DATE: 14 May 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 14 day of May 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;

	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;
"Affordable Housing Units"	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;
"Affordable Rented Housing"	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;
"Amenity Open Space"	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;
"Appeal"	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;
"Approved Affordable Housing Plan"	means the Affordable Housing Plan(s) for each Phase of the Development approved pursuant to paragraph 1 of the

	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 Development 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;
"Community Orchard"	means the area of land to be provided within the Development for a community orchard the area and location of which shall be agreed pursuant to Reserved Matters Applications for the Development;
"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 Contributions; Highways England Contribution; Public Health Contribution; NHS Health Contribution and the Bus Infrastructure Contribution payable in accordance with the terms set

	out in 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, 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;
(d) the Community Orchard; and
(e) the Village Green;

"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 person's 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 PROVIED 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 Site 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 and 'Reserved Matters Approvals' shall be construed accordingly;
"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.

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 20th February 2017 over that part of the Site comprised within title numbers: K462070, K549160, K550742, K574197, K982096 and a legal charge dated 7th 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 12th 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;

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;

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 4.1.7or 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 principal 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:

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

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 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.