planning permission for the Development
- 2.7 The Owner has submitted the Appeal to the Secretary of State and this Deed has been entered into the secure the planning obligations set out herein

### **3 STATUTORY PROVISIONS**

- 3.1 This Deed is made pursuant to Section 106 of the Planning Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and to all other enabling powers to the intent that this Deed shall bind the parties and their heirs and successors assigns and persons claiming through or under them, except as expressly provided for by this Deed
- 3.2 The covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of s.106 of the Planning Act and are enforceable by the Council as Local Planning Authority against the Owner
- 3.3 The Council's Costs are payable pursuant to Section 106(1)(d) of the Planning Act
- 3.4 Nothing in this Deed shall be construed as prohibiting limiting or affecting any right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted by the Council or the Secretary of State after the date of this Deed and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement of Development under the terms of this Deed.

### **4 ENFORCEABILITY OF OBLIGATIONS**

- 4.1 The provisions contained in this Deed shall not bind nor be enforceable against the following:
  - 4.1.1 any Statutory Undertaker which acquires an interest in the Site for the purpose of undertaking its statutory functions;

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- 4.1.2 any individual owners, occupiers or tenants, and their mortgagees or chargees of the Private Housing Units and their successors in title;
  - 4.1.3 any individual owners, occupiers or tenants of the Affordable Housing Units and their successors in title (save for the provisions of the Second Schedule);
  - 4.1.4 any individual owners, occupiers or tenants of the Extra Care Units and their successors in title (save for the provisions of the Second Schedule);
  - 4.1.5 any mortgagee or chargee of the Site or any part of it (unless and until they become a mortgagee or chargee in possession of the Site);
  - 4.1.6 any Protected Tenant;
  - 4.1.7 any Registered Provider save for the (save for the provisions of the Second Schedule);
  - 4.1.8 any successor in title of any persons detailed in sub-paragraphs 4.1.1 to 4.1.7 or their mortgagee or chargee.
- 4.2 None of the provisions (including the Affordable Housing provisions) in this Deed shall be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a “**Receiver**”)) of the whole or any part of the Affordable Housing Land or Affordable Housing Unit(s) or any persons or bodies deriving title through such mortgagee or chargee or Receiver Provided That:
- (a) Such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Land and/or Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Land and/or Affordable Housing Unit(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principle monies, interest, costs and expenses; and
  - (b) If such disposal has not been completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Land and/or Affordable Housing Unit(s) free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely in relation to those Affordable Housing Land and/or Affordable Housing Unit(s) only.

## **5 COVENANTS**

### **5.1 The Owner's Covenants**

The Owner covenants with the Council:

5.1.1 To observe the restrictions and perform the obligations set out in the First Schedule and the Second Schedule

5.1.2 To serve a separate Commencement Notice on the Council in relation to and in accordance with each of the following provisions in respect of each Phase of the Development:

5.1.2.1 At least 28 Working Days before the Commencement Date to serve notice of the proposed occurrence of the same;

5.1.2.2 Within 14 Working Days of the Commencement of Development to serve notice of the actual Commencement Date;

5.1.2.3 Within 14 Working Days of the occurrence of a Trigger Date to serve notice of the date of the relevant Trigger Date and details of the relevant event.

5.1.3 To retain such records and information and within 14 Working Days of receipt of a written request by the Council to provide the Council with such records and information as the Council may reasonably request to enable the Council to satisfy itself (acting reasonably) that the Owner is complying with all of its obligations under this Deed and the conditions attached to the Permission

5.1.4 To pay the Council's Costs on completion of this Deed

5.1.5 To pay the Council's monitoring costs not less than 28 days prior to Commencement of Development

### **5.2 The Council's Covenants**

6.2.1 The Council covenants with the Owner to perform the obligations set out in the Third Schedule

## **6 DECLARATIONS AND AGREEMENTS**

### **6.1 Effective Date**

6.1.1 With the exception of the obligations referred to in Clauses 5.1.2 and 5.1.4 the restrictions and covenants on the part of the Owner contained in this Deed will not take effect until the issue of the Permission and the Commencement of Development Save That if in determining the Appeal

the Secretary of State expressly states in the Decision Letter that any obligation:

- 6.1.2 is not a material planning consideration; or
  - 6.1.3 can be given no weight in determining the Appeal; or
  - 6.1.4 does not constitute a reason for granting Permission in accordance with Regulation 122 of the CIL Regulations
- then such Obligation shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Decision Letter.

6.2 Liability for Breach

No person shall be liable for a breach of a covenant contained in this Deed after that person has irrevocably parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to any subsisting breach of covenant prior to parting with such interest

6.3 Revocation Modification or Expiry of the Permission

This Deed shall determine and cease to have any further effect if the Permission is revoked, quashed or modified by the Council pursuant to the Planning Act or by any Court without the written consent of the Owner or if the Permission expires before the Commencement of Development and in such circumstances the Council shall procure that any entry referring to this Deed in the Register of Local Land Charges shall be removed forthwith

6.4 Notices

6.4.1 Any Commencement Notice required under clause 5.1.2 shall be in the form attached to this Deed at Annex 1 and shall be deemed to be served if sent electronically to the address provided on the Commencement Notice or if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the Council provided on the Commencement Notice

6.4.2 Any other notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in clause 1 or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on the Council addressed to the Head of Planning quoting reference MC/19/1566

6.5 Approvals

Where any approval consent direction action or authority is required to be given by any of the parties hereto such approval consent direction action or authority shall not be unreasonably delayed or withheld and shall only be effective if given for the purposes of this Deed



6.6 Severance

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

6.7 Waiver by the Council

No waiver (whether express or implied) by the Council of any breach or default by another party in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party

6.8 Registration as a Local Land Charge

This Deed is a Local Land Charge and shall be registered as such by the Council

6.9 Disputes Resolution

6.9.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure

6.9.2 The decision of any expert appointed under the Disputes Resolution Procedure shall be final and binding on all of the parties to the dispute except in the case of manifest error

6.10 Overdue Payment

6.10.1 Payments required to be made under the terms of this Deed shall for the purposes of this clause be deemed to fall due and to be payable on the date specified for payment in the relevant clause or if no date is specified in the relevant clause then such payment shall fall due 21 Working Days after the occurrence of the relevant Trigger Date (in either case the "**Due Date**")

6.10.2 In the event of any delay in making the payment required under this Deed interest shall be payable on the amount payable at the rate of two percent above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment

6.11 Indexation and VAT

6.11.1 Any sums which become payable under this Deed on a date more than twelve months after the date of the issue of the Permission other than the Council's Costs shall be subject to Indexation

6.11.2 Where a sum is subject to Indexation the actual sum due to the Council ("the Indexed Sum") shall be calculated in accordance with the formula:

$$\text{Indexed Sum} = \text{Initial sum} \times \frac{\text{Inflation Index at Due Date}}{\text{Inflation Index at Base Date}}$$

Where:

- 6.11.2.1 “the Initial Sum” is the original sum specified in this Deed; and  
6.11.2.2 “the Base Date” is the date twelve months after the date of issue of the Permission

Provided That where payment is not made on the Due Date the provisions of clause 6.10.2 will have effect in relation to the Indexed Sum except where the inflation index at the due date is less than the inflation index at the base date when the sum in question shall not be subject to indexation

6.11.3 All sums due under this Deed are exclusive of VAT and the Owner shall pay to the Council in addition to any such sums any VAT properly payable in respect thereof

6.12 No Fettering of Discretion

Except in so far as is legally or equitably permitted nothing in this Deed shall fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council

6.13 Variation

No variation or modification of this Deed shall be valid unless made by Deed and executed by the parties or their respective successors

6.14 Receipt

The Council acknowledges receipt of the Council’s Costs and the Monitoring Costs

6.15 Contracts (Rights of Third Parties) Act 1999

This Deed is not intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999

6.16 Planning Permission

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

7.17 Jurisdiction

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

## 8 MORTGAGEE’S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound

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by the obligations contained in this Deed and that the security of the mortgage over part of the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of that part of the Site over which it has a charge in which case it too will be bound by the obligations as if it were a person deriving title from the Owner in respect of the part of the Site over which the charge is secured.

## FIRST SCHEDULE

The Owner for themselves and their successors in title covenants with the Council as follows:

### **PART 1 - Financial Contributions:**

#### **Secondary and Sixth Form Contribution**

1. To pay the Secondary and Sixth Form Contribution to the Council in the following instalments:
  - a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Secondary and Sixth Form Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Secondary and Sixth Form Contribution for that Phase has been paid to the Council.

#### **Waste and Recycling Contribution**

2. To pay the sum of One Hundred and Fifty Five Pounds and Forty Four Pence (£155.44) per Dwelling on each Phase to the Council towards the enhancement of capacity of waste and recycling provision in respect of the Development such sum to be paid prior to first Occupation of the first Dwelling on each Phase

#### **Library Contribution**

3. To pay the Library Contribution to the Council in the following instalments:
  - a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Library Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Library Contribution for that Phase has been paid to the Council.

#### **Public Realm Contribution**

4. To pay the Public Realm Contribution to the Council in the following instalments:
  - a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Public Realm Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Public Realm Contribution for that Phase has been paid to the Council.

**Public Rights of Way Contribution**

5. To pay the Public Rights of Way Contribution to the Council in the following instalments:
  - a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Public Rights of Way Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Public Rights of Way Contribution for that Phase has been paid to the Council.

**Public Rights of Way Signage Contribution**

6. To pay the Public Rights of Way Signage Contribution to the Council in the following instalments:
  - a. The sum of £950 to be paid prior to first Occupation of 75% of the Dwellings on Phase 1;
  - b. The sum of £950 to be paid prior to first Occupation of 75% of the Dwellings on Phase 2;
  - c. The sum of £950 to be paid prior to first Occupation of 75% of the Dwellings on Phase 3;
  - d. The sum of £950 to be paid prior to first Occupation of 75% of the Dwellings on Phase 4;

Provided That if the Phasing of the Site approved pursuant to Reserved Matters shall result in more or less than four Phases the Public Rights of Way Signage Contribution shall be split and payable equally between each Phase of the Development

**Sports Facilities Contribution**

7. To pay the Sports Facilities Contribution to the Council in the following instalments:
  - a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Sports Facilities Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Sports Facilities Contribution for that Phase has been paid to the Council.

**Open Space and Outdoor Sport Contribution**

8. To pay the Open Space and Outdoor Sport Contribution to the Council in the following instalments:
  - a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Open Space and Outdoor Sport Contribution for that Phase has been paid to the Council.
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Open Space and Outdoor Sport Contribution for that Phase has been paid to the Council.

**Public Health Facilities Contribution**

9. In the event that an A5 hot food takeaway facility is permitted within 400m of the Education Land on the Development prior to first Occupation of the last Dwelling on Phase 4 to pay the sum of One Thousand One Hundred and Thirteen Pounds and Thirty Eight Pence (£1,113.38) to the Council towards public health mitigation measures prior to first occupation of the last Dwelling on Phase 4.

**Habitats Mitigation Contributions**

10. To pay the sum of £306.95 per Dwelling on each Phase to the Council towards habitat mitigation for wintering birds mitigation measures and ecological enhancements at the North Kent SAMMS such sum to be paid prior to first Occupation of the first Dwelling on each Phase
11. To pay the sum of £158.48 per Dwelling to the Council towards additional habitat mitigation to provide a bespoke wardening role for a period of 10 years for the North Kent SAMMS such sum to be paid on the commencement of Development of each Phase

**Sustainable Transport Contribution**

13. To pay the Sustainable Transport Contribution to the Council in the following instalments:
- a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Sustainable Transport Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Sustainable Transport Contribution for that Phase has been paid to the Council.

**Bus Infrastructure Contribution**

14. To pay the Bus Infrastructure Contribution to the Council in the following instalments:
- a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the Bus Service Contribution for that Phase has been paid to the Council
  - b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the Bus Service Contribution for that Phase has been paid to the Council.

**NHS Health Contribution**

15. To pay the NHS Health Contribution to the Council in the following instalments:
- a. Not to Occupy more than 50% of the Dwellings in a Phase until the first 50% of the NHS Health Contribution for that Phase has been paid to the Council

- b. Not to Occupy more than 80% of the Dwellings in a Phase until the remaining and final 50% of the NHS Health Contribution for that Phase has been paid to the Council.

**16. Highways England Contribution**

Not to Occupy more than 200 of the Dwellings on the Development until the Highways England Contribution has been paid to the Council.

**17. Review of Financial Contributions**

- 18. Upon the grant of Reserved Matters Approval for each Phase of the Development the Financial Contributions payable in respect of each Phase of the Development shall be reviewed in accordance with the actual number of Dwellings permitted pursuant to the Reserved Matters Approval for that Phase and if the number of Dwellings permitted is different from the number of Dwellings permitted by the Permission as further detailed on the Phasing Plan the Financial Contributions payable shall be revised and adjusted to reflect the actual number of Dwellings permitted with any sums having been overpaid being reimbursed to the party who made the payment by the Council within 28 Working Days of the review being carried out.
- 19. Any dispute arising between the parties following a review of the Financial Contributions payable shall be resolved in accordance with the Dispute Resolution Procedure at the Fourth Schedule to this Deed.

**PART 2 – PRIMARY SCHOOL LAND AND CONTRIBUTIONS**

**1. Primary School**

- 1.1 Subject to the further provisions of this paragraph 1 of Part 2 of this Schedule the Owner shall reserve the Primary School Site for the purposes of accommodating a Primary School for the duration of the construction phase of the Development PROVIDED THAT the Owner may agree with the Council to substitute any or all of the Primary School Site for another prepared and Serviced parcel of land of an equivalent size elsewhere within the Development Site at the time of submission of Reserved Matters for the Development
- 1.2 The Owner shall not Commence Development on the Phase in which the Primary School is to be located until the Owner has notified the Council in writing as to whether either:
  - 1.2.1 the Owner elects to construct the Primary School Site in lieu of payment of both the Primary Education Contribution and the Nursery Contribution in which case the provisions of paragraphs 1.3 to 1.7 of this Part 2 of this Schedule shall apply; OR

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- 1.2.2 The Owner elects to construct the Primary School Site in two phases as detailed in Paragraph 1.8 of this Schedule and in lieu of payment of both the Primary Education Contribution and the Nursery Contribution then the provisions of Paragraphs 1.3, 1.4, 1.5, 1.7 and 1.8 of this Part 2 of this Schedule shall apply; OR
- 1.2.3 the Owner elects not to construct the Primary School on the Primary School Serviced Site in which case the provisions of paragraphs 1.9 of this Part 2 of this Schedule shall apply.
- 1.3 If the Owner elects to construct the Primary School the Owner shall submit with its election pursuant to Paragraph 1.2.1 or Paragraph 1.2.2 of this Part 2 of this Schedule the Primary School Specification for the Primary School and the Council shall be required to reasonably accept such election.
- 1.4 If the Council refuses to approve the Owner's proposed Primary School Specification the Owner and the Council shall use reasonable endeavours to agree a Primary School Specification (which may require amendments to such specification as originally proposed by the Owner) and the Council may request such additional information as it may reasonably require to enable it to approve the Primary School Specification but if the Council has not approved a Primary School Specification within 60 Working Days of the issue of the Council's notification under paragraph 1.3 above either party may refer the matter to an expert for determination under the Dispute Resolution Procedure as prescribed by the Fourth Schedule to this Deed.
- 1.5 The Owner shall be deemed to have elected not to construct the Primary School in the event that either:
- a) the Council has notified the Owner or (as the case may be) the expert appointed pursuant to the Dispute Resolution Procedure has determined that the Primary School Specification proposed by the Owner is not approved; or
  - b) (without prejudice to paragraph 1.2 above) no notice of election has been given by the Owner by the date specified in paragraph 1.2 above.
- 1.6 If the Owner and the Council have agreed the Primary School Specification for the delivery of the Primary School in its entirety pursuant to Paragraph 1.2.1 of this Part 2 of this Schedule the Owner shall Complete the Primary School in accordance with the relevant agreed Primary School Specification and any Necessary Consents such that;



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- a) the Primary School is Completed and available for use prior to first Occupation of no more than 400 Dwellings within the Development (or such other delivery date as may be agreed with the Council); and
- b) the Primary School Site has been transferred to the Council (and the Council shall accept such Primary School Transfer) or to the relevant School Governing Body (who shall also accept such Primary School Transfer).

1.7 The Owner's obligations to the Transfer of the Primary School Site shall be subject to the grant to the Owner of any necessary rights to enable it to access the Transferred Primary School Site and to connect into and/or run services across the Primary School Site to enable it to comply with the obligations in paragraph 1.9 or subject to such rights being otherwise granted to the Owner at the relevant time by the Council or the relevant School Governing Body and for the avoidance of doubt the Owner shall request the inclusion of said rights in the relevant Primary School Site Transfer.

1.8 If the Owner elects to construct the Primary School in phases in accordance with the Specification pursuant to Paragraph 1.2.2 of this Part 2 of this Schedule then the Owner shall Complete the Primary School in accordance with the relevant agreed Primary School Specification and any Necessary Consents such that;

a) the 1FE with 2FE core of the Primary School is Completed and available for use prior to Occupation of no more than 400 Dwellings within the Development (or such other delivery date as may be agreed with the Council); and

b) the 2FE of the Primary School is Completed and available for use prior to Occupation of no more than 1000 Dwellings within the Development (or such other delivery date as may be agreed in writing with the Council); and

c) the Primary School Site has been transferred to the Council (and the Council shall accept such Primary School Site Transfer) or to the relevant School Governing Body (who shall also accept such Primary School Site Transfer) and the provisions of Paragraph 1.7 of this Schedule shall apply.

1.9 If the Owner elects not to construct the Primary School the Owner shall:

- a) not Occupy more than 400 Dwellings in the Development until the Owner has Transferred the Primary School Site Serviced to the Council (and the Council shall accept such Transfer) or to the relevant School Governing Body; and

pay the the Primary Education Contribution and the Nursery Contribution to the Council prior to first Occupation of not more than 400 Dwellings in the Development

**PART 3 – OPEN SPACE**

- 1.1 Prior to the first Occupation of any Dwellings on each Phase containing Open Space the Owner shall submit the Management Plan and the Open Space Specification in respect of that Open Space on that Phase to the Council for approval in writing (hereinafter referred to in their approved forms as the **“Approved Management Plan”** and the **“Approved Open Space Specification”**);
- 1.2 The Open Space to be provided within each Phase of the Development shall be laid out in accordance with the Approved Open Space Specification prior to first Occupation any of the Dwellings to be constructed in that respective Phase;
- 1.3 Not to Occupy or permit to be Occupied any Dwellings in any respective Phase unless and until the Open Space to be provided within that Phase of the Development has been laid out in accordance with the Approved Open Space Specification;
- 1.4 Following the laying out of the Open Space within a Phase in accordance with this Deed, to serve written notice of such completion on the Council;
- 1.5 Within twenty eight days of receiving notice pursuant to paragraph 1.4 of this Part 3 of the First Schedule the Council shall inspect the Open Space and shall give notice in writing of any works reasonably required to cause the same to be made fit for use and otherwise in accordance with the requirements of this Deed, and thereafter to complete such required works within 3 months beginning on the date when notice has been given by the Council or such other timeframe as shall be agreed between the parties;
- 1.6 The Open Space within each Phase shall be maintained in accordance with the Approved Management Plan to the reasonable satisfaction of the Council for a minimum period of twelve months from the date of service of the notice in paragraph 1.5 until the date it is transferred to the Management Company;
- 1.7 On the expiry of the twelve month period referred to in paragraph 1.6 to serve a further notice on the Council of readiness to transfer the Open Space to the Management Company in accordance with the details contained within the Approved Management Plan;

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- 1.8 To procure a brochure outlining the management and maintenance arrangement and charging regime associated with the Open Space and the and to provide a copy of such brochure to each buyer or tenant of a Dwelling prior to completion of any sale or lease;
- 1.9 Not to Occupy or permit to be Occupied 80% or more of the Dwellings to be constructed in any respective Phase unless and until the Open Space to be provided within that Phase of the Development has been transferred to the Management Company free from incumbrances (other than as set out below and those already existing at the date of this Deed) and for the avoidance of doubt the transfer shall:
- (a) be a transfer of the entire freehold interest in the Open Space;
  - (b) be free from any pre-emption or option agreement;
  - (c) be free from any mortgage, charge, lien or other such incumbrance;
  - (d) include all usual and necessary rights of way with or without vehicle;
  - (e) be subject to rights of reasonable access to the public;
  - (f) reserve any usual and necessary rights to use existing services and to lay and use new services together with any rights of entry to inspect, repair, renew, cleanse and maintain the same;
  - (g) include provisions securing the sole use of the Open Space for the general recreational enjoyment of the public as general amenity open space;
  - (h) not require consideration in excess of one pound (£1); and
  - (i) contain covenants by the Management Company in favour of the Council and pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 to the effect that the Management Company shall maintain, repair, replace as necessary and generally manage the Open Space in strict accordance with the Approved Management Plan and the principles of good estate management to the intent that the Open Space remains fit for purpose and available for safe use by the public at all times during which any part of the Development is Occupied;
- 1.10 To procure that the buyer of each Dwelling shall enter into covenants substantially in the following form directly with the Management Company under which the buyer shall:
- (a) covenant to pay to the Management Company a pro rata proportion (according to the number of dwellings comprised in the Development to be constructed on the site) of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining, repairing and as necessary renewing the Open Space in accordance with the Approved Management Plan; and

- (b) covenant that upon any subsequent sale of such Dwelling to procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 1.10(a) and 1.10(b) of this Part 3 of the First Schedule;

**SECOND SCHEDULE**  
**Affordable Housing**

The Owner covenants with the Council as follows:

1. Not to cause or allow the Commencement of Development on each Phase until the Affordable Housing Plan for that Phase has been submitted to and agreed in writing by the Council (such approval not to be unreasonably withheld or delayed) Provided That the Affordable Housing Plan shall not require anything that would be inconsistent with the Permission and Further Provided That the Council shall seek to agree the Affordable Housing Plan for each Phase within 28 days of receipt
2. Not to cause or allow the Commencement of Development on each Phase of the Development until it has submitted a statement, for approval in writing by the Council, detailing how the Affordable Housing will be provided (where relevant) in the relevant Phase in compliance with the Affordable Housing Plan agreed pursuant to paragraph 1 of this Second Schedule, and thereafter to provide the Affordable Housing in that Phase in accordance with the approved statement
3. The Owner may from time to time submit to the Council for its prior written approval revisions to the Approved Affordable Housing Plan for each Phase Provided That such provisions are in accordance with this Second Schedule.
4. Not to use the Affordable Housing Land in each Phase except for the provision of the Affordable Housing except that prior to the transfer of the Affordable Housing Land to a Registered Provider in accordance with the terms of this Schedule the Affordable Housing Land may be used as a temporary compound or landscaping reserve land

5. Not cause or permit the first Occupation of the first Dwelling on each Phase of the Development until either:
  - a. The Council approves in writing a Registered Provider to undertake the management of the Affordable Housing Units on that Phase; or
  - b. the Owner informs the Council in writing that it will be developing the Affordable Housing Units in that Phase in accordance with the relevant Homes England requirements
6. Where paragraph 5a applies to use reasonable endeavours to enter into a contract with a Registered Provider for the applicable Phase of the Development for the transfer of the Affordable Housing Land in that Phase
7. Any transfer of the Affordable Housing Land on each Phase shall contain such provisions as set out in paragraphs 10, 14 and/or 15 of this Second Schedule as applicable
8. Not to cause or permit the first Occupation of more than 50% of the Private Housing Units in each Phase until either:
  - a. the Affordable Housing Land in that Phase and/or Affordable Housing Units in that Phase have been transferred to the approved Registered Provider in accordance with this Schedule; or
  - b. where the Owner intends to undertake the long term management of the Affordable Housing Units in a Phase that party has:
    - i. become a Registered Provider under current procedures pursuant to the Homes England scheme and produced evidence of this to the Council, and
    - ii. if applicable, entered into a funding agreement with the Homes England and provided a copy of the agreement to the Council (if appropriate), and
    - iii. entered into a Nominations Agreement with the Council
9. Not to transfer the Affordable Housing Land in a Phase to a Registered Provider without first procuring that such Registered Provider agrees to enter into a Nominations Agreement with the Council
10. Any transfer of the Affordable Housing Land in a Phase to a Registered Provider shall be with full title guarantee and vacant possession
11. To use reasonable endeavours to procure that of the total number of Affordable Housing Units to be constructed on the Affordable Housing Land in each Phase shall comprise at least 50% shall be built to current Building Regulations Standard and at least 5% of the Affordable Housing Units in a Phase to be constructed shall be for Wheelchair Accessible Housing unless otherwise agreed in writing with the Council

12. To agree in writing with the Council the precise mix of housing types which will comprise the total number of Affordable Housing Units to be constructed on the Affordable Housing Land in a Phase pursuant to any Reserved Matters Approvals.
  
13. Subject to clause 5 any transfer of the Affordable Housing Land in a Phase and/or Affordable Housing Units in a Phase shall ensure that the Affordable Housing Land and/or Affordable Housing Units shall only be used for the purposes of Affordable Housing in perpetuity and shall contain the following provisions (unless evidence is produced to the Council, to its reasonable satisfaction, that the Registered Provider has agreed otherwise and the Council agrees in writing to the omission):
  - a. a grant to and may reserve from the Registered Provider reasonable pedestrian and vehicle access for ingress to and egress from the Affordable Housing Land on the Phase together with rights for all necessary services
  - b. an agreement that all parties shall bear their own costs in relation to the transfer
  - c. the disposal shall be free of all financial charges and of any restrictive covenants or other third party rights which would prevent the use of the Affordable Housing Land and/or the Affordable Housing Units on the Phase for the purpose for which it is transferred
  - d. the disposal shall be subject to the Standard Conditions of Sale (Fifth Edition) or the Standard Commercial Property Conditions (Second Edition) except insofar as they are incompatible with the provisions of this clause or any other express provision of this Deed
  - e. subject to clause 5 the transfer shall contain a covenant by the Registered Provider not to use the Affordable Housing Land in the Phase otherwise than for the purposes of Affordable Housing

PROVIDED THAT for the avoidance of doubt the Owner may transfer the Affordable Housing to more than one Registered Provider

14. For the purposes of this Second Schedule “transfer” shall include the grant of a long lease for a term of not less than 125 years and in the case of such a leasehold grant to a Registered Provider:
  - a. no ground rent shall therein be reserved other than at the rate of one peppercorn per annum
  - b. any service charge payable under the lease shall be no more than a fair and reasonable proportion of the following costs:
    - i. repair maintenance and decoration of the structure the exterior or the internal common parts of the building in which the Affordable Housing Units are situate (including any equipment in the common parts such as fire and safety equipment)

- ii. insurance of the building in which the Affordable Housing Units are situate
- iii. maintenance of any garden roads access ways footpaths car parks bins stores fences gates and other boundary structures serving the relevant Affordable Housing Units in common with other properties in the vicinity of the relevant Affordable Housing Units
- iv. other services to be provided by the landlord of the building in which the Affordable Housing Units are situate and which are agreed in writing by the Registered Provider

**THIRD SCHEDULE**  
**The Council's Covenants**

1. To co-operate insofar as is reasonable with the Owner in the performance of the Owners obligations under this Deed
  2. Not to use any Contribution other than for the purpose specified in this Deed in relation to that Contribution without the prior written consent of the Owner
  3. At the Owner's request to return any part of the Contributions aforesaid which shall not have been used for the purposes set out above within a period of five (5) years from the date of the payment of the relevant Contribution together with interest at the base rate prevailing from time to time of the National Westminster Bank plc calculated from the date of receipt of the relevant sum by the Council as evidenced by the Council's official receipt Provided That the Council shall not be obliged to return any part of any Contribution which has been spent or contractually committed prior to the date of the request
  4. Upon receipt of any Contributions in the First Schedule hereto the Council shall if requested to do so supply (a) its written receipt for the aforesaid Contributions and (b) written confirmation that the relevant obligation(s) for a particular phase of the Development has been satisfied.
  5. **NHS Health Contribution**
- 5.1 The Council covenants with the Owner as follows:
- a) to hold each NHS Health Contribution in a separate account;
  - b) to notify the relevant Health Service Body within ten Business Days of receipt of any NHS Health Contribution that the Council is in receipt of the NHS Health Contribution;
  - c) to pay such contributions to the relevant Health Service Body upon receipt of a document from the relevant Health Service Body confirming that they will:
    - (i) apply such contributions or part thereof solely for the purposes for which the payment has been made pursuant to this Deed;

- (ii) provide full details of the expenditure of the such contributions on demand to the Council or to the Owner or both of them; and
  - (iii) return any unspent part of the contributions to the Council after the expiry of 5 years from the date of receipt of the relevant part or instalment of the contribution from the Council.
- (c) in the event that the document in the form required by paragraph 5.1(c) above is not received following the expiry of five years from the date of receipt of the relevant contribution by the Council then the Council's obligation to pay the relevant contribution to the relevant Health Service Body shall cease absolutely and the Council shall refund to the person or body who made the payment the unexpended contribution with twenty Working Days of receipt of a written request from the person or body who made the payment.

## **6. Highways England Contribution**

- 6.1 The Council covenants with the Owner as follows:
- a. to hold the Highways England Contribution in a separate account;
  - b. to notify Highways England within ten Business Days of receipt of the Highways England Contribution that the Council is in receipt of the Highways England Contribution;
  - c. to pay such contributions to Highways England upon receipt of a document from Highways England confirming that they will:
    - i. apply such contributions or part thereof solely for the purposes for which the payment has been made pursuant to this Deed;
    - ii. provide full details of the expenditure of the such contributions on demand to the Council or to the Owner or both of them; and
    - iii. return any unspent part of the contributions to the Council after the expiry of 5 years from the date of receipt of the relevant part or instalment of the contribution from the Council.
  - d. in the event that the document in the form required by paragraph 6.1(c) above is not received following the expiry of five years from the date of receipt of the relevant contribution by the Council then the Council's obligation to pay the relevant contribution Highways England shall cease absolutely and the Council shall refund to the person or body who made the payment the unexpended contribution with twenty Working Days of receipt of a written request from the person or body who made the payment.

## **FOURTH SCHEDULE Dispute Resolution Procedure**

### **1. General**



All differences and questions that arise between the parties arising out of or connected with this Deed shall be referred to an expert

2. Choice of Expert

a. If the difference or question relates to the construction of rights and liabilities of any party or to the terms or conditions to be embodied in any deed or document appertaining thereto it shall be referred to a solicitor or barrister agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the Chairman from time to time of the Bar or any person in an equivalent subsequent role.

b. If the difference or question relates to the occupancy of any dwelling it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed at the request of any party by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors or any person in an equivalent subsequent role.

3. No Further Submissions

After delivery of counter submissions or (if none) after submission of written submissions no party shall be entitled to make any further submissions and the expert shall forthwith deliberate and deliver to every party to the dispute their decision in writing within a reasonable time of closing submissions or counter submissions

4. Restriction on Terms of Decision

The expert shall be restricted in settling the dispute to choosing between one of the proposals submitted by the parties or elements compatible with one another from the submissions of different parties to the dispute

5. Costs

Each Party shall bear their own costs except in so far as directed by the Expert

**FIFTH SCHEDULE  
EDUCATION CONTRIBUTION FORMULA**



10.3.2021 – Roythornes

**IN WITNESS** whereof this Deed has been duly executed as a Deed by the Parties  
the day and year first before written

**THE COMMON SEAL of MEDWAY )**  
**COUNCIL** was hereunto affixed to )  
This Deed in the presence of )

Authorised Signatory

**SIGNED** as a **DEED** by )  
**PAULINE LINDA GOATHAM )**  
In the presence of )

Witness signature:

Witness Name:

Witness address:

**SIGNED** as a **DEED** by )  
**ROSS MANSER GOATHAM )**  
in the presence of: )

Witness signature:

Witness Name:

Witness address:

10.3.2021 – Roythornes

**SIGNED** as a **DEED** by            )  
**CLIVE ARTHUR GOATHAM** )  
in the presence of:                 )

Witness signature:

Witness Name:  
Witness address:

**SIGNED** as a **DEED** by            )  
**BARCLAYS SECURITY**                 )  
**TRUSTEE LIMITED**                 )  
Acting by an Attorney             )  
in the presence of:

Witness signature:

Witness Name:  
Witness address:

**ANNEX 1**  
**Commencement Notice**

To: Medway Council, Section 106/CIL Officer, The Planning Service, Dock Road,  
Chatham, ME4 4TR

Planning application number: MC/ / *[to be completed in full]*

Section 106 Agreement dated: *[to be completed in full]*

Development Site Address: *[to be completed in full]*

In accordance with the terms of the above section 106 Agreement, **I GIVE YOU NOTICE** that the following event has been reached (*please complete as appropriate*)

EITHER:

**PRIOR TO COMMENCEMENT OF WORKS ON THE DEVELOPMENT ON SITE (1)**

Work is expected to commence on the Development Site on *[insert date]*

*(1) this notification should be sent at least 28 days prior to commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement*

OR

**WORKS HAVE COMMENCED ON SITE (2)**

Work commenced on the Development Site on *[insert date]*

*(2) this notification should be sent within 14 days after commencement of works on the Development Site as required under Clause 5.1.2 of the Section 106 Agreement*

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OR

A TRIGGER DATE(S) HAS OCCURRED (3)

Obligation type: *(insert each obligation)*  
e.g. *Education Contribution*

Trigger Date: *(insert the date that each obligation was due to be paid or was due to come into effect)*  
e.g. *1 March 2013*

*(3) this notification should be sent within 14 days after trigger date occurred as required under Clause 5.1.2 of the Section 106 Agreement*

FROM:

Company/Owner/Payee:  
Address *(required for invoicing)*:  
Email address:

*Please send this notification to:*

By email: [S106@medway.gov.uk](mailto:S106@medway.gov.uk) *(preferred option)*

By post: Section 106/CIL Officer, The Planning Service  
Medway Council, Dock Road, Chatham, ME4 4TR

## **ANNEX 2**

### School Site Transfer Terms

1. Reservation of the rights of access and passages of services and rights of entry reasonably necessary for the beneficial enjoyment of the Development.
2. Completion of the Transfer of the Primary School Sites or part thereof shall take place on such date as shall be agreed in writing between the County Council and the Developer.
3. The Primary School Sites shall be free from incumbrances other than the following (insofar as they may relate to the relevant Primary School Application Site);
  - (i) any matters contained or referred to in the Land Registry registered title for the relevant Primary School Application Site other than any charge;
  - (ii) any matters discoverable by inspection of the Primary School Sites whether or not such inspection has actually taken place;
  - (iii) any matters that the transferor does not reasonably know about;
  - (iv) all local land charges and all matters capable of registration as local land charges;
  - (v) all notices, demands, charges, orders, resolutions, levies, conditions, restrictions, directions, requirements and other matters served or made by any person or body exercising statutory functions;
  - (vi) all matters referred to in Schedule 3 Land Registration Act 2002 and any matters which were overriding interests as defined in section 70(1) Land Registration Act 1925 and which continue in effect under the Land Registration Act 2002;
  - (vii) all rights of way, water, light, air and other rights, easements, quasi-easements, liabilities and public rights whatsoever and any liability to repair or to contribution towards the cost of repair or roads, passages, sewers, drains, fences or other items;

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PROVIDED THAT no such encumbrances listed at (a) to (g) shall prevent the relevant School Application Site from being developed as a Primary School.

Subject to a restrictive covenant not to use the relevant Primary School Application Site other than for education purposes.

The provisions of the Standard Conditions will apply so far as they are not varied by or inconsistent with the provisions of Schedule 2.



**ANNEX 3**

**Site Location plan**

**ANNEX 4**

**Phasing Plan**

**ANNEX 5**  
**PARAMETERS PLAN**