

**DATED**

**MAIDSTONE BOROUGH COUNCIL**

**-and-**

**THE KENT COUNTY COUNCIL**

**-and-**

**THE MASTER FELLOWS AND SCHOLARS OF THE COLLEGE  
OF SAINT JOHN THE EVANGELIST IN THE UNIVERSITY OF CAMBRIDGE**

**-and-**

**CATESBY STRATEGIC LAND LIMITED**

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**DEED OF AGREEMENT PURSUANT TO  
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO THE DEVELOPMENT OF  
LAND AT MOAT ROAD HEADCORN TN27 9NT  
PLANNING APPLICATION REFERENCE NO. 23/504471/OUT  
APPEAL REFERENCE NO. APP/U2235/W/24/3351435**

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Mid Kent Legal Services  
Maidstone Borough Council  
Maidstone House  
King Street  
Maidstone  
Kent ME15 6JQ



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**THIS DEED OF AGREEMENT** is dated the                      day of                      **2024**

**Between**

- (1)     **MAIDSTONE BOROUGH COUNCIL** of Maidstone House King Street Maidstone Kent ME15 6JQ (the “**Borough Council**”) and
- (2)     **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ (the “**County Council**”) and
- (3)     **THE MASTER FELLOWS AND SCHOLARS OF THE COLLEGE OF SAINT JOHN THE EVANGELIST IN THE UNIVERSITY OF CAMBRIDGE** of The Bursary, St Johns College, St Johns Street, Cambridge CB2 1TP and care of Mills & Reeve LLP, Botanic House, 100 Hills Road, Cambridge CB2 1PH (the “**Owner**”) and
- (4)     **CATESBY STRATEGIC LAND LIMITED** (company number 03231740) of Orchard House, Papple Close, Houlton, Rugby CV23 1EW (the “**Promoter**”) and

**RECITALS**

- A. The Borough Council is the Local Planning Authority and Local Housing Authority for the area within which the Land is situated and the appropriate statutory body to enforce this Deed for the purposes of section 106 of the 1990 Act
- B. The County Council is a local planning authority for the purposes of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and is the statutory authority responsible for education local highways libraries integrated children’s services community learning adult social care and waste services for the area within which the Land is situated and enforcing authority (as the case may be) for the purposes of section 106 of the 1990 Act
- C. The Application was made to the Borough Council by the Promoter and the Owner pursuant to the 1990 Act for planning permission to carry out the Development.
- D. By a notice of refusal dated 29<sup>th</sup> April 2024 the Borough Council refused planning permission for the Development for the reasons set out therein and the Owner has appealed to the Secretary of State against the refusal and enters into this Deed to the intent that any objections of the Borough Council to the grant of planning permission are overcome
- E. The Owner is interested in the Land by virtue of being the freehold owners of the Land as set out in Schedule 1
- F. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms, directly relate to the Development and fairly

and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010

- G. The Owner has agreed to enter into this Deed to regulate the Development as set out herein and in support of the Appeal
- H. The Borough Council and the County Council (as the case may be) are Local Authorities for the purposes of section 111 of the Local Government Act 1972 and are satisfied that the arrangements made in this Deed will facilitate, be conducive to and be incidental to the Borough Council's and/or the County Council's (as the case may be) functions
- I. This Deed is made pursuant to section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council and/or the County Council (as the case may be) pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

## **OPERATIVE PROVISIONS**

**IT IS AGREED** as follows

### **1 Definitions**

- 1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the definitions contained in Paragraphs 1.1 to the relevant Schedule(s)

<b>“1990 Act”</b>	means the Town and Country Planning Act 1990 (as amended)
<b>“All in Tender Price Index”</b>	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
<b>“Appeal”</b>	means the appeal against the Borough Council's refusal of the Application which has been made to the Secretary of State by the Promoter and the Owner and given reference APP/U2235/W/24/3351435

<b>“Application”</b>	means the application for outline planning permission submitted by the Promoter and the Owner to the Borough Council to carry out the Development on the Land and given the registered reference number 23/504068/OUT
<b>“Borough Council Contributions”</b>	means the financial contributions payable to the Borough Council pursuant to Schedule 4 and 5 comprising a) the Off-site Sports Contribution b) the BNG Monitoring Contribution
<b>“Commencement of Development”</b>	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words <b>“Commence”</b> and <b>“Commencement”</b> and <b>“Commence Development”</b> shall be construed accordingly
<b>“Consumer Price Index”</b>	means the Consumer Price Index published by the Office for National Statistics and the acronym <b>“CPI”</b> shall be construed accordingly
<b>“County Council Contributions”</b>	means the financial contributions payable to the County Council pursuant to Schedule 7 comprising: a) the Primary Education Contribution b) the Secondary Education Contribution c) the Special Education Needs and Disabilities Contribution d) Travel Plan Monitoring Contribution e) TRO Contribution
<b>“Deed”</b>	means this deed of agreement together with all Schedules and Appendices

<p><b>“Development”</b></p>	<p>means up to 115 no. dwellings (Use Class C3) with 40% affordable housing including demolition of existing buildings new means of access into the site from moat road (not internal roads) short diversion to the public right of way (KH590) associated highway works, provision of public open space provision of shelter to replace curtilage listed building emergency/pedestrian access to Millbank and associated infrastructure including surface water drainage (with related off site s278 highway works to Moat Road)</p>
<p><b>“Dwelling”</b></p>	<p>means any residential unit to be erected on the Land pursuant to the Planning Permission and approved pursuant to the Reserved Matters Approval including for the avoidance of doubt the Open Market Dwellings the Affordable Dwellings</p>
<p><b>“Implementation of the Planning Permission”</b></p>	<p>means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and the words <b>“Implement”</b> and <b>“Implemented”</b> and <b>“Implementation”</b> shall be construed accordingly <b>AND FOR THE AVOIDANCE OF DOUBT</b> Implementation of the Planning Permission shall not be construed as Commencement of Development for the purposes of this Deed</p>
<p><b>“Index Linked”</b></p>	<p>means adjusted by reference to the relevant index pursuant to the provisions of Clause <b>18</b></p>
<p><b>“Interest Rate”</b></p>	<p>means interest at 4% (four per cent) per annum above the base lending rate of the Bank of England from time to time applicable at the actual date of payment</p>
<p><b>“Land”</b></p>	<p>means the land against which this Deed may be enforced as detailed in Schedule 1 and shown edged coloured red on the Plan</p>

<b>“Monitoring Fee (Borough Council)”</b>	means the sum of £4,398.75 in connection with the monitoring and administration of this Deed
<b>“Monitoring Fee (County Council)”</b>	means the sum of £600.00 (six hundred pounds) in connection with the monitoring and administration of this Deed
<b>“Occupy”</b>	means taking or permitting beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations or marketing or display operations <b>“Occupation”</b> <b>“Occupier”</b> or <b>“Occupied”</b> shall be construed accordingly
<b>“Open Market Dwellings”</b>	means those Dwellings for sale on the open market and which are not Affordable Dwellings
<b>“Parties”</b>	means the Owner the Borough Council and the County Council as the context so requires and <b>“Party”</b> means any one of them
<b>“Plan”</b>	means the plan titled “20 - S106 Boundary Plan” (dated 05/02/2025; prepared by Catesby Estates plc) annexed at Appendix A
<b>“Planning Inspector”</b>	means the inspector appointed by the Secretary of State to determine the Appeal
<b>“Planning Permission”</b>	means planning permission for the Development to be granted pursuant to the Appeal subject to conditions
<b>“Practical Completion”</b>	means the stage in the progress of the Development when the works are sufficiently complete in accordance with the approved plans and specifications such that the Development can be occupied and used for its intended purposes, notwithstanding the fact that there may be



	<p>minor outstanding works or defects which do not materially affect the Occupation and use of the Development. Practical Completion shall be certified by the issuing of a practical completion certificate by the Owner's architect, engineer or other appropriately qualified professional (as the case may be) and the term <b>"Practically Complete"</b> shall be construed accordingly</p>
<b>"Preparatory Operation"</b>	<p>means (for the purpose of this deed and for no other purpose) an operation or item of work of or connected with or ancillary to</p> <ul style="list-style-type: none"> <li>a) archaeological investigation</li> <li>b) exploratory boreholes and trial pits</li> <li>c) site surveys</li> <li>d) site clearance</li> <li>e) demolition works</li> <li>f) diversion, decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities</li> <li>g) the erection of fences and hoardings around the Land and</li> <li>h) construction of temporary access and service roads</li> </ul>
<b>"Reserved Matters Application"</b>	<p>means an application for approval of reserved matters in accordance with the Planning Permission</p>
<b>"Reserved Matters Approval"</b>	<p>means an approval or approvals given by the Borough Council pursuant to each and every Reserved Matters Application</p>
<b>"Secretary of State"</b>	<p>the Secretary of State for Housing, Communities and Local Government or any other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for</p>

	Housing, Communities and Local Government by the Planning Act
<b>“Section 106 Monitoring Officer”</b>	means any such officer appointed by the Borough Council for the purposes of monitoring planning obligations secured in respect of development proposals
<b>“Statutory Undertakers”</b>	means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator
<b>“VAT”</b>	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
<b>“Working Day”</b>	means a day which is not a Saturday, Sunday, bank holiday in England or other public holiday

## 2 Interpretation

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed and any reference to a Paragraph or Sub-Paragraph within a Schedule shall be a reference to a Paragraph or Sub-Paragraph in that Schedule (unless otherwise stated)
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 2.3 Unless the context otherwise requires words importing the singular include the plural and vice versa
- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 2.6 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established

- 2.7 Reference to any Party to this Deed shall include that party's personal representatives successors and permitted assigns and in the case of the Borough Council or the County Council (as the case may be) shall include any successor to their respective statutory functions
- 2.8 Reference to any officer of the Borough Council and/or County Council (as applicable) means such officer or such other officer as may be lawfully designated by the Borough Council and/or the County Council (as the case may be) for the purposes of discharging such duties and functions
- 2.9 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually
- 2.10 Words denoting an obligation on a Party to do any act matter or thing include an obligation to cause permit or procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.11 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision
- 2.12 Any words following the terms "including" "include" "in particular" "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms
- 2.13 Unless otherwise stated all amounts referred to in this Deed are in Pounds Sterling and all references in this Deed to "pounds" or "pence" or "£" are references to the lawful currency of the United Kingdom
- 2.14 Any financial contributions collected pursuant to the terms of this Deed may be pooled with other funds for use by the receiving party for the purposes for which those contributions were paid and for the avoidance of doubt any financial contribution may be used towards professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the person receiving the financial contribution in order to achieve the purposes for which the requisite contribution was paid
- 2.15 In relation to any financial payments and contributions made pursuant to this Deed the Borough Council or the County Council (as the case may be) shall be entitled to treat

any accrued interest or any interest payable under Clause 21 (Interest on Late Payments) as if it were part of the principal sum paid

### **3 Legal Basis**

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972, sections 12 and 93 of the Local Government Act 2003, section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
  - 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act
  - 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
  - 3.2.3 relate to the Land
  - 3.2.4 are entered into with the intent to bind the Owner's interest in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come
  - 3.2.5 are enforceable by the Borough Council and the County Council (as the case may be) as local planning authority
  - 3.2.6 are executed by the respective Parties as a deed
- 3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council and the County Council (as the case may be) pursuant to the powers contained in section 111 of Local Government Act 1972, sections 12 and 93 of the Local Government Act 2003, section 1 of the Localism Act 2011 and all other powers so enabling

### **4 Conditionality**

With the exception of this Clause 4 and Clauses 1, 2, 3, 5.2 5.3 and 7 to 24 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant of the Planning Permission

- 4.1 Each planning obligation in this Deed is also conditional upon the Secretary of State or her appointed Planning Inspector deciding the Appeal being satisfied that it complies in all respects with Regulation 122 of the Community Infrastructure Regulations 2010 and in the event that the Secretary of State or her Planning Inspector deciding the Appeal expressly states in their decision letter that any individual planning obligation within this Deed is not compliant with Regulation 122 of the Community Infrastructure

Regulations 2010 then that planning obligation or those planning obligations so identified by the Secretary of State or her appointed Planning Inspector will cease to take effect and shall be void for the purposes of this Deed and the Owners shall not be obliged to comply with the terms of that planning obligation **PROVIDED ALWAYS THAT**

4.1.1 the remaining provisions of the Deed shall take effect and remain in effect and enforceable in accordance with the terms of this Deed and

4.1.2 any specific obligation considered deleted by the operation of this Clause will be considered re-instated in the event the decision of the Secretary of State or her appointed Planning Inspector in relation to the obligation is successfully challenged

## **5 Owner's and Promoter's Covenants**

### Part 1: the Owner's Covenants

5.1 The Owner covenants with the Borough Council and the County Council to perform and observe the covenants obligations restrictions and requirements contained in this Deed including in the Schedules hereto.

5.2 The Owner shall permit the Borough Council and the County Council and their authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Borough Council and the County Council and their authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice

### Part 2: The Owner's and the Promoter's Covenants

5.3 Before completion of this Deed the Promoter covenants to pay:

5.3.1 to the Borough Council, the Borough Council's reasonable legal and administrative costs and disbursements incurred in connection with the negotiation preparation execution completion and registration (as a local land charge) of this Deed

5.3.2 to the County Council, the County Council's reasonable legal and administrative costs in connection with the negotiation and execution of this Deed and officer fees

whether or not this Deed is delivered in accordance with Clause 24

5.4 The Owner covenants to pay within 20 (twenty) Working Days from the grant of Planning Permission (i.e. the Appeal being allowed):

5.4.1 the Monitoring Fee (Borough Council) to the Borough Council; and

5.4.2 the Monitoring Fee (County Council) to the County Council.

## **6 Covenants of the Borough Council and the County Council**

6.1 The Borough Council covenant with the Owner that it will perform the Borough Council's covenants as set out in this Deed

6.2 The County Council covenant with the Owner that it will perform the County Council's covenants as set out in this Deed and in the event of the Application being refused on Appeal the County Council shall on request by the payer repay such unspent funds as the County Council is holding to the payer of Monitoring Fee (County Council) but less any costs incurred by the County Council in monitoring this Deed until the date of such refusal

6.3 Any approval, consent, direction, authority, agreement or action required of or to be given by the Borough Council or the County Council under this Deed shall not be unreasonably withheld or delayed

## **7 Successors and Exclusions**

7.1 The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Borough Council and the County Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof

7.2 Save for Clause 5.2 no planning obligations contained in this Deed shall be binding on any Statutory Undertaker with any existing interest in any part of the Land or which acquires an interest in any part of the Land for the purpose of the supply of electricity, gas, water, or sewerage, drainage or public telecommunication services

7.3 No obligations contained in this Deed shall be binding on any freehold or leasehold owners or Occupiers of individual Dwellings (or their respective mortgagees or successors in title) constructed pursuant to the Planning Permission save for the provisions of Paragraph 2.6 of Schedule 7 which shall be enforceable against the owners and occupiers of the relevant Affordable Housing Units or their charges mortgagees or successors in title

7.4 Save for any subsisting or antecedent breach, non-performance or non-observance of their obligations or other provisions of this Deed arising prior to parting with such interest no person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs

## **8 Determination of the Planning Permission**

8.1 Save for Clause 5.3, this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is not issued or shall be revoked or modified pursuant to section 97 of the 1990 Act or quashed or otherwise withdrawn (without the consent of the Owner) or expires prior to Implementation of the Planning Permission **PROVIDED THAT** this sub-clause 8.1 shall have no effect if a planning permission under Sections 73 or 73A of the 1990 Act are granted in respect of the Planning Permission

8.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of this Deed

## **9 Section 73 and/or Section 73A Applications**

9.1 In the event that the Borough Council in consultation with the County Council (or the Secretary of State on appeal) grants a planning permission pursuant to an application made under section 73 and/or section 73A of the 1990 Act in respect of any condition of the Planning Permission (or a subsequent permission to which this clause relates) references in this Deed to the Application the Planning Permission and/or the Development shall be deemed to include any such subsequent planning application and planning permission granted pursuant to such application and/or development permitted by such planning permission respectively and this Deed shall take effect and be read and construed accordingly **UNLESS** the Borough Council in consultation with the County Council in determining the section 73 and/or section 73A application (or the Secretary of State determining the section 78 of the 1990 Act appeal in relation to that application) requires consequential amendments to this Deed as are necessary to make the development the subject of the section 73 and/or section 73A application acceptable in planning terms **IN WHICH CASE** a separate deed under section 106 or section 106A of the 1990 Act (as the case may be) will be required to secure such planning obligations or other planning benefits as may be determined **PROVIDED ALWAYS THAT** nothing in this Deed shall in any way fetter the Borough Council's

discretion in consultation with the County Council in relation to the section 73 and/or section 73A application or the determination thereof

## **10 Disputes**

10.1 Without prejudice to the rights of the Borough Council or the County Council to take immediate alternative action any dispute arising under this Deed (**SAVE FOR** the amount of any contribution payable pursuant to this Deed or the due date of payment) shall be referred at the instance of any Party for determination by a single expert whose decision shall (save in the case of manifest error or fraud) be final and binding on the Parties

10.2 The following provisions and terms of appointment shall apply to such disputes

10.2.1 if the dispute relates to

10.2.1.1 transport or highway works, engineering, demolition or construction works a chartered civil engineer being a member of the Institution of Civil Engineers (having not less than 10 (ten) years' relevant experience in the public or private sector) agreed by the Parties to the dispute but in default of agreement appointed at the request of any of the Parties by or on behalf of the President from time to time of the Institution of Civil Engineers

10.2.1.2 any building within the Development or any similar matter a chartered surveyor (having not less than 10 (ten) years' relevant experience) agreed by the Parties to the dispute but in default of agreement appointed at the request of any of the Parties by or on behalf of the President from time to time of the Royal Institution of Chartered Surveyors

10.2.1.3 financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant, a chartered accountant (having not less than 10 (ten) years' relevant experience) agreed by the Parties to the dispute but in default of agreement appointed at the request of any of the Parties by or on behalf of the President from time to time of the Royal Institute of Chartered Accountants in England and Wales

10.2.1.4 any legal requirement or interpretation or other matter regarding this Deed, the same shall be referred to Counsel of at least 10 (ten) years' experience in such matters who shall be appointed in



default of agreement between any of the Parties by the President of the Bar Council for England and Wales or his deputy

in all other cases the Expert shall be an independent and suitable person holding appropriate professional qualifications with least 10 (ten) years post qualification experience in the subject matter of the dispute

- 10.2.2 The Expert shall be agreed between the Parties or in the absence of such agreement appointed by the President (or equivalent person) for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and in the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body within 10 (ten) Working Days after a written request by one Party to the other to agree to the appointment of an expert, then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of either Party and such solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares
- 10.2.3 The Expert shall be required to give notice of his appointment to each of the Parties to the dispute
- 10.2.4 The Party calling for the determination shall make written submissions together with any supporting material to the Expert and the other Parties within 10 (ten) Working Days of the date of notification of the Expert's appointment pursuant to Clause 10.2.3
- 10.2.5 The other Parties shall have 10 (ten) Working Days from the receipt of such written submission to make counter written submissions together with any supporting material
- 10.2.6 If exceptionally a Party feels that further submission should be taken into account, the Expert may accept such late submission provided before deciding whether exceptionally to accept further submissions the applying Party shall provide and the Expert will require
- 10.2.6.1 an explanation as to why it was not submitted as part of the originating submission or counter submission and

- 10.2.6.2 an explanation of how and why the material is relevant and
- 10.2.6.3 the opposing Party's views on whether it should be accepted

**AND** the Expert will refuse to accept further submissions unless fully satisfied that

- 10.2.6.4 it is not covered in the submissions already received; and
- 10.2.6.5 it is directly relevant and necessary for his decision; and
- 10.2.6.6 it would not have been possible for the Party to have provided the submission with the originating submission or counter submission (as the case may be)

**AND** the Expert will notify the Parties of his decision within 5 (five) Working Days of receipt of the late submission

**AND** where such further submission is permitted

- 10.2.6.7 the other Parties shall be entitled to make written submission within 10 (ten) Working Days of the date of notification of the Expert's decision to allow the late submission; and
- 10.2.6.8 the Expert may take this into account when making any cost order.

10.2.7 Allowing for the nature and complexity of the dispute, if the Expert is of the opinion that he is likely to need to test the submissions by questioning or to clarify matters arising out of the submissions, the Expert may call for the dispute to be heard in an informal round table discussion led by the Expert who shall identify the issues for discussion based on the submissions received.

10.2.8 Unless otherwise agreed between the Parties to the dispute the Expert shall disregard any representations made out of time.

10.2.9 Any Expert howsoever appointed shall be subject to the express requirement that a decision be reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 (twenty) Working Days

- 10.2.9.1 after the conclusion of any hearing that takes place; or
- 10.2.9.2 after the Expert has received the representations under Clause 10.2.5 or 10.2.6 (as the case may be) or if none, the expiry of the period referred to in Clause 10.2.5 or 10.2.6 (as the case may be).

10.2.10 The Expert's decision shall be in writing and give reasons for his decision.

10.2.11 The Expert's fees shall be payable by the Parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties in equal shares.

## 11 Notices

11.1 Any communication to be given pursuant to this Deed including any notice, agreement, approval or authorisation must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

<b>The Borough Council</b>	<b>Maidstone Borough Council</b>
<b>Address</b>	The Head of Development Management Maidstone Borough Council Maidstone House King Street Maidstone Kent ME15 6JQ  Reference 23/504471/OUT
With a copy to	The Section 106 Monitoring Officer

<b>The County Council</b>	<b>The Kent County Council</b>
<b>Address</b>	<b>General Counsel</b> Sessions House Maidstone Kent ME14 1XQ  Reference <b>KEN002:001525</b>  and a copy of such notice, agreement, approval authorisation or other written communication shall be emailed to <a href="mailto:developer.contributions@kent.gov.uk">developer.contributions@kent.gov.uk</a>

<b>The Owner</b>	<b>The Master Fellows and Scholars of the College of Saint John the Evangelist in the University Of Cambridge</b>
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<b>Address</b>	<p>The Bursary St Johns College St Johns Street Cambridge CB2 1TP</p> <p>Care of Mills &amp; Reeve LLP Botanic House 100 Hills Road Cambridge CB2 1PH.</p>
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<b>The Promoter</b>	<b>Catesby Strategic Land Limited</b>
<b>Address</b>	<p>Planning &amp; Operations Director Orchard House Papple Close Houlton Rugby CV23 1EW</p>

11.2 Any communication given pursuant to this Deed shall conclusively be deemed to have been received

11.2.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or

11.2.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 (two) Working Days after the date of posting

11.3 Any communication by the Owner required pursuant to this Deed shall cite the Clause or Paragraph or Sub-Paragraph of the relevant Schedule to this Deed to which such communication relates

11.4 This Clause does not apply to Schedule 8 (Mortgagee Protection) or the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution

## **12 Local Land Charge**

- 12.1 This Deed is a local land charge and shall be registered by the Borough Council as such.
- 12.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Borough Council and/or the County Council (as the case may be) for confirmation to that effect and (subject to the payment of the Borough Council's and/or the County Council's (as the case may be) reasonable costs and charges in connection therewith) upon the Borough Council and/or the County Council (as the case may be) being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council and/or the County Council (as the case may be) shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner.
- 12.3 The Borough Council and/or the County Council's (as the case may be) shall upon the written request of the Owner (and subject to the payment of the Borough Council's and/or the County Council's (as the case may be) reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council and/or the County Council's (as the case may be) being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable the Borough Council shall cancel all entries made in the local land charges register in respect of this Deed.

## **13 Powers**

- 13.1 Nothing contained or implied in this Deed shall fetter, prejudice, restrict or affect the rights, discretions, powers, duties, responsibilities and obligations of the Borough Council or the County Council (as the case may be) under all and any legislative instrument including statutes, by-laws, statutory instruments, orders and regulations for the time being in force in the exercise of its function as a local authority

## **14 Severability**

- 14.1 If any provision (or part thereof) of this Deed shall be held to be invalid, illegal or unenforceable then the validity, legality, and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected, impaired or called into question.

## **15 Rights of Third Parties**

- 15.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed

## **16 Change of Ownership and New Interest**

- 16.1 The Owner warrants that

16.1.1 they have full authority to enter into this Deed;

16.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land and that it has not leased mortgaged charged or otherwise created any interest in the Land at the date of this Deed;

16.1.3 they know of no impediment to the validity of this Deed;

16.1.4 they are not aware of any subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed; and

16.1.5 they shall make good any loss to the Borough Council and the County Council as a result of a breach of this warranty within 10 (ten) Working Days of a request to do so.

- 16.2 The Owner shall not complete the transfer or lease of any Open Market Dwelling if any monies due to be paid to the Borough Council or the County Council (as the case may be) pursuant to the terms of this Deed by the date of Occupation of that Open Market Dwelling have not been paid

- 16.3 Save for the transfer of an individual Open Market Dwelling the Owner shall give the Borough Council and the County Council notice as soon as reasonably practicable of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land (**SAVE FOR** the transfer, lease or assignment of any of the Dwellings to be constructed in accordance with the Planning Permission to a private individual) occurring before all the obligations under this Deed have been discharged such notice to give:

16.3.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and

16.3.2 the nature and extent of the interest disposed of by reference to a plan.

16.4 The Parties agree that a mortgagee of the Land shall have no liability under this Deed **UNLESS** it takes possession of the Land or any part of the Land in which case the mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner and the security of its charge over the Land shall take effect subject to this Deed

## **17 Waiver**

17.1 No waiver (whether expressed or implied) by the Borough Council or the County Council (as the case may be) of any breach or default or delay in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Borough Council or the County Council (as the case may be) from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

## **18 Indexation**

18.1 All the financial contributions payable pursuant to this Deed shall be Index Linked.

18.2 The Borough Council Contributions shall be increased in the same proportion as the percentage increase in the Consumer Price Index between the quarterly index figure immediately preceding the date of this Deed and the quarterly index figure for the quarter immediately preceding the date of actual payment.

18.3 SAVE FOR the Travel Plan Monitoring Contribution and the TRO Contribution, the County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately preceding Q1 2022 and the quarterly index figure for the quarter immediately preceding the date of actual payment.

18.4 Where reference is made to any index in this Deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service, the Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council or the County Council (as the case may be) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council or the County Council (as the case may be) shall approve.

18.5 In the event that there is a decrease in the relevant index in this Clause 18 any financial contribution payable pursuant to this Deed shall not fall below the figure set out within this Deed.

## **19 Forward-Funding**

19.1 If the County Council forward-funds any project, facility, infrastructure or other expenditure from its own resources and/or enters into a commitment to a third party to repay any similar forward-funding provided by that third party (whether in cash and/or in kind) in anticipation of receipt of any relevant contribution or payment under the provisions of this Deed then on such receipt the County Council may credit such contribution or payment (including any indexation element and/or interest received thereon) to its own resources and/or repay such third party accordingly and in either case the receipt shall be treated as being immediately expended by the County Council for the purpose for which the forward-funding was expended PROVIDED THAT this Clause 19 shall only apply to expenditure incurred by the County Council in connection with one or more of the specific purposes for which the County Council Contributions are due to be paid under this Agreement.

## **20 Interest on Late Payments**

20.1 If any sum or amount due or outstanding under this Deed has not been paid to the Borough Council or the County Council (as the case may be) by the date it is due the Owner shall pay the Borough Council or the County Council (as the case may be) interest on that amount (or any outstanding balance) at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment.

## **21 VAT**

21.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT (if any).

21.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice.

## **22 Agreements and Declarations**

22.1 The Parties agree that

22.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission; and



22.1.2 nothing in this Deed grants planning permission or any other approval, consent or permission required from the Borough Council or the County Council (as the case may be) in the exercise of any other statutory function.

## **23 Governing Law**

23.1 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.

23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England.

## **24 Delivery**

24.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated.

**IN WITNESS** whereof the Parties hereto have executed this Deed on the day and year first before written

The COMMON SEAL of )  
**MAIDSTONE BOROUGH COUNCIL** )  
was affixed to this Deed in the )  
presence of )

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Authorised Signatory

The COMMON SEAL of **THE KENT** )  
**COUNTY COUNCIL** was affixed to )  
this DEED in the presence of )  
)

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Authorised Signatory

Executed as a **DEED** by affixing the )  
 common seal of )  
**THE MASTER FELLOWS AND** )  
**SCHOLARS OF THE COLLEGE** )  
**OF SAINT JOHN THE** )  
**EVANGELIST IN THE UNIVERSITY** )  
**OF CAMBRIDGE** in the presence of )

Signature

Name (IN BLOCK CAPITALS)

Signed as a DEED by <b>CATESBY STRATEGIC LAND LIMITED</b> acting by a director in the presence of:	) ) ) ) ) ) )	
		<b>Signature – Director</b>
		<b>Name (IN BLOCK CAPITALS)</b>
		<b>Signature of witness</b>
		<b>Name (IN BLOCK CAPITALS)</b>  <b>Address</b>  <b>Occupation</b>

## **Schedule 1 : The Land**

The land against which this Deed is enforceable comprises all that land and premises situate at land lying to the North of Moat Road, Headcorn, Ashford as shown on the Plan of which

1. the Owner is the registered proprietor of the freehold with title absolute of all of the land and premises shown edged red on the Plan and forming part of the land registered at the Land Registry under title number K971301 subject to the matters in the Charges Registers but otherwise free from encumbrances.

## **Schedule 2: Notices**

### **1. Interpretation of this Schedule**

- 1.1. Unless the context otherwise requires the terms and expressions used in this Schedule shall have the meanings defined in Clause 1.1 and Paragraph 1.1 of the Schedules

### **2. Notices**

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that:

#### **Notification of Implementation of Planning Permission**

- 2.1. it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Implementation;
- 2.2. it shall not Implement the Planning Permission unless and until the notice required by Paragraph 2.1 has been provided to the Borough Council and the County Council;
- 2.3. it shall subsequently notify the Borough Council and the County Council promptly in any event within 5 (five) Working Days of the actual date of Implementation;

#### **Notification of Commencement of Development**

- 2.4. it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Commencement of Development;
- 2.5. it shall not Commence Development unless and until the notice required by Paragraph 2.4 has been provided to the Borough Council and the County Council;
- 2.6. it shall notify the Borough Council and the County Council promptly in any event within 5 (five) Working Days of the actual date of Commencement;

#### **Notification of Occupation**

- 2.7. it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of first Occupation of the Development
- 2.8. the Owner shall not first Occupy any part of the Development unless and until the notice required by Paragraph 2.7 has been provided to the Borough Council and the County Council
- 2.9. it shall notify the Borough Council and the County Council promptly in any event within 5 (five) Working Days of the actual date of first Occupation of the Development

- 2.10 it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Occupation of 40% (forty percent) of the Dwellings
- 2.11 the Owner shall not first Occupy more than 40% (forty percent) of the Dwellings unless and until the notice required by Paragraph 2.10 has been provided to the Borough Council and the County Council
- 2.12 it shall notify the Borough Council and the County Council promptly in any event within 5 (five) Working Days of the actual date of Occupation of 40% (forty percent) of the Dwellings
- 2.13 it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Occupation of 60% (sixty percent) of the Dwellings
- 2.14 the Owner shall not first Occupy more than 60% (sixty percent) of the Dwellings unless and until the notice required by Paragraph 2.13 has been provided to the Borough Council and the County Council
- 2.15 it shall notify the Borough Council and the County Council promptly in any event within 5 (five) Working Days of the actual date of Occupation of 60% (sixty percent) of the Dwellings
- 2.16 it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Occupation of 80% (eighty percent) of the Dwellings
- 2.17 the Owner shall not first Occupy more than 80% (eighty percent) of the Dwellings unless and until the notice required by Paragraph 2.13 has been provided to the Borough Council and the County Council
- 2.18 it shall notify the Borough Council and the County Council promptly in any event within 5 (five) Working Days of the actual date of Occupation of 80% (eighty percent) of the Dwellings

**Notification of Completion**

- 2.10 it shall provide the Borough Council and the County Council with a copy of the final Certificate of Practical Completion of the Development.
- 3 Failure to provide any notice pursuant to this Schedule shall constitute a breach of the terms of this Deed.

## Schedule 3: Financial Contributions

### 1 Interpretation of this Schedule

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<p><b>“Off-site Sports Contribution”</b></p>	<p>means a sum per Dwelling where the total contribution shall be calculated in accordance with the following formula</p> <p><b>D x £2,565 x 0.173 = £OSC Index Linked</b></p> <p>WHERE</p> <p><b>D</b> is the number of Dwellings to be provided pursuant to the Reserved Matters Approval</p> <p><b>£OSC Index Linked</b> is the Off Site Sports Contribution payable</p>
<p><b>“Off-site Sports Facilities”</b></p>	<p>means the improvement and/or provision of sport features at either:</p> <ul style="list-style-type: none"> <li>a) Headcorn Football Club TN27 9LU</li> <li>b) Headcorn Cricket and Tennis Club, TN27 9LE</li> <li>c) Headcorn Bowls Club TN27 9RL</li> <li>d) Accessible sports facilities within 1km of the application site</li> </ul>
<p><b>"Travel Plan Monitoring Contribution"</b></p>	<p>means a contribution in the sum of £948.00 (nine hundred and forty eight pounds) to be paid to the County Council to carry out the Travel Plan monitoring</p>
<p><b>“TRO Contribution”</b></p>	<p>means the sum of £10,000 (ten thousand pounds) to be paid to the County Council towards the implementation of the traffic regulation order (TRO) extending the 30mph speed limit on Moat Road to incorporate the access to the Development</p>
<p><b>"Travel Plan"</b></p>	<p>means the travel plan to be submitted by the Owner to the Borough Council pursuant to the relevant condition imposed by the Planning Permission</p>
<p><b>“Spend”</b></p>	<p>for the purposes of this Schedule includes facilitate the delivery of or apply or spend or allocate or commit or use</p>

	for the purpose for which the relevant contribution was paid and the word “ <b>Spent</b> ” shall be construed accordingly
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**2 Off-site Sports Contribution**

- 2.1 The Owner covenants that it shall pay to the Borough Council the Off-site Sports Contribution before first Occupation of the Development and the Owner further covenants that it shall not Occupy the Development until the Off-site Sports Contribution has been paid the Borough Council
- 2.2 The Borough Council covenants with the Owner that it shall Spend the Off-site Sports Contribution (or any part thereof) on the Off-site Sports Facilities or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree and not to Spend the Off-site Sports Contribution otherwise than on the Off-site Sports Facilities **PROVIDED THAT** the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.1 as if it were part of the principal sum paid by the Owner

**3 Travel Plan Submission and Travel Plan Monitoring Contribution**

- 3.1 The Owner covenants that it shall pay to the County Council the Travel Plan Monitoring Contribution prior to first Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until the Travel Plan Monitoring Contribution has been paid to the County Council
- 3.2 The County Council covenants with the Owner that it shall Spend the Travel Plan Monitoring Contribution (or any part thereof) following payment by the Owner for the purpose of monitoring compliance with the Travel Plan

**4 TRO Contribution**

- 4.1 The Owner covenants that it shall pay to the County Council the TRO Contribution prior to first Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until the TRO Contribution has been paid to the County Council
- 4.2 The Owner covenants that it shall indemnify the County Council in respect of any further costs in processing any application for a traffic regulation order relating to the Development in the event that the County Council's (reasonable and proper) costs in processing any such application exceed the initial payment of £10,000.00 (ten



thousand pounds) paid by the Owner of which the Owner shall pay within 14 Working Days on the date of written demand by the County Council

- 4.3 The County Council covenants with the Owner that it shall Spend the TRO Contribution (or any part thereof) following payment by the Owner for the purpose specified in this Deed

## Schedule 4: Biodiversity Net Gain

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<b>"Biodiversity Gain Land"</b>	means any part of the Land allocated for the delivery of the Biodiversity Units in accordance with the Biodiversity Management Plan which is required to be maintained for at least thirty (30) years from the completion of the BNG Works to create the Biodiversity Units
<b>"Biodiversity Management Plan"</b>	means the plan submitted to, and approved by the Borough Council pursuant to the relevant condition of the Planning Permission to satisfy the Development's requirement to deliver a net gain of Biodiversity Units across the Land of at least 20%
<b>"Biodiversity Gain Land Monitoring Contribution"</b>	means the sum of £20,000 (twenty thousand pounds) Index Linked to be paid by the Owner to the Borough Council to be applied by the Borough Council as a financial contribution towards the Borough Council's costs of monitoring compliance with the Biodiversity Management Plan approved by the Borough Council
<b>"BNG Monitoring Reports"</b>	means a written report which provides an assessment of the performance and efficacy of the BNG Management Plan in the period preceding the relevant Monitoring Report Date
<b>"Biodiversity Metric"</b>	means the statutory biodiversity metric issued by the Department for Environment, Food and Rural Affairs as at the date of this Deed
<b>"Biodiversity Units"</b>	means biodiversity units required to deliver a biodiversity net gain of at least 20% on the Land calculated in accordance with Biodiversity Metric
<b>"BNG Commencement Notice"</b>	means a written notice served by the Owner on the Borough Council which identifies the date of the commencement of the BNG Works on the Biodiversity Gain Land

<b>"BNG Completion Notice"</b>	means a written notice served by the Owner on the Borough Council which confirms that the BNG Works have been completed and the Biodiversity Units created
<b>"BNG Works"</b>	means the works required on the Biodiversity Gain Land to deliver the Biodiversity Units as set out in the Biodiversity Management Plan
<b>"Duration"</b>	means from the date of issue of a BNG Completion Notice, a period of thirty (30) years which the Owner must manage the Biodiversity Land in accordance with the BNG Management Plan
<b>"Monitoring Report Dates"</b>	means the second, fifth, tenth, fifteenth, twentieth, twenty-fifth and thirtieth anniversaries of the BNG Works Completion Notice or as otherwise set out in the Biodiversity Management Plan
<b>"Spend"</b>	means for the purposes of this Schedule includes facilitate the delivery of or apply or spend or allocate or commit or use for the purpose for which the relevant contribution was paid and the word " <b>Spent</b> " shall be construed accordingly

1.2 The Owner covenants with the Borough Council:

**BNG Works**

1.2.1 To issue the BNG Commencement Notice prior to starting the BNG Works

1.2.2 To complete the BNG Works in accordance with the Biodiversity Management Plan

1.2.3 To issue the BNG Completion Notice upon completion of the BNG Works

1.2.4 Not to issue the BNG Completion Notice unless and until the BNG Works have been completed in accordance with the Biodiversity Management Plan

**Management and Maintenance of the BNG Works**

1.2.5 To manage and maintain the BNG Works in accordance with the BNG Management Plan for the Duration

1.2.6 To provide the BNG Monitoring Reports to the Borough Council following each of the Monitoring Report Dates in accordance with the programme for submission as set out in the Biodiversity Management Plan

- 1.2.7 To carry out such remedial measures reasonably identified by the Borough Council and notified to the Owner in writing as soon as reasonably practicable following such notification to ensure that the BNG Management Plan is being complied with

**Biodiversity Gain Land Monitoring Contribution**

- 1.2.8 The Owner covenants that in the event that the Planning Inspector grants Planning Permission subject to a condition which requires the Development to deliver the Biodiversity Units across the Land it shall pay to the Borough Council the BNG Monitoring Contribution prior to first Occupation of the Development.
- 1.2.9 The Borough Council covenants with the Owner that it shall Spend the BNG Monitoring Contribution (or any part thereof) following payment by the Owner for the purpose monitoring compliance with the Biodiversity Management Plan approved by the Borough Council

## Schedule 5: Local Labour

### 1 Interpretation of this Schedule

- 1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<b>“Local Area”</b>	means Maidstone Borough Council’s geographical boundaries.
<b>“Local Labour”</b>	means (as the case may be) potential employees, contractors’, sub-contractors and consultants resident or located within the Local Area.
<b>“Local Employment Scheme”</b>	as the context requires means the Local Employment (Construction) Scheme
<b>“Local Employment (Construction) Scheme”</b>	<p>means a scheme for the provision of training and employment of Local Labour on the Land during the construction of the Development which shall</p> <ol style="list-style-type: none"> <li>1. state the purpose and objectives of the scheme;</li> <li>2. include details of the construction programme for the Development;</li> <li>3. identify all employment (staffing and labour) requirements (together with timings as to when such staffing and labour is likely to be required with reference to the construction programme) and identify what percentage of Local Labour will, as a minimum, be from the Local Area;</li> <li>4. identify training needs (including customised training not currently delivered through mainstream courses) and the delivery of those training needs,</li> <li>5. identify apprenticeships and work placements to be (and likely to be) generated by the construction of the Development</li> <li>6. identify arrangements and initiatives setting out how the Owner and its contractors and sub-contractors</li> </ol>

	<p>will</p> <p>6.1. promote and fill the identified employment requirements of the Development from within the Local Area which initiatives and arrangements shall include (but not be limited to) advertising of all vacancies through Local Area employment agencies and job centres and Local Area newspapers</p> <p>6.2. meet the employment and training targets set out in the scheme</p> <p>6.3. ensure the delivery of the identified training needs and identified apprenticeships and work placements</p> <p><b>AND</b> identify</p> <p>7. the timings and funding arrangements for the implementation of such initiatives</p> <p>8. a scheme for monitoring and reviewing the effectiveness of such initiatives including timescales for the submission of monitoring reports to the Borough Council during the construction phase of the Development</p> <p><b>AND</b> such other matters as the Borough Council may require</p>
<p><b>“Reasonable Endeavours”</b></p>	<p>means that the party under such an obligation shall be bound to take such steps that a prudent and determined person would take to attempt to fulfil (and achieve the desired objective of) the relevant obligation by the expenditure of such effort and/or sums of money (including the engagement of such professional or other advisers as in all the circumstances may be reasonable) provided that it does not adversely affect that party’s commercial interests.</p>

## **2 Local Employment (Construction) Scheme**

- 2.1 The Owner covenants with the Borough Council that it shall submit the Local Employment (Construction) Scheme to the Borough Council for its approval prior to the Commencement of Development.
- 2.2 The Owner covenants with the Borough Council that it shall not Commence Development unless and until the Local Employment (Construction) Scheme has been submitted to and approved by the Borough Council.
- 2.3 The Owner covenants with the Borough Council that it shall implement and (if applicable) ensure that all contractors and subcontractors working at the Land implement and comply with the approved Local Employment (Construction) Scheme.
- 2.4 (If applicable) the Owner covenants with the Borough Council that it shall issue a written statement to its prospective contractors and sub-contractors at the stage of tendering for work and contracts associated with the construction of the Development and ensure that the documentation in any tender it subsequently lets (including **FOR THE AVOIDANCE OF DOUBT** in any tender it subsequently lets to a main contractor) informing them of the provisions of this Paragraph 2 and advising and ensuring that it is a pre-requisite to the acceptance of the tender that all contractors and sub-contractors (as the case may be) are required to:
  - 2.4.1 abide by the approved Local Employment (Construction) Scheme; and
  - 2.4.2 provide regular monitoring information to the Owner in accordance with the approved Local Employment (Construction) Scheme.
- 2.5 The Owner shall submit a final report to the Borough Council no later than 3 (three) months after Occupation of the Development which report shall
  - 2.5.1 assess the overall performance of the Owner and (as the case may be) all contractors and sub-contractors in achieving the objectives of and the employment and training targets identified in the approved Local Employment (Construction) Scheme;
  - 2.5.2 provide suitable evidence substantiating compliance with the approved arrangements and initiatives in the approved Local Employment (Construction) Scheme; and
  - 2.5.3 assess the overall effectiveness of the arrangements and initiatives in achieving the objectives of and the employment and training targets in the approved Local Employment (Construction) Scheme.

### **3**     **Review**

- 3.1     The Owner covenants with the Borough Council that it shall not amend the approved Local Employment Scheme without the approval of the Borough Council.
- 3.2     Where the Owner or the Borough Council reasonably believe that the approved Local Employment Scheme requires amendments or revisions due to (but not limited to) the arrangements or initiatives contained in the approved Local Employment Scheme being ineffective then
  - 3.2.1   the Owner may submit an amended or revised Local Employment Scheme to the Borough Council for its approval or
  - 3.2.2   the Borough Council may request that the Owner submit for approval an amended or revised Local Employment Scheme to reflect such amendments or revisions as it may identify as being ineffective and, unless the Borough Council agrees otherwise, the Owner shall within 20 (twenty) Working Days of a request from the Borough Council under this Sub-Paragraph submit an amended or revised Local Employment Scheme to the Borough Council for its approval.
- 3.3     The Owner covenants with the Borough Council that it shall ensure that it (and, where applicable, its contractors and sub-contractors) shall implement and comply with the amended or revised approved Local Employment Scheme and the provisions of this Schedule shall apply accordingly.

### **4**     **General**

- 4.1     The Owner covenants with the Borough Council that it shall use Reasonable Endeavours to ensure that:
  - 4.1.1   employment opportunities generated during the construction phase of the Development shall be from the Local Area;
  - 4.1.2   all new temporary and permanent vacancies identified during the construction phase shall be advertised through Local Area employment agencies and job centres and Local Area newspapers in advance of recruitment;
  - 4.1.3   businesses contracted and sub-contracted in the construction phase of the Development shall be from the Local Area;
  - 4.1.4   all sub-contracting and tendering opportunities for the construction phase of the Development shall be suitably advertised in the Local Area to make businesses in the Local Area aware of the opportunities, timescales and



procedures to be adopted in tendering for available work.

- 4.2 The Owner covenants with the Borough Council to cooperate fully with the employment agencies and job centres and other employment services/training providers to facilitate maximum employment and training opportunities for Local Labour within the Development.
- 4.3 The Owner shall have due regard to any reasonable requirements and/or recommendations made by the Borough Council in relation to the drafting and operation of the Local Employment Scheme submitted pursuant to the terms of this Deed and/or any subsequent review or amendment thereto.
- 4.4 Any Local Employment Scheme approved pursuant to this Schedule shall be deemed to be incorporated within this Deed and enforceable by the Borough Council as part of this Deed.
- 4.5 The Owner covenants with the Borough Council that it shall on request provide the Section 106 Monitoring Officer with a copy of the approved (including any subsequently approved amended or revised) Local Employment Scheme.

## Schedule 6: County Council Education Contributions

### 1 Interpretation of this Schedule

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<p><b>“Applicable Dwelling”</b></p>	<p>means the Dwellings to be provided pursuant to the Reserved Matters Approval which are not 1 bedroom units of a size which is less than 56 sq. m gross internal area</p>
<p><b>“CIL”</b></p>	<p>means the Community Infrastructure Levy introduced under Part 11 of the Planning Act 2008 or such alternative levy as may replace it as is being charged by the Borough Council or the County Council to fund infrastructure should it be payable in respect of the Development and intended to cover education infrastructure</p>
<p><b>“CIL Regulations”</b></p>	<p>Means the Community Infrastructure Levy Regulations 2010 as amended</p>
<p><b>“Primary Education Contribution”</b></p>	<p>means the sum of £5,412.74 (five thousand four hundred and twelve pounds and seventy-four pence) per Applicable Dwelling where the total contribution shall be calculated in accordance with the following formula</p> <p><b>D x £5,412.74 = £PEC Index Linked</b></p> <p>WHERE</p> <p><b>D</b> is the number of Applicable Dwellings to be provided pursuant to the Reserved Matters Approval</p> <p><b>£PEC Index Linked</b> is the Primary Education Contribution payable</p>
<p><b>“Secondary Education Contribution”</b></p>	<p>means the sum of £5,329.27 (five thousand three hundred and twenty-nine pounds and twenty-seven pence) per Applicable Dwelling where the total contribution shall be calculated in accordance with the following formula</p>

	<p><b>D x £5,329.27 = £SEC Index Linked</b></p> <p>WHERE</p> <p><b>D</b> is the number of Applicable Dwellings to be provided pursuant to the Reserved Matters Approval</p> <p><b>£SEC Index Linked</b> is the Secondary Education Contribution payable</p>
<p><b>“Special Education Needs and Disabilities Contribution”</b></p>	<p>means the sum of £559.83 (Five hundred and fifty-nine pounds and eighty-three pence) per Applicable Dwelling where the total contribution shall be calculated in accordance with the following formula</p> <p><b>D x £559.83 = £SENDC Index Linked</b></p> <p>WHERE</p> <p><b>D</b> is the number of Applicable Dwellings to be provided pursuant to the Reserved Matters Approval</p> <p><b>£SENDC Index Linked</b> is the Special Education Needs and Disabilities Contribution payable</p>
<p><b>“Primary Education Facilities”</b></p>	<p>means</p> <ol style="list-style-type: none"> <li>1) the expansion of schools in the Maidstone rural south east or neighbouring primary education planning groups serving the Development; and/or</li> <li>2) Marden Primary School, 1 Goudhurst Rd, Marden, Tonbridge TN12 9JX, and/or;</li> <li>3) Staplehurst Primary School, Gybbon Rise, Staplehurst, Tonbridge TN12 0LZ, and/or;</li> <li>4) Lenham Primary School, Ham Lane, Lenham, Maidstone ME17 2LL</li> </ol>
<p><b>Secondary Education Facilities</b></p>	<p>means the expansion of secondary schools in the Maidstone District non-selective planning group including Cornwallis Academy New Line Learning Academy and the Lenham School and/or expansion of existing schools in Maidstone &amp; Malling selective planning groups, including Maidstone Girls Grammar</p>

	School, Invicta Girls Grammar School, Oakwood Park Grammar School, and Maidstone Grammar School
<b>Special Education Needs &amp; Disabilities Facilities</b>	means additional Special Education Needs & Disability places with the Maidstone District to serve the Development
<b>“Spend”</b>	means for the purposes of this Schedule includes facilitate the delivery of or apply or spend or allocate or commit or use for the purpose for which the relevant contribution was paid and the word <b>“Spent”</b> shall be construed accordingly

## **2 Primary Education Contribution, Secondary Education Contribution and Special Education Needs & Disabilities Contribution**

2.1 The Owner covenants that subject to the County Council complying with its obligations in paragraph 2.2.4 of this Schedule it shall:

2.1.1 pay to the County Council:

- (a) 50 % of the Primary Education Contribution
- (b) 50 % of the Secondary Education Contribution; and
- (c) 50 % of the Special Education Needs & Disabilities Contribution

Before Commencement of the Development and covenants further that it shall not Commence the Development unless and until the contributions payable pursuant to this paragraph 2.1.1 have been paid to the County Council and the Borough Council have been notified that payment has been made

2.1.2 pay to the County Council:

- (a) the balance of the Primary Education Contribution
- (b) the balance of the Secondary Education Contribution; and
- (c) the balance of the Special Education Needs & Disabilities Contribution

before first Occupation of the Development and covenants further that it shall not Occupy the Development unless and until the contributions payable pursuant to this paragraph 2.1.2 have been paid to the County Council and the Borough Council have been notified that payment has been made

2.2 The County Council covenants with the Owner that:

2.2.1 it shall Spend the Primary Education Contribution (or any part thereof) on the Primary Education Facilities or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree in writing and not to Spend the Primary Education Contribution otherwise than on the Primary Education Facilities;

2.2.2 it shall Spend the Secondary Education Contribution (or any part thereof) on the Secondary Education Facilities or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree in writing and not to Spend the Secondary Education Contribution otherwise than on the Secondary Education Facilities;

2.2.3 it shall Spend the Special Education Needs & Disabilities Contribution (or any part thereof) on the Special Education Needs & Disabilities Facilities or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree and not to Spend the Special Education Needs & Disabilities Contribution otherwise than on the Special Education Needs & Disabilities Facilities;

2.2.4 From the date of this Deed until the date upon which payment falls due under paragraphs 2.1.1 and 2.1.2 of this Schedule the County Council shall use reasonable endeavours to bid to the Borough Council for CIL for the Primary Education Facilities and the Secondary Education Facilities to coincide with available CIL bidding rounds as advised by the Borough Council

2.3 In the event that all or any part of:

2.3.1 the Primary Education Contribution; or

2.3.2 the Secondary Education Contribution; or

2.3.3 the Special Education Needs & Disabilities Contribution

has not been Spent for the purpose for which it was paid pursuant to this Schedule 4 within 10 (ten) years from the date upon which the final payment of the Primary Education Contribution the Secondary Education Contribution and/or the Special Education Needs & Disabilities Contribution (as applicable) was made to the County Council and unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made the relevant payment to repay such sum or amount (or such part thereof) as the County Council is holding to the person who paid the relevant contribution together with any accrued interest that

has not been Spent (if any) but less any tax that may be payable thereon and the County Council's administration expenses and for the avoidance of doubt if part of the Primary Education Contribution, the Secondary Education Contribution or the Special Education Needs & Disabilities Contribution has been Spent by the County Council pursuant to this Schedule 4 then there shall be no requirement to repay such sums as have already been Spent by the County Council.

2.4 In the event that prior to the relevant Primary Education Contribution and/or the Secondary Education Contribution falling due (pursuant to paragraphs 2.1.1 and 2.1.2 above) and CIL monies are unconditionally paid to the County Council towards the Primary Education Facilities and/or the Secondary Education Facilities then the corresponding Primary Education Contribution and/or the Secondary Education Contribution will be reduced by the relevant amount of monies received pursuant to paragraph 2.2.4 above by the County Council as a contribution towards the Primary Education Facilities and/or the Secondary Education Facilities (as the case may be) and **FOR THE AVOIDANCE OF DOUBT** in order for this paragraph 2.4 to apply:

2.4.1 the County Council must have unconditionally received the CIL monies towards the Primary Education Facilities and the Secondary Education Facilities before the occurrence of the triggers in paragraphs 2.1.1 and 2.1.2 of this Schedule; and

2.4.2 the County Council need to be reasonably satisfied that the application of the CIL monies will meet the needs arising from the Development only;

2.4.3 if no CIL monies or insufficient CIL monies have been received towards the Primary Education Facilities and/or the Secondary Education Facilities by the triggers at paragraphs 2.1.1 and 2.1.2 then the relevant amount of the Primary Education Contribution and the Secondary Education Contribution will be due to be paid by the Owner to the County Council in accordance with paragraphs 2.1.1 and 2.1.2 respectively

## Schedule 7: Affordable Housing

### 1. Interpretation of this Schedule

- 1.1. This Schedule shall regulate those Dwellings to be delivered and disposed of as Affordable Dwellings and unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<b>"Affordable Dwellings "</b>	<p>means a maximum of 40% (forty percent) of the total amount of Dwellings (rounded up to the nearest whole Dwelling) approved pursuant to the Reserved Matters Approval to be provided by the Owner on the Land together with rights and easements over the Land to provide access to the Dwelling and such entrance way, corridors, parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including vehicle and cycle parking and curtilage of which:</p> <ol style="list-style-type: none"><li>1) 75% (seventy five percent) shall be Social Rented Units (the <b>"Social Rent Requirement"</b>) which are to be transferred to a Registered Provider</li></ol> <p>and</p> <ol style="list-style-type: none"><li>2) 25% (twenty five percent) shall be Shared Ownership Units (the <b>"Shared Ownership Requirement"</b>) which are to be transferred to a Registered Provider</li></ol> <p><b>PROVIDED ALWAYS THAT</b> where the rounding up of the Social Rented Units and the Shared Ownership Units (as the case may be) to the nearest whole Dwelling results in more Affordable Dwellings being secured than is required then the Affordable Dwellings shall be rounded up or down (as the case may be) in the following order provided that preference shall always be given to Social Rented Units which will always be rounded up to the nearest whole:</p>
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	<p>1. the Shared Ownership Units shall be rounded down to the nearest whole Dwelling;</p> <p>2. the Social Rented Units shall be rounded up to the nearest whole Dwelling</p> <p><b>AND FOR THE PURPOSES OF THIS SCHEDULE</b> the reference to <b>“Affordable Dwellings”</b> shall be a reference to the Social Rented Units and/or the Shared Ownership Units to be provided on the Affordable Housing Land</p>
<b>“Affordable Housing”</b>	means the Affordable Dwellings to be provided within the Development which are available to persons in Housing Need and which are to be made permanently available to such persons nominated by the Borough Council
<b>"Affordable Housing Land"</b>	means those plots on the Land approved by the Borough Council pursuant to the approved Affordable Housing Scheme for the location of the Affordable Housing on which the Affordable Dwellings will be constructed and delivered in accordance with the obligations set out in this Deed
<b>“Affordable Housing Scheme”</b>	<p>means a scheme for the provision of the Affordable Dwellings to be provided by the Owner on the Land which scheme shall (as a minimum) include:</p> <ul style="list-style-type: none"> <li>• a plan showing the location of the Affordable Dwellings on the Land appropriately distributed throughout the Development so as not to be segregated from the Open Market Dwellings and ensure inclusive and mixed communities;</li> <li>• details of the tenure and tenure split;</li> <li>• identifying which of the Affordable Dwellings (being no less than 15% (fifteen percent) of the Affordable Dwellings) is to comprise fully wheelchair accessible Dwellings their location within the Development (as shown on the plan above) and the type and size of Affordable Dwelling to be provided as fully wheelchair accessible</li> </ul>



	<b>AND</b> such other matters as the Borough Council may reasonably require
<b>“Allocations Scheme”</b>	means the Borough Council's published scheme for determining the priority and order in which affordable housing is allocated to applicants on its housing register, including criteria for eligibility prioritisation and allocation procedures
<b>"HE"</b>	means the body known as Homes England established pursuant to Part 1 of the Housing and Regeneration Act 2008 or any successor body performing substantially the same functions
<b>“Housing Need”</b>	means: a) in relation to the Social Rented Units the requirement by a person for social housing allocation in accordance with the Allocations Scheme and b) in relation to the Shared Ownership Units the requirement by a person to be registered with a Registered Provider and in accordance with current government guidance to be granted a Shared Ownership Lease because the person's income is insufficient to enable them to rent or buy housing available locally on the open market determined with regard to local incomes and local house prices
<b>"Indicative Affordable Housing Mix"</b>	means the mix for the Affordable Housing which (unless otherwise agreed with the Borough Council) shall be in accordance with Appendix B of this Deed
<b>“Local Housing Allowance”</b>	means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework or body that may replace it
<b>“Part M4(2)”</b>	means Part M4(2) “Category 2: Accessible and adaptable dwellings” of the Building Regulations 2010 as supported by “Approved Document M: Access to and

	use of buildings, volume 1: Dwellings” as may be amended, updated or replaced from time to time or such other equivalent standard as approved by the Borough Council
<b>“Part M4(3)”</b>	means Part M4(3) "Category 3: Wheelchair user dwellings" of Schedule 1 to the Building Regulations 2010 as supported by "Approved Document M: Access to and use of buildings, volume 1: Dwellings" as may be amended, updated or replaced from time to time or such other equivalent standard as approved by the Borough Council
<b>"Registered Provider"</b>	means any person body or entity which is registered as a provider of social housing with the RSH in accordance with section 80(2) and Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 and has not been removed from the register (including its successors and assigns)
<b>“RSH”</b>	means the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any successor body with equivalent regulatory functions
<b>“Shared Ownership Lease”</b>	means a lease which accords with HE's model form of lease issued from time to time
<b>"Shared Ownership Units”</b>	means the Affordable Dwellings to be occupied by persons who are in Housing Need whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 10% (ten percent) and not more than 75% (seventy five percent) and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% (one hundred percent)
<b>“Social Rent”</b>	means chargeable rent (exclusive of service charges) that is subject to the RSH’s Rent Standard (April 2020) and associated guidance (as such standard and/or guidance may be amended updated or replaced from time to time) and is required to be offered to eligible

	persons in Housing Need at the applicable chargeable rent set in accordance with the RSH's guidance
<b>“Social Rented Units”</b>	means the Affordable Dwelling owned and managed by the Registered Provider and let to a person in Housing Need at a Social Rent

## 2. General Provisions

- 2.1. The Owner covenants that prior to Commencement of Development the Owner shall submit to the Borough Council for its approval the Affordable Housing Scheme and the Owner shall not Occupy any Dwelling unless and until the Borough Council has approved the Affordable Housing Scheme.
- 2.2. Subject to Paragraph 5 (Exclusions) the Owner covenants that the total number of Affordable Dwellings to be provided on the Land shall not exceed the total of the Social Rent Requirement plus the Shared Ownership Requirement
- 2.3. The Owner covenants that it shall construct and deliver the Affordable Dwellings on the Affordable Housing Land in accordance with the approved Affordable Housing Scheme and the other provisions of this Schedule.
- 2.4. The Owner covenants that the Affordable Dwellings shall be constructed:
- 2.4.1. in accordance with Part M4(2); and
- 2.4.2 (if any of the Affordable Dwellings are required by the Borough Council pursuant to the Affordable Housing Scheme to be fully wheelchair accessible) in accordance with Part M4(3).
- 2.5. Subject to Paragraph 5 (Exclusions) the Owner covenants that the Affordable Dwellings shall not be Occupied or used for any other purpose other than as Affordable Housing unless otherwise agreed by the Borough Council.
- 2.6. Subject to Paragraph 5 (Exclusions) the Owner covenants that:
- 2.6.1. the Social Rented Units shall not be Occupied other than by persons who are in Housing Need; and
- 2.6.2. the Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need and duly registered with a Registered Provider.

## 3. Transfer of the Affordable Dwellings

Subject to paragraph 7 of this Schedule 6:

- 3.1. The Social Rented Units and the Shared Ownership Units shall be transferred to and managed by a Registered Provider.
- 3.2. Prior to Occupation of 40% (forty percent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed by the Borough Council it shall ensure that:
  - 3.2.1. 50% (fifty percent) of the Affordable Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (and on Practical Completion of the Affordable Dwellings the Owner further covenants that it shall provide a copy of the certificate of Practical Completion to the Borough Council); and
  - 3.2.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings has been transferred or granted to the Registered Provider (or the Borough Council as the case may be pursuant to Paragraph 6) free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings; and
  - 3.2.3. the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the Affordable Dwellings in accordance with the Allocations Scheme and the provisions of this Deed;

**AND** the Owner covenants that no more than 40% (forty percent) of the Open Market Dwellings shall be Occupied unless and until the provisions of this Sub-Paragraph have been complied with or unless otherwise agreed by the Borough Council.
- 3.3. Prior to Occupation of 60% (sixty percent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed by the Borough Council it shall ensure that:
  - 3.3.1. 75% (seventy five percent) of the Affordable Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (and on Practical Completion of the Affordable Dwellings the Owner further covenants that it shall provide a copy of the certificate of Practical Completion to the Borough Council); and
  - 3.3.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings Practically

Completed has been transferred or granted to the Registered Provider (or the Borough Council as the case may be pursuant to Paragraph 6) free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings; and

- 3.3.3. the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the Affordable Dwellings Practically Complete in accordance with the Allocations Scheme and the provisions of this Deed

**AND** the Owner covenants that no more than 60% (fifty percent) of the Open Market Dwellings shall be Occupied unless and until the provisions of this Sub-Paragraph have been complied with or unless otherwise agreed by the Borough Council.

- 3.4. Prior to Occupation of 80% (eighty per cent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed by the Borough Council it shall ensure that:

- 3.4.1. all of the Affordable Dwellings shall have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (and on Practical Completion of the Affordable Dwellings the Owner further covenants that it shall provide a copy of the certificate of Practical Completion to the Borough Council); and

- 3.4.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings Practically Completed has been transferred or granted to the Registered Provider (or the Borough Council as the case may be pursuant to Paragraph 6) free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings; and

- 3.4.3. the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the Affordable Dwellings Practically Complete in accordance with the Allocations Scheme and the provisions of this Deed

**AND** the Owner covenants that no more than 80% (eighty percent) of the Open Market Dwellings shall be Occupied unless and until the provisions of this Sub-Paragraph have been complied with or unless otherwise agreed by the Borough Council.

- 3.5. The Owner covenants that it shall provide evidence of the transfer of the freehold or leasehold interest of the Affordable Dwellings referred to in this Paragraph 3 of this Schedule to the Borough Council within 15 (fifteen) Working Days of completion of the transfer.
- 3.6. Subject to Paragraph 5 (Exclusions) the Owner covenants that it shall ensure that the price to be paid for the Social Rented Units by the Registered Provider (or the Borough Council as the case may be) shall be at a level that allows the Social Rented Units to be paid for through rents to be charged as Social Rent.
- 3.7. Subject to Paragraph 5 (Exclusions) the Owner covenants that no more than a 10% (ten percent) to 75% (seventy five percent) share in the Shared Ownership Units shall be sold to eligible applicants initially and the rent (excluding service charge) to be charged on the remaining percentage share in the Shared Ownership Units shall not be more than 3% (three percent) of the capital value of the unsold equity at the point of initial sale in that particular individual Shared Ownership Unit with each subsequent annual rent increase limited to a maximum of CPI plus 1% (one percent).

#### **4. Miscellaneous Provisions**

- 4.1. The Owner covenants that prior to Practical Completion of the Affordable Dwellings:
  - 4.1.1. all public highways (if any) and public sewerage and drainage serving the Affordable Dwellings shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over consents or agreements that might be required;
  - 4.1.2. all private roads footways and footpaths (if any) serving the Affordable Dwellings shall be in place and constructed to an adoptable standard; and
  - 4.1.3. all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Dwellings shall be constructed laid connected operational and serviceable.

#### **5. Exclusions**

- 5.1. The Affordable Housing Provisions in this Agreement shall not be binding on nor be enforceable against:

- 5.1.1. subject to compliance with Schedule 8 a Chargee who is proposing to exercise its power of sale or otherwise dispose of the Relevant Affordable Housing;
- 5.1.2. a tenant of a Social Rented Unit who has exercised a statutory right to acquire;
- 5.1.3. a tenant of a Social Rented Unit who has exercised a statutory right to buy;
- 5.1.4. a Shared Ownership leaseholder who has acquired 100% (one hundred percent) of the shares in the Shared Ownership Unit: and
- 5.1.5. any successor in title of any persons detailed in Sub-Paragraphs 5.1.2, 5.1.3 and 5.1.4 above or their mortgagee or charge.

## Schedule 8: Mortgagee Protection

### 1. Interpretation of this Schedule

- 1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<p><b>“Charge”</b></p>	<p>means a mortgage, charge or other security or loan documentation granting a security interest in the Relevant Affordable Housing in favour of the Chargee</p>
<p><b>“Chargee”</b></p>	<p>means any mortgagee or chargee of the Registered Provider of the Relevant Affordable Housing and any receiver (including an administrative receiver) and manager 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</p>
<p><b>“Date of Deemed Service”</b></p>	<p>means in each instance where a Chargee has served a Default Notice under Paragraph 2.1.1</p> <p>(a) in the case of service by delivery by hand of the Default Notice to the Borough Council’s offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ during 09h00 and 17h00 on a Working Day the date on which the Default Notice is so delivered <b>PROVIDED THAT</b> if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or</p>



	(b) in the case of service by using first class registered post or other next Working Day delivery service within the United Kingdom to the Borough Council's offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ the second Working Day after the date on which the Default Notice is posted (by being placed in a post box or being collected by or delivered to Royal Mail) <b>PROVIDED THAT</b> the Chargee is able to evidence that the Default Notice was actually delivered to the LPA (by Royal Mail proof of delivery or otherwise)
<b>“Default Notice”</b>	means a notice in writing served on the Borough Council by the Chargee under Paragraph 2.1.1 of the Chargee's intention to enforce its security over the Relevant Affordable Housing
<b>“Intention Notice”</b>	means a notice in writing served on the Chargee by the Borough Council under Paragraph 2.3 that the Borough Council is minded to purchase the Relevant Affordable Housing
<b>“Moratorium Period”</b>	means in each instance where a Chargee has served a Default Notice under Paragraph 2.1.1 the period from (and including) the Date of Deemed Service on the Borough Council of the Default Notice to (and including) the date falling 3 (three) months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the Borough Council)
<b>“Option”</b>	means the option to be granted to the Borough Council (and/or its nominated substitute Registered Provider) in accordance with Paragraph 2.4 for the purchase of the Relevant Affordable Housing

<b>“Relevant Affordable Housing”</b>	means the Affordable Housing that the Chargee intends to enforce its Charge against as notified and identified to the Borough Council pursuant to Paragraph 2.2
<b>“Sums Due”</b>	means all sums due to a Chargee of the Relevant Affordable Housing pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses.

## 2. Mortgagee Protection

2.1. In order to benefit from the protection granted by Paragraph 5.1.1 of Schedule 5 a Chargee must

2.1.1. serve a Default Notice on the Borough Council by:

2.1.1.1. delivery by hand to the Borough Council's offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ during 09h00 and 17h00; or

2.1.1.2. using first class registered post or other next Working Day delivery service within the United Kingdom to the Borough Council's offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ

in either case addressed to the Section 106 Monitoring Officer of the Borough Council prior to seeking to dispose of the Relevant Affordable Housing

2.1.2. when serving the Default Notice the Chargee will clearly identify the Relevant Affordable Housing to which the Default Notice applies and

2.1.3. subject to Paragraph 2.6 not exercise its power of sale over or otherwise dispose of the Relevant Affordable Housing before the expiry of the Moratorium Period except in accordance with Paragraph 2.3

2.2. From the first day of the Moratorium Period to (but excluding) the date falling one (1) calendar month later the Borough Council may serve an Intention Notice on the Chargee

2.3. Not later than 15 (fifteen) Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Borough Council and the Chargee) the Chargee will grant the Borough Council (and/or

the Borough Council's nominated substitute Registered Provider) an exclusive option to purchase the Relevant Affordable Housing which shall contain the following terms:

- 2.3.1. the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
  - 2.3.2. the price for the sale and purchase will be agreed in accordance with Paragraph 2.4.2 or determined in accordance with Paragraph 2.5;
  - 2.3.3. provided that the purchase price has been agreed in accordance with Paragraph 2.4.2 or determined in accordance with Paragraph 2.5 but subject to Paragraph 2.3.4 the Borough Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and complete the purchase of the Relevant Affordable Housing at any time prior to the expiry of the Moratorium Period;
  - 2.3.4. the Option will expire upon the earlier of:
    - 2.3.4.1. notification in writing by the Borough Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option; or
    - 2.3.4.2. the expiry of the Moratorium Period and
  - 2.3.5. any other terms agreed between the parties to the Option (acting reasonably).
- 2.4. Following the service of the Intention Notice:
- 2.4.1. the Chargee shall use reasonable endeavours to reply to enquiries raised by the Borough Council (or its nominated substitute Registered Provider) in relation to the Relevant Affordable Housing as expeditiously as possible having regard to the length of the Moratorium Period; and
  - 2.4.2. the Borough Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the Relevant Affordable Housing which shall be the higher of:
    - 2.4.2.1. the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the Relevant Affordable Housing contained in Schedule 7; and
    - 2.4.2.2. (unless otherwise agreed in writing between the Borough Council (or its nominated substitute Registered Provider) and the Chargee the Sums Due.

- 2.5. On the date falling 10 (ten) Working Days after service of the Intention Notice if the Borough Council (or its nominated substitute Registered Provider) and the Chargee have not agreed the price pursuant to Sub-Paragraph 2.4.2.1:
- 2.5.1. the Borough Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the identity of an independent surveyor having at least 10 (ten) years' experience in the valuation of affordable/social housing within the Maidstone area to determine the dispute and if the identity is agreed shall appoint such independent surveyor to determine the dispute;
  - 2.5.2. if on the date falling 15 (fifteen) Working Days after service of the Intention Notice the Borough Council (or its nominated substitute Registered Provider) and the Chargee have not been able to agree the identity of an independent surveyor either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 (ten) years' experience in the valuation of affordable/social housing within the Borough of Maidstone to determine the dispute;
  - 2.5.3. the independent surveyor shall determine the price reasonably obtainable referred to at Sub-Paragraph 2.4.2.1 due regard being had to all the restrictions imposed upon the Relevant Affordable Housing by this Agreement;
  - 2.5.4. the independent surveyor shall act as an expert and not as an arbitrator;
  - 2.5.5. the fees and expenses of the independent surveyor are to be borne equally by the parties;
  - 2.5.6. the independent surveyor shall make their decision and notify the Borough Council, the Borough Council's nominated substitute Registered Provider (if any) and the Chargee of that decision no later than 10 (ten) Working Days after their appointment and in any event within the Moratorium Period; and
  - 2.5.7. the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 2.6. The Chargee may dispose of the Relevant Affordable Housing free from the obligations and restrictions contained in Paragraphs 2.4.2, 2.6, 3.6 and 3.7 of Schedule 7 which shall determine absolutely in respect of those Relevant Affordable Housing (but subject to any existing tenancies) if:

- 2.6.1. the Borough Council has not served an Intention Notice before the date falling 1 (one) calendar month after the first day of the Moratorium Period;
  - 2.6.2. the Borough Council (or its nominated substitute Registered Provider) has not exercised the Option and completed the purchase of the Relevant Affordable Housing on or before the date on which the Moratorium Period expires; or
  - 2.6.3. the Borough Council (or its nominated substitute Registered Provider) has notified the Chargee in writing pursuant to the Option that it no longer intends to exercise the Option.
- 2.7. The Borough Council (and its nominated substitute Registered Provider if any) and the Chargee shall act reasonably in fulfilling their respective obligations under Paragraphs 2.1 to 2.6 (inclusive).

## Schedule 9: Curtilage Listed Building

### 1 Interpretation of this Schedule

- 1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1

<b>“ Curtilage Listed Building”</b>	means the structure on the Land identified coloured yellow on the Curtilage Listed Building Plan to be dismantled/reconstructed in situ pursuant to the Planning Permission.
<b>“Curtilage Listed Building Plan”</b>	means the plan identifying the Curtilage Listed Building coloured yellow annexed at Appendix B.
<b>“ Curtilage Listed Building Works”</b>	means the works to be carried out on the Curtilage Listed Building pursuant to the Planning Permission and any subsequent listed building consent..
<b>“Management Company”</b>	means a management company responsible for the ongoing management and maintenance of the Curtilage Listed Building.

### 2 Curtilage Listed Building - management and maintenance

- 2.1 The Owner covenants with the Borough Council:
- 2.1.1 Within 3 months of Practical Completion of the Curtilage Listed Building Works, to transfer the Curtilage Listed Building to the Management Company, such transfer to secure that the Curtilage Listed Building is managed and maintained and is accessible to the public for the lifetime of the Development.
- 2.1.2 For the avoidance of doubt, until such time as the Curtilage Listed Building is transferred to the Management Company, the Owner shall be responsible for the management and maintenance and ensuring that the Curtilage Listed Building is accessible to the public.

## Appendix A: Site Location Plan

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## Appendix B: Curtilage Listed Building Plan

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## Appendix C: Indicative Housing Mix

<b>Bed size</b>	<b>Social Rent</b>	<b>Shared Ownership</b>	<b>TOTAL</b>
1	30%	10%	40%
2	14%	4%	18%
3	25%	9%	34%
4	6%	2%	8%
<b>TOTAL</b>	75%	25%	100%