

DATED 24th September 2024

MAIDSTONE BOROUGH COUNCIL

-and-

HALLAM LAND MANAGEMENT LIMITED

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF LAND AT
LAND NORTH & SOUTH OF KENWARD ROAD YALDING KENT ME18 6JP
PLANNING APPLICATION REFERENCE NO. 23/505139/OUT
APPEAL REFERENCE NO. APP/U2235/W/24/3344070

Mid Kent Legal Services
Maidstone House
King Street
Maidstone
Kent ME15 6JQ
IKEN Ref.: M019756.1



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THIS DEED OF AGREEMENT is dated the 24th day of September 2024

Between

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House King Street Maidstone Kent ME15 6JQ (the "**Borough Council**") and
- (2) **HALLAM LAND MANAGEMENT LIMITED** (Company Registration Number 02456711) of Isaacs Building 4 Charles Street Sheffield S1 2HS (the "**Owner**")

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 the statutory authority responsible for education and local highways for the area within which the Land is situated
- C. The Application was made to the Borough Council
- D. The Borough Council has failed to determine the application within the statutory time period and the Owner appealed to the Secretary of State against the non-determination of the Application and enters into this obligation to the intent that any objections of the Borough Council to the grant of planning permission are overcome and the impacts of the Development can be adequately mitigated
- E. The Owner is a person interested in the Land by virtue of being the freehold owner of the Land as set out in Schedule 1. Whilst there is a Farm Business Tenancy Agreement a Notice to Terminate that tenancy has been issued terminating the tenancy on 27 September 2024 and the Owner has agreed not to Implement the Planning Permission until the Farm Business Tenancy Agreement has been terminated.
- 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 is a Local Authority for the purposes of section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive to and be incidental to the Borough Council's 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 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)

“1990 Act”	means the Town and Country Planning Act 1990 (as amended)
“All in Tender Price Index”	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Appeal”	means the appeal against the Borough Councils non-determination of the Application which has been made to the Secretary of State by the Owner and given reference APP/U2235/W/24/3344070
“Application”	means the application for outline planning permission submitted to the Borough Council to carry out the Development on the Land and given the registered reference number 23/505139/OUT
“Borough Council Contributions”	means the financial contributions payable to the Borough Council pursuant to Schedule 3 comprising a) the HMMP Assessment Contribution b) the HMMP Monitoring Contribution c) the Yalding Station Contribution

“Commencement of Development”	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 “Commence” and “Commencement” and “Commence Development” shall be construed accordingly
“Consumer Price Index”	means the Consumer Price Index published by the Office for National Statistics and the acronym “CPI” shall be construed accordingly
“County Council”	means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the responsible authority for education and local highways for the area within which the Land is situated
“County Council Contributions”	means the financial contributions payable to the County Council pursuant to Schedule 5 comprising a) the Primary Education Contribution b) the Public Transport Improvements Contribution c) the Secondary Education Contribution d) the SEND Contribution
“Deed”	means this deed of agreement together with all Schedules and Appendices
“Development”	means outline application (all matters reserved other than principal means of access to the highway) for the removal of existing polytunnels on land north of Kenward Road and the erection of up to 112no. dwellings (Class C3), associated infrastructure and landscaping, together with the change of use of land south of Kenward Road to provide informal/recreational open space, sustainable urban drainage features, landscaping, and ancillary works/infrastructure on the Land as set out in the Application pursuant to the Appeal

“Dwelling”	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 and the First Homes
“Farm Business Tenancy Agreement”	means the agreement for a Farm Business Tenancy on part of the Land dated 31 May 2023 between Hallam Land Management Limited and Clock House Farm Limited
“General Building Cost Index”	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Implementation of the Planning Permission”	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and the words “Implement” and “Implemented” and “Implementation” shall be construed accordingly AND FOR THE AVOIDANCE OF DOUBT Implementation of the Planning Permission shall not be construed as Commencement of Development for the purposes of this Deed
“Index Linked”	means adjusted by reference to the relevant index pursuant to the provisions of Clause 18
“Interest Rate”	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
“Land”	means the land against which this Deed may be enforced as detailed in Schedule 1 and shown edged coloured red on the Plan
“Monitoring Fee (Borough Council)”	means the sum of £8,797.50 (eight thousand seven hundred and ninety-seven pounds and fifty pence) in connection with the monitoring and administration of

	this Deed
“Monitoring Fee (County Council)”	means the sum of £900 (nine hundred pounds) in connection with the monitoring and administration of this Deed
“New Homes Build Warranty”	means a new homes build warranty provided by the NHBC or an alternative warranty provider
“Occupy”	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 and for the avoidance of doubt the exchange of contracts for sale of any Dwelling shall constitute permitting its occupation and “Occupation” “Occupier” or “Occupied” shall be construed accordingly
“Open Market Dwellings”	means those Dwellings for sale on the open market and which are not Affordable Dwellings or First Homes
“Parties”	means the Owner and the Borough Council as the context so requires and “Party” means any one of them
“Plan”	means the plan entitled “S106 Site Plan” (Drawing No 35214_102 Rev02) prepared by BroadwayMalyan and dated August 2024 annexed at Appendix A
“Planning Inspector”	means the inspector appointed by the Secretary of State to preside over the inquiry in relation to the Appeal
“Planning Permission”	means planning permission for the Development to be granted pursuant to the Appeal subject to conditions

“Practical Completion”	means in the case of Dwellings the issue of the New Homes Build Warranty and in the case of any other works required to be undertaken pursuant to this Deed the stage in the progress of such works when the works are sufficiently complete in accordance with the approved plans and specifications such that the proper issue of one or more certificate(s) of practical completion of any such works can be issued by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term “Practically Complete” shall be construed accordingly
“Preparatory Operation”	means an operation or item of work of or connected with or ancillary to <ul style="list-style-type: none"> a) archaeological and/or ecological investigation b) exploratory boreholes and trial pits c) site clearance including the removal of polytunnels (but excluding demolition of a building or other structure) d) investigations for the purposes of assessing ground conditions and remedial work in respect of any contamination or other adverse ground conditions e) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities f) the erection of fences and hoardings around the Land and g) construction of temporary access and service roads
“Reserved Matters Application”	means an application for approval of reserved matters in accordance with the Planning Permission

“Reserved Matters Approval”	means an approval given by the Borough Council or by (or on behalf of) the Secretary of State of a Reserved Matters Application
“Section 106 Monitoring Officer”	means any such officer appointed by the Borough Council for the purposes of monitoring planning obligations secured in respect of development proposals
“Secretary of State”	means the Secretary of State for Housing Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77 78 and 79 of the 1990 Act and includes any successor department or authority of His Majesty’s Government that is responsible for exercising these powers
“Statutory Undertakers”	means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator
“VAT”	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)
“Working Day”	means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) 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 shall include any successor to its respective statutory functions
- 2.8 Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council 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 20 (Interest) as if it were part of the principal sum paid
- 2.16 For the purposes of this Deed where a party is required to give consent approval agreement or other similar affirmation under the terms of this Deed then such party shall not unreasonably withhold or delay such consent approval agreement or other similar affirmation

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 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 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

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 5.4 5.5 and 7 to 23 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the Appeal being allowed and (save in respect of any obligations in this Deed requiring compliance prior to Commencement of Development) the Commencement of Development
- 4.2 Each planning obligation in this Deed is also conditional upon the Secretary of State or his 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 his 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 his appointed Planning Inspector will cease to take effect and shall be void for the purposes of this Deed and the Owner shall not be obliged to comply with the terms of that planning obligation **PROVIDED ALWAYS THAT**
- 4.2.1 the remaining provisions of the Deed shall take effect and remain in effect and enforceable in accordance with the terms of this Deed and
- 4.2.2 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 his appointed Planning Inspector in relation to the obligation is successfully challenged

5 Owner's Covenants

- 5.1 The Owner covenants with the Borough Council to perform and observe the covenants obligations restrictions and requirements contained in this Deed including the Schedules hereto.
- 5.2 The Owner shall permit the Borough Council and its 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 its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice
- 5.3 Before completion of this Deed the Owner covenants to pay 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

- 5.4 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)

5.4.2 the Monitoring Fee (County Council) which the Borough Council shall transfer to the County Council

whether or not this Deed is delivered in accordance with Clause 23 and the Owner covenants further not to Implement the Planning Permission unless and until the Monitoring Fee (Borough Council) and the Monitoring Fee (County Council) has been paid to the Borough Council

- 5.5 The Owner covenants to the Borough Council that it shall not Implement the Planning Permission unless and until the Farm Business Tenancy Agreement has been terminated

6 Council's Covenants

- 6.1 The Borough Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the Borough Council's covenants as set out in this Deed

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 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 Save for Clause 5.2 and subject to Clause 16.2 those obligations contained in this Deed specifically regulating the use of land or buildings after Occupation no planning 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

- 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
- 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 Applications

- 9.1 In the event that the Borough Council (or the Secretary of State on appeal) grants a planning permission pursuant to an application made under section 73 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 determining the section 73 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 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 relation to the section 73 application or the determination thereof

10 Disputes

10.1 Without prejudice to the rights of the Borough 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 either Party 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 either Party 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 the Owner and the Borough Council 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 persons 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

10.2.6.6 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

10.2.6.7 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 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

The Borough Council	Maidstone Borough Council
Address	The Head of Development Management Maidstone Borough Council Maidstone House King Street Maidstone Kent ME15 6JQ Reference: Land North and South of Kenward Road Yalding (23/505139/OUT; APP/U2235/W/24/3344070)
On every occasion with a copy to	The Section 106 Monitoring Officer

The Owner	Hallam Land Management Limited
Address	Legal Department Isaacs Building 4 Charles Street Sheffield S1 2HS

- 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 or the Mortgagee 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 7 (Mortgage 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 for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a confirmation to such effect to the Owner

12.3 The Borough Council shall upon the request of the Owner (and subject to the payment of the Borough Council's 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 being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable 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 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 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 there is no 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

16.1.5 they shall make good any loss to the Borough 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 pursuant to the terms of this Deed by the date of Occupation of that Open Market Dwelling have not been paid

- 16.3 The Owner shall give the Borough Council immediate notice 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

17 Waiver

- 17.1 No waiver (whether expressed or implied) by the Borough Council 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 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 following Borough Council Contributions payable pursuant to this Deed 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
- 18.2.1 the HMMP Assessment Contribution
- 18.2.2 each HMMP Monitoring Contribution
- 18.3 The following Borough Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index from 3Q2024 and the quarterly index figure for the quarter immediately preceding the actual date of payment
- 18.3.1 the Yalding Station Contribution
- 18.4 The following 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 from 1Q2022 and the quarterly index figure for the quarter immediately preceding the actual date of payment
- 18.4.1 the Primary Education Contribution
- 18.4.2 the Secondary Education Contribution
- 18.4.3 the SEND Contribution
- 18.5 The following County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building

Cost Index from 3Q2024 and the quarterly index figure for the quarter immediately preceding the actual date of payment

18.5.1 the Public Transport Improvements Contribution

18.6 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 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 in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council shall approve

18.7 In the event that there is a decrease in the relevant index in this Clause 19 any financial contribution payable pursuant to this Deed shall not fall below the figure set out within this Deed

19 Interest on Late Payments

19.1 If any sum or amount due or outstanding under this Deed has not been paid to the Borough Council by the date it is due the Owner shall pay the Borough Council 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

20 VAT

20.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT

20.2 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

21 Agreements and Declarations

21.1 The Parties agree that

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

21.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough in the exercise of any other statutory

function

22 Governing Law

22.1 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

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

23 Delivery

23.1 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

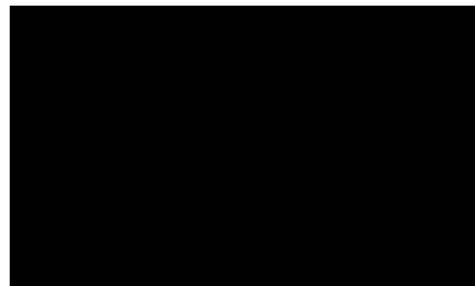
IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

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



Authorised Signatory

EXECUTED as a deed
By Attorney for
HALLAM LAND MANAGEMENT LIMITED
Under a Power of Attorney
dated 31 AUGUST 2023



Attorney

LEWIS MITCHEL BARRETT

Name (IN BLOCK CAPITALS) of Attorney

in the presence of

Witness Signature:



Name of Witness: NICOLA WILSON

Address
ISAACS BUILDING
& CHARLES STREET
SHEFFIELD S1 2HS

Schedule 1: The Land

The land against which this Deed is enforceable comprises all that land and premises situate at Kenward Road Maidstone (also known as Land North and South of Kenward Road Yalding Kent ME18 6JP) as shown edged red on the Plan of which the Owner is the registered proprietor of the freehold with title absolute of all the land and premises as the same is shown edged red on the Plan and is registered at the Land Registry under title number TT90736 subject to the matters in the Charges Registers and the Farm Business Tenancy Agreement 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 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
- 2.3 it shall subsequently notify the Borough Council promptly and 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 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
- 2.6 it shall notify the Borough Council promptly and 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 with no less than 20 (twenty) Working Days prior notice of the intended date of Occupation (as the case may be)
- 2.7.1 of the first Dwelling and
- 2.7.2 of 50% (fifty percent) of the Dwellings and
- 2.7.3 of 35% (thirty five percent) of the Open Market Dwellings and
- 2.7.4 of 50% (fifty percent) of the Open Market Dwellings and
- 2.7.5 of 65% (sixty five percent) of the Open Market Dwellings
- 2.8 the Owner shall not Occupy (as the case may be)

2.8.1 the first or any subsequent Dwelling and

2.8.2 50% (fifty percent) or more of the Dwellings and

2.8.3 35% (thirty five percent) or more of the Open Market Dwellings and

2.8.4 50% (fifty percent) or more of the Open Market Dwellings and

2.8.5 65% (sixty five percent) or more of the Open Market Dwellings

unless and until the notice required by the corresponding Sub-Paragraph of Paragraph 2.7 (as the case may be) has been provided to the Borough Council

2.9 it shall notify the Borough Council promptly and in any event within 5 (five) Working Days of the actual date of Occupation of the first Dwelling

Notification of Completion

2.10 it shall provide the Borough Council with a copy of the final Certificate of Practical Completion of the final Dwelling in the Development

3 Failure to provide any notice pursuant to this Schedule shall constitute a breach of the terms of this Deed

Schedule 3: Borough Council Financial Obligations

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

“HMMP”	means the Habitat Management and Monitoring Plan submitted pursuant to the condition of the Planning Permission to secure biodiversity net gains and their management and monitoring for approval by the Borough Council
“HMMP Assessment”	means the assessment of the HMMP with a view to approving the HMMP
“HMMP Assessment Contribution”	means a contribution in the sum of £340 (three hundred and forty pounds) Index Linked
“HMMP Monitoring Contribution”	means a contribution in the sum of £340 (three hundred and forty pounds) Index Linked per HMMP Monitoring Report submitted pursuant to the approved HMMP
“HMMP Monitoring Report”	<p>means the monitoring report to be submitted to the Borough Council pursuant to the approved HMMP in years</p> <ul style="list-style-type: none">• 2 (two) (when the First Payment is due) and• 5 (five) and• 10 (ten) and• 15 (fifteen) and• 20 (twenty) and• 25 (twenty-five) and• 30 (thirty)
“Network Rail”	means Network Rail Property (Southern) a division within Network Rail responsible for managing and developing

	Network Rail's property assets in the southern region of England including Yalding Railway Station in Kent or any successor body performing substantially the same functions
"Yalding Station Contribution"	means a contribution in the sum of £50,000 (fifty thousand pounds) Index Linked
"Yalding Station Cycle Infrastructure"	means improvements to the security of the cycle storage at Yalding Railway Station (off the B2162 Hampstead Lane Yalding Maidstone Kent) to include a new cycle shelter closed-circuit television/video surveillance and lighting and associated works or such other works as may be deemed necessary by Network Rail to improve cycle security at Yalding Railway Station
"Spend"	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 "Spent" shall be construed accordingly

2 HMMP Assessment and Monitoring Contribution

- 2.1 The Owner covenants that it shall pay to the Borough Council the HMMP Assessment Contribution before Implementation of the Planning Permission and covenants further that it shall not Implement the Planning Permission unless and until the HMMP Assessment Contribution has been paid to the Borough Council
- 2.2 The Borough Council covenants that it shall use the HMMP Assessment Contribution as a financial contribution towards the Borough Council's costs of the HMMP Assessment
- 2.3 The Owner covenants that it shall pay to the Borough Council the HMMP Monitoring Contribution in respect of the first HMMP Monitoring Report on the date when the first HMMP Monitoring Report required pursuant to the approved HMMP is submitted to the Borough Council (the **"First Payment"**) and the Owner covenants that it shall thereafter pay to the Borough Council the HMMP Monitoring Contribution on the

- 2.3.1 5th (fifth) and
- 2.3.2 10th (tenth) and
- 2.3.3 15th (fifteenth) and
- 2.3.4 20th (twentieth) and
- 2.3.5 25th (twenty-fifth) and
- 2.3.6 30th (thirtieth) anniversaries of the date of payment of the First Payment
- 2.4 The Borough Council covenants that it shall use the HMMP Monitoring Contribution as a financial contribution towards the Borough Council's costs of monitoring the approved HMMP
- 3 Yalding Station Contribution**
 - 3.1 The Owner covenants that it shall pay to the Borough Council the Yalding Station Contribution before Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until the Yalding Station Contribution has been paid to the Borough Council
 - 3.2 The Borough Council covenants to the Owner to transfer the Yalding Station Contribution (or any part thereof) to Network Rail if the Borough Council is satisfied that Network Rail will Spend the Yalding Station Contribution on the Yalding Station Cycle Infrastructure or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree
 - 3.3 The Borough Council covenants to the Owner that if the Borough Council are of the view that the Yalding Station Contribution will not be Spent in accordance with Paragraph 3.2 the Borough Council shall repay such of the Yalding Station Contribution as the Borough Council is holding to the person who paid the Yalding Station Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses and for the avoidance of doubt if part of the Yalding Station Contribution has been transferred by the Borough Council to Network Rail pursuant to Paragraph 3.2 then there shall be no requirement to repay such sums as have already been transferred by the Borough Council to Network Rail

Schedule 4: County Council 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

“Applicable Flat”	means those Dwellings comprising flats but excluding Applicable Houses and those flats (if any) of less than 56sqm GIA and excluding sheltered accommodation
“Applicable House”	means those Dwellings comprising houses but excluding Applicable Flats and those houses (if any) of less than 56sqm GIA and excluding sheltered accommodation
“Bus Voucher”	means a voucher (or bus pass) issued by a bus operator entitling the holder to redeem travel free of charge on bus services local to the Development for unlimited travel within Maidstone borough over a period of 1 (one) month from the date of redemption of the voucher
“GIA”	means Gross Internal Area as measured in accordance with the ‘International Property Measurement Standards: Residential Buildings (IPMS 2 – Residential (Internal))’ (September 2016) or any amendment update or variation thereto or any subsequent replacement thereof or such other standard as may be approved by the Royal Institution of Chartered Surveyors (RICS)
“Primary Education Contribution”	<p>means the sum of</p> <p>a) £5,412.74 (five thousand four hundred and twelve pounds and seventy-four pence) per Applicable House and</p> <p>b) £1,353.18 (one thousand three hundred and fifty three pounds and eighteen pence) per Applicable Flat</p> <p>(as the case may be) where the total contribution shall be</p>

	<p>calculated in accordance with the following formula</p> $(AH \times £5,412.74) + (AF \times £1,353.18) = \text{£PEC Index Linked}$ <p>WHERE</p> <p>AH is the number of Applicable Houses to be provided pursuant to the Reserved Matters Approval</p> <p>AF is the number of Applicable Flats to be provided pursuant to the Reserved Matters Approval</p> <p>£PEC Index Linked is the Primary Education Contribution payable</p>
“Primary Education Facilities”	<p>means a One Form of Entry permanent expansion of a primary school in the County Council’s Coxheath Primary Education Planning Group comprising</p> <ul style="list-style-type: none"> • Coxheath Primary School • East Farleigh Primary School • Hunton Church of England Primary School • Yalding St Peter & St Paul Church of England Primary School
“Public Transport Improvements Contribution”	<p>means the sum of £1,500 (one thousand five hundred pounds) per Dwelling where the total contribution shall be calculated in accordance with the following formula</p> $D \times £1,500 = \text{£PTIC Index Linked}$ <p>WHERE</p> <p>D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval</p> <p>£PTIC Index Linked is the Public Transport Improvements Contribution payable</p>
“Public Transport Improvements”	<p>means enhancements to public transport services within the Marden and Yalding areas of Maidstone designed to promote sustainable development. Such improvements</p>

	<p>may include, but are not limited to</p> <ul style="list-style-type: none"> • Increased bus services including additional bus routes frequency or capacity • Improved bus infrastructure including upgrades to bus stops shelters or accessibility including associated infrastructure. • Demand Responsive Transport (DRT) being a flexible bus service operating on demand rather than a fixed timetable
“Secondary Education Contribution”	<p>means the sum of</p> <p>a) £5,329.27 (five thousand three hundred and twenty-nine pounds and twenty-seven pence) per Applicable House and</p> <p>b) £1,332.32 (one thousand three hundred and thirty two pounds and thirty two pence) per Applicable Flat</p> <p>(as the case may be) where the total contribution shall be calculated in accordance with the following formula</p> <p>(AH x £5,329.27) + (AF x £1,332.32) = £SEC Index Linked</p> <p>WHERE</p> <p>AH is the number of Applicable Houses to be provided pursuant to the Reserved Matters Approval</p> <p>AF is the number of Applicable Flats to be provided pursuant to the Reserved Matters Approval</p> <p>£SEC Index Linked is the Secondary Education Contribution payable</p>
“Secondary Education Facilities”	<p>means the expansion of the Cornwallis Academy to provide additional accommodation and/or provision of additional secondary school accommodation in the Maidstone District non-selective and Maidstone & Malling selective planning groups which include</p>

	<ul style="list-style-type: none"> • Invicta Grammar School • Lenham School • Maidstone Grammar School • Maidstone Grammar School for Girls • Maplesden Noakes School • New Line Learning Academy • Oakwood Park Grammar School • School of Science and Technology Maidstone • St. Augustine Academy • Valley Park School
“SEND Education Contribution”	<p>means the sum of</p> <p>a) £559.83 (five hundred and fifty-nine pounds and eighty-three pence) per Applicable House and</p> <p>b) £139.96 (one hundred and thirty nine pounds and ninety six pence) per Applicable Flat</p> <p>(as the case may be) where the total contribution shall be calculated in accordance with the following formula</p> <p>(AH x £559.83) + (AF x £139.96) = £SEND Index Linked</p> <p>WHERE</p> <p>AH is the number of Applicable Houses to be provided pursuant to the Reserved Matters Approval</p> <p>AF is the number of Applicable Flats to be provided pursuant to the Reserved Matters Approval</p> <p>£SEND Index Linked is the SEND Education Contribution payable</p>
“SEND Facilities”	<p>means the provision of additional Special Educational Needs and Disability (SEND) places within the Maidstone borough</p>

“Spend”	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 “Spent” shall be construed accordingly
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2 Bus Voucher

2.1 The Owner covenants that it shall prior to the first Occupation of each Dwelling in the Development

2.1.1 provide to each Dwelling (at the Owner’s cost and at nil cost to the Occupier) a Bus Voucher and

2.1.2 to provide the County Council with such evidence as the County Council deems satisfactory to establish the discharge of this obligation and

2.1.3 to notify the Borough Council that the provisions of Paragraph 2.1.1 and 2.1.2 have been complied with

2.2 The Owner covenants that no Dwelling in the Development shall be first Occupied unless and until

2.2.1 the first Occupier of that Dwelling has been provided with a Bus Voucher and

2.2.2 Paragraphs 2.1.2 and 2.1.3 have been complied with

3 Public Transport Improvements Contribution

3.1 The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Public Transport Improvements Contribution before Commencement of Development and covenants further that it shall not Commence Development unless and until 50% (fifty percent) of the Public Transport Improvements Contribution has been paid to the Borough Council

3.2 The Owner covenants that it shall pay to the Borough Council the balance of the Public Transport Improvements Contribution before Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until the balance of the Public Transport Improvements Contribution has been paid to the Borough Council

3.3 The Borough Council covenants to the Owner to transfer the Public Transport Improvements Contribution (or any part thereof) to the County Council if the Borough Council is satisfied that the County Council will Spend the Public Transport

Improvements Contribution on the Public Transport Improvements or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree

- 3.4 The Borough Council covenants to the Owner that if the Borough Council are of the view that the Public Transport Improvements Contribution will not be Spent in accordance with Paragraph 3.3 the Borough Council shall repay such of the Public Transport Improvements Contribution as the Borough Council is holding to the person who paid the Public Transport Improvements Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses and for the avoidance of doubt if part of the Public Transport Improvements Contribution has been transferred by the Borough Council to the County Council pursuant to Paragraph 3.3 then there shall be no requirement to repay such sums as have already been transferred by the Borough Council to the County Council

4 Primary Education Contribution

- 4.1 The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Primary Education Contribution before Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until 50% (fifty percent) of the Primary Education Contribution payable pursuant to this Sub-Paragraph has been paid to the Borough Council
- 4.2 The Owner covenants that it shall pay to the Borough Council the balance of the Primary Education Contribution before Occupation of 50% (fifty percent) of the Dwellings and covenants further that it shall not Occupy 50% (fifty percent) of the Dwellings unless and until the balance of the Primary Education Contribution has been paid to the Borough Council
- 4.3 The Borough Council covenants to the Owner to transfer the Primary Education Contribution (or any part thereof) to the County Council if the Borough Council is satisfied that the County Council will Spend the Primary Education Contribution on the Primary Education Facilities
- 4.4 The Borough Council covenants to the Owner that if the Borough Council are of the view that the Primary Education Contribution will not be Spent in accordance with Paragraph 4.3 the Borough Council shall repay such of the Primary Education Contribution as the Borough Council is holding to the person who paid the Primary Education Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses and for the avoidance of doubt if part of the Primary Education Contribution has been transferred

by the Borough Council to the County Council pursuant to Paragraph 4.3 then there shall be no requirement to repay such sums as have already been transferred by the Borough Council to the County Council

5 Secondary Education Contribution

- 5.1 The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Secondary Education Contribution before Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until 50% (fifty percent) of the Secondary Education Contribution payable pursuant to this Sub-Paragraph has been paid to the Borough Council
- 5.2 The Owner covenants that it shall pay to the Borough Council the balance of the Secondary Education Contribution before Occupation of 50% (fifty percent) of the Dwellings and covenants further that it shall not Occupy 50% (fifty percent) of the Dwellings unless and until the balance of the Secondary Education Contribution has been paid to the Borough Council
- 5.3 The Borough Council covenants to the Owner to transfer the Secondary Education Contribution (or any part thereof) to the County Council if the Borough Council is satisfied that the County Council will Spend the Secondary Education Contribution on the Secondary Education Facilities
- 5.4 The Borough Council covenants to the Owner that if the Borough Council are of the view that the Secondary Education Contribution will not be Spent in accordance with Paragraph 5.3 the Borough Council shall repay such of the Secondary Education Contribution as the Borough Council is holding to the person who paid the Secondary Education Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses and for the avoidance of doubt if part of the Secondary Education Contribution has been transferred by the Borough Council to the County Council pursuant to Paragraph 5.3 then there shall be no requirement to repay such sums as have already been transferred by the Borough Council to County Council

6 SEND Contribution

- 6.1 The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the SEND Contribution before Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until 50% (fifty percent) of the SEND Contribution payable pursuant to this Sub-Paragraph has been paid to the Borough Council

- 6.2 The Owner covenants that it shall pay to the Borough Council the balance of the SEND Contribution before Occupation of 50% (fifty percent) of the Dwellings and covenants further that it shall not Occupy 50% (fifty percent) of the Dwellings unless and until the balance of the SEND Contribution has been paid to the Borough Council
- 6.3 The Borough Council covenants to the Owner to transfer the SEND Contribution (or any part thereof) to the County Council if the Borough Council is satisfied that the County Council will Spend the SEND Contribution on the SEND Facilities
- 6.4 The Borough Council covenants to the Owner that if the Borough Council are of the view that the SEND Contribution will not be Spent in accordance with Paragraph 6.3 the Borough Council shall repay such of the SEND Contribution as the Borough Council is holding to the person who paid the SEND Contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses and for the avoidance of doubt if part of the SEND Contribution has been transferred by the Borough Council to the County Council pursuant to Paragraph 6.3 then there shall be no requirement to repay such sums as have already been transferred by the Borough Council to County Council

Schedule 5: 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

"Affordable Dwellings"	<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> <p>1) a maximum of 25% (twenty five percent) (rounded to the nearest whole Dwelling) shall be First Homes (as defined in Schedule 7) (the "First Homes Requirement") which are to be provided and delivered in accordance with the provisions of Schedule 7</p> <p>the balance of which shall comprise</p> <p>2) 75% (seventy five percent) (rounded to the nearest whole Dwelling) Social Rented Units (the "Social Rent Requirement") which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule AND</p> <p>3) 25% (twenty five percent) (rounded to the nearest whole Dwelling) Shared Ownership Units (the "Shared Ownership Requirement") which are to be transferred to a Registered Provider for housing</p>
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	<p>persons in Housing Need in accordance with the provisions of this Schedule</p> <p>or such other percentage mix in these tenures as may otherwise be agreed in writing between the Owner and the Borough Council and/or varied as part of the approved Affordable Housing Scheme</p> <p>PROVIDED ALWAYS THAT where the rounding up of the Social Rented Units the Shared Ownership Units and First Homes 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 Dwelling</p> <ol style="list-style-type: none"> 1. the First Homes requirement shall be rounded down to the nearest whole Dwelling 2. then (if there are still more Affordable Dwellings being secured than is required) the Shared Ownership Units shall be rounded down to the nearest whole Dwelling <p>AND FOR THE PURPOSES OF THIS SCHEDULE the reference to "Affordable Dwellings" shall be a reference to the Social Rented Units and the Shared Ownership Units to be provided on the Affordable Housing Land (AND NOT the First Homes to be provided pursuant to Schedule 7)</p>
"Affordable Housing"	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
"Affordable Housing Commuted Sum"	means a financial contribution in lieu of the on-site provision of Affordable Dwellings such contribution being

	<p>part of the Alternative Affordable Housing Provision such sum to be to be calculated in accordance with Appendix B such financial contribution to be paid to the Borough Council to procure affordable housing improvements within the Borough Council's administrative area</p>
"Affordable Housing Land"	<p>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</p>
"Affordable Housing Notice"	<p>means a written notice to be served by the Owner on the Borough Council confirming that the Owner has been unable to transfer the Affordable Dwellings to a Registered Provider such notice to be accompanied by:</p> <ul style="list-style-type: none"> a) details of the Registered Providers who have been approached to purchase the relevant Affordable Dwellings and b) copies of the responses/offers from the Registered Providers
"Affordable Housing Scheme"	<p>means a scheme for the provision of the Affordable Dwellings to be provided by the Owner on the Land which scheme shall include</p> <ul style="list-style-type: none"> • 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 • details of the tenure and tenure split • the type and size of Dwelling to be provided as the Affordable Dwelling • identifying which of the Affordable Dwellings (being

	<p>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 and to be built to requirement Part M4(3)</p> <p>to include such revisions to the approved Affordable Housing Scheme as may be agreed in writing between the Owner and the Borough Council</p>
"Allocations Scheme"	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
"Alternative Affordable Housing Provision"	means the package of alternative Affordable Housing provision to be proposed by the Owner and approved by the Borough Council as set out in Paragraphs 6.2 – 6.3
"HE"	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
"Housing Need"	<p>means</p> <ul style="list-style-type: none"> 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 rent or buy housing available locally on the open market determined with

	regard to local incomes and local house prices
"Part M4(2)"	means Part M4(2) "Category 2: Accessible and adaptable 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
"Part M4(3)"	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
"Registered Provider"	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)
"RSH"	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
"Shared Ownership Lease"	means a lease which accords with HE's model form of lease issued from time to time
"Shared Ownership Units"	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)
“Social Rent”	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
“Social Rented Units”	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 Commence Development 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 under the terms of this Schedule 5 shall not exceed 40% (forty percent) of the Dwellings to be provided pursuant to the Reserved Matters Approval
- 2.3. Save for where the Alternative Affordable Housing Provision relates to the payment of an Affordable Housing Commuted Sum pursuant to Paragraph 6 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)
 - 2.4.2. in accordance with Part M4(3) for those Affordable Dwellings to be delivered as fully wheelchair accessible PROVIDED THAT no more than 15% (fifteen percent) of the Affordable Dwellings (rounded up to the nearest whole Dwelling) shall be required to be constructed to be fully wheelchair accessible

in accordance with Part M4(3)

- 2.5. Save for where the Alternative Affordable Housing Provision relates to the payment of an Affordable Housing Commuted Sum pursuant to Paragraph 6 but 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. Save for where the Alternative Affordable Housing Provision relates to the payment of an Affordable Housing Commuted Sum pursuant to Paragraph 6 but 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
 - 2.6.2. the Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need and duly registered a Registered Provider

3. Transfer of the Affordable Dwellings

- 3.1. The Owner covenants that the Social Rented Units and the Shared Ownership Units shall be transferred to and managed by a Registered Provider (or the Borough Council as the case may be pursuant to Paragraph 6)
- 3.2. Unless otherwise agreed in writing between the Owner and the Borough Council prior to Occupation of the first Dwelling the Owner covenants that it shall have secured the exchange of contracts of the Affordable Dwellings to a Registered Provider and shall provide to the Borough Council sufficient evidence to the Borough Council's satisfaction to show that this Sub-Paragraph has been complied with and the Owner covenants that it shall not Occupy the first Dwelling unless and until the provisions of this Sub-Paragraph have been complied with PROVIDED THAT this Sub-Paragraph 3.2 shall not apply to the extent that any of the Affordable Dwellings are to be transferred to the Borough Council pursuant to Paragraph 6
- 3.3. Prior to Occupation of 35% (thirty five percent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed in writing by the Borough Council it shall ensure that
 - 3.3.1. 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

- 3.3.2. 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 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
- 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 in accordance with the Allocations Scheme and the provisions of this Deed

AND the Owner covenants that no more than 35% (thirty five 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 in writing by the Borough Council

- 3.4. Prior to Occupation of 50% (fifty percent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed in writing by the Borough Council it shall ensure that
 - 3.4.1 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
 - 3.4.2 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 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
 - 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 in accordance with the Allocations Scheme and the provisions of this Deed

AND the Owner covenants that no more than 50% (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 in writing by the Borough Council

3.5. Prior to Occupation of 65% of the Open Market Dwellings the Owner covenants that unless otherwise agreed in writing by the Borough Council it shall ensure that

3.5.1 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

3.5.2 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

3.5.3 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 65% 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 in writing by the Borough Council

3.6. The Owner covenants that it shall provide evidence of the transfer of the freehold or leasehold interest of the Affordable Dwellings referred to in Paragraphs 3.3.2 3.4.2 and 3.5.2 of this Schedule to the Borough Council within 5 (five) Working Days of completion of the transfer

3.7. 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 pursuant to Paragraph 6) shall be at a level that allows the Social Rented Units to be paid for through rents to be charged as Social Rent

3.8. 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).

3.9. It is agreed by the Owner and the Borough Council that

3.9.1. the provisions in this Paragraphs 3 are subject to the operation of Paragraph 6 where the Affordable Housing Commuted Sum is applicable

3.9.2. the Affordable Housing Commuted Sum shall subject to the approved Alternative Affordable Housing Provision be paid by the Owner to the Borough Council in accordance with the approved Dwelling Occupation triggers for such payment identified in the approved Alternative Affordable Housing Provision and the Owner covenants further not to Occupy such Dwelling being the Dwelling identified in the approved Dwelling Occupation triggers (or any subsequent Dwelling) unless and until the relevant Affordable Housing Commuted Sum has been paid to the Borough Council.

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

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 6 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 chargee

6. Alternative Affordable Housing Provision

- 6.1. Where the Owner has used all reasonable but commercially prudent endeavours to enter into a legally binding contract with an Registered Provider for the Affordable Dwellings for a period of at least 9 months following the Reserved Matters Approvals (or such shorter period as may be agreed in writing by the Borough Council) but has not been able to secure a contract the Owner shall serve the Affordable Housing Notice on the Borough Council demonstrating the use of such all reasonable but commercially prudent endeavours over that period to secure a Registered Provider such that an Alternative Affordable Housing Provision is necessary in relation to the Development
- 6.2. The Owner shall submit to the Borough Council details of the proposed Alternative Affordable Housing Provision for the Borough Council's approval either at the same time as the Affordable Housing Notice or after the Affordable Housing Notice
- 6.3. The Alternative Affordable Housing Provision shall comprise one or more of the following options:
 - 6.3.1. different percentages of the tenures set out in the definition of Affordable Dwellings
 - 6.3.2. the payment of an Affordable Housing Commuted Sum in respect of part or all of the Affordable Dwellings and where this is being put forward as part of the Alternative Affordable Housing Provision the Alternative Affordable Housing Provision shall also identify Dwelling Occupation triggers for payment of the Affordable Housing Commuted Sum
 - 6.3.3. the sale of part or all of the Affordable Dwellings to the Borough Council
- 6.4. The approved Alternative Affordable Housing Provision shall apply to the Development and for the avoidance of doubt where an Affordable Housing Commuted Sum is paid in lieu of on-site provision then on the payment of the Affordable Housing Commuted Sum to the Borough Council for those Affordable Dwellings to which it relates the Owner shall be released from the obligations in this Deed

Schedule 6: 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 and Paragraph 1.1 of Schedule 5

"Charge"	means a mortgage charge or other security or loan documentation granting a security interest in the Relevant Affordable Housing in favour of the Chargee
"Chargee"	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
"Date of Deemed Service"	<p>means in each instance where a Chargee has served a Default Notice under Paragraph 2.2.1</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 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</p> <p>(b) in the case of service by using first class registered post or other next Working Day</p>

	<p>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) PROVIDED THAT the Chargee is able to evidence that the Default Notice was actually delivered to the LPA (by Royal Mail proof of delivery or otherwise)</p>
"Default Notice"	<p>means a notice in writing served on the Borough Council by the Chargee under Paragraph 2.2.1 of the Chargee's intention to enforce its security over the Relevant Affordable Housing</p>
"Intention Notice"	<p>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</p>
"Moratorium Period"	<p>means in each instance where a Chargee has served a Default Notice under Paragraph 2.2.1 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)</p>
"Option"	<p>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</p>
"Relevant Affordable Housing"	<p>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</p>

“Sums Due”	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.
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2. Mortgagee Protection

2.1. In order to benefit from the protection granted by Paragraph 5.1.1 (Exclusions) 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 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 5 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 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 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 14 (fourteen) 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 2.5 2.6 3.7 and 3.8 of Schedule 5 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 7: First Homes

1. Interpretation of this Schedule

- 1.1. This Schedule shall regulate those Dwellings to be delivered and Disposed of as First Homes 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

“Active Armed Services Member”	means an active member of the Royal Navy the Royal Marines the British Army or the Royal Air Force
"Affordable Housing"	for the purposes of this Schedule means housing to be provided off-site which is considered to be affordable housing pursuant to the Borough Council's local development plan documents (as may be reviewed or any subsequent replacement thereof) to be provided to eligible households (determined with regard to local incomes and local house prices) whose needs are not met by the open market
“Allocations Scheme”	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
“Armed Services Member”	means <ul style="list-style-type: none"> a) an Active Armed Services Member or a former member who was an Active Armed Services Member within the five (5) years prior to the Disposal of the First Home or b) a divorced or separated spouse or civil partner of a member or c) a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

“Compliance Certificate”	means the certificate issued by the Borough Council confirming that a Dwelling is being Disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and (unless Paragraph 3.3 applies) the Eligibility Criteria (Local) (as the case may be)
“Discounted Market Price”	means a sum which is the Market Value of the Dwelling discounted by the First Homes Discount
“Disposal”	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home (whether on a first or any subsequent sale) other than</p> <ul style="list-style-type: none"> a) a letting or sub-letting pursuant to Paragraph 4 (Use) b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for Occupation except where the transfer is to a First Homes Owner c) an Exempt Disposal <p>and “Disposed” and “Disposing” shall be construed accordingly</p>
“Eligibility Criteria (Local)”	<p>means criteria (if any) published by the Borough Council at the date of the relevant Disposal of a First Home which are met in respect of a Disposal of a First Home (whether on a first or any subsequent disposal) if</p> <ul style="list-style-type: none"> a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer) and b) the purchaser’s annual gross income (or in the case of a joint purchase the joint purchasers’ joint annual gross income) does not in the tax year immediately preceding the year of purchase exceed the local income cap as may be published from time to time by the Borough Council and is in force at the time of the

	<p>relevant Disposal of the First Home (or any subsequent Disposal) PROVIDED THAT the local income cap shall not exceed the Price Cap and</p> <p>c) any or all of criteria (i) (ii) and (iii) below are met</p> <ul style="list-style-type: none"> (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria) and/or (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a "Key Worker" as may be designated and published by the Borough Council from time to time and which is in operation at the time of the relevant Disposal of the First Home <p>AND FOR THE AVOIDANCE OF DOUBT any such criteria or replacement criteria as to what a "Key Worker" may be that is in operation at the time of the relevant Disposal of the First Home shall be the "Key Worker" criteria which shall apply to that Disposal and</p> <p>d) the purchaser (or in the case of a joint purchase the joint purchasers') must have a first mortgage or other home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% (fifty percent) of the Discounted Market Price</p> <p>it being acknowledged that at the date of this Deed the Borough Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home but may choose to do so before any Disposal and subsequent Disposal</p>
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<p>“Eligibility Criteria (National)”</p>	<p>means criteria which are met in respect of a purchase of a First Home (whether on a first or any subsequent Disposal) if</p> <ul style="list-style-type: none"> a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer) and b) the purchaser’s annual gross income (or in the case of a joint purchase the joint purchasers’ joint annual gross income) does not in the tax year immediately preceding the year of purchase exceed £80,000 (eighty thousand pounds) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home and c) the purchaser (or in the case of a joint purchase the joint purchasers’) must have a first mortgage or other home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% (fifty percent) of the Discounted Market Price
<p>“Exempt Disposal”</p>	<p>means the Disposal of a First Home in one of the following circumstances</p> <ul style="list-style-type: none"> a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order divorce settlement or other legal agreement or order upon divorce annulment or dissolution of the marriage or civil partnership or the making of a nullity separation or presumption of death order

	<p>d) Disposal to a trustee in bankruptcy prior to sale of the relevant First Home (AND FOR THE AVOIDANCE OF DOUBT Paragraph 5 (Mortgage Exclusion) shall apply to such sale)</p> <p>PROVIDED THAT in each case other than (d) the person to whom the Disposal is made complies with the terms of Paragraph 4 (Use)</p>
“First Home”	<p>means a Dwelling to be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer meeting the Eligibility Criteria (Local) or the Eligibility Criteria (National) (as the case may be) at the Discounted Market Price and which on its first Disposal shall not exceed the Price Cap</p>
“First Homes Contribution”	<p>means in circumstances where a sale of a First Home other than as a First Home has taken place pursuant to Paragraphs 3.9 3.10 or 5 resulting in the First Home being lost to the open market the lower of the following two amounts</p> <p>a) the First Homes Discount percentage of the proceeds of sale or</p> <p>b) the proceeds of sale less the amount due and outstanding to any Mortgagee or their Receiver (as defined in Paragraph 5 (Mortgage Exclusion)) (as the case may be) of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee or their Receiver under the terms of any mortgage BUT FOR THE AVOIDANCE OF DOUBT shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p>

	AND WHICH FOR THE AVOIDANCE OF DOUBT shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home
“First Homes Discount”	means a minimum discount of 30% (thirty percent) below the Market Value of the First Home AND PROVIDED ALWAYS THAT whatever discount (as a percentage of Market Value) is given at the first Disposal shall be the same at each subsequent sale of the First Home in perpetuity
“First Homes Owner”	means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than <ul style="list-style-type: none"> a) the Owner; or b) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is Disposed of for Occupation as a First Home; or c) the freehold a tenant or sub-tenant of a permitted letting under Paragraph 4 (Use)
“First Homes Plan”	means those plots on the Land approved by the Borough Council pursuant to the approved First Homes Scheme for the location of the First Homes on which the First Homes Requirement will be constructed and delivered in accordance with the obligations set out in this Deed
“First Homes Requirement”	means the First Homes Requirement as defined in Schedule 5 identified reserved set aside and to be provided and delivered as First Homes by the Owner on the Land in accordance with the approved First Homes Scheme together with such 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
"First Homes Scheme"	<p>means a scheme for the provision of the First Homes Requirement to be provided by the Owner on the Land which scheme shall (as a minimum) include</p> <ul style="list-style-type: none"> • a plan showing the location of the First Homes Requirement on the Land • the type and size of Dwelling to be provided as the First Home • (if applicable) identifying which of the First Homes 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 and to be built to requirement Part M4(3) <p>AND such other matters as the Borough Council may require AND FOR THE AVOIDANCE OF DOUBT the First Homes Scheme may be submitted as part of the Affordable Housing Scheme</p>
"First Time Buyer"	means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
"Local Connection Criteria"	means the local connection criteria contained within the Borough Council's Allocations Scheme or any amendment update or variation thereto or any subsequent replacement thereof AND FOR THE AVOIDANCE OF DOUBT any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that disposal
"Market Value"	means the open market value of the First Home assessed in accordance with the Royal Institution of

	Chartered Surveyors (RICS) 'Red Book' Valuation Standards (January 2014 or any such amendments variation or replacement guidance issued by RICS and current at the time of the sale of the First Home) by a Valuer AND FOR THE AVOIDANCE OF DOUBT the valuation shall not take into account the First Homes Discount
"Mortgagee"	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
"Part M4(2)"	means Part M4(2) "Category 2: Accessible and adaptable 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 such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Borough Council
"Part M4(3)"	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 Council
"Price Cap"	means the amount for which the First Home is sold after the application of the Discounted Market Price which on its first Disposal shall not exceed £250,000.00 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State or such other amount as may be published from time to time by the Secretary of State

"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors (RICS) who is a RICS registered valuer appointed by the First Homes Owner and acting in an independent capacity

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 First Homes Scheme and the Owner shall not Commence Development unless and until the Borough Council has approved the First Homes Scheme **AND FOR THE AVOIDANCE OF DOUBT** the First Homes Scheme may be incorporated into the Affordable Housing Scheme contemplated by Schedule 6
- 2.2 The Owner covenants that the total number of First Homes to be provided on the Land shall not exceed the First Homes Requirement
- 2.3 The Owner covenants that they shall construct and deliver the First Homes Requirement on the Land in the location shown on the First Homes Plan and in accordance with the approved First Homes Scheme and the other provisions of this Schedule and the First Home Requirement shall subject to the terms of this Schedule be retained in perpetuity

3. Delivery Mechanism

- 3.1. The Owner covenants that subject to the terms of this Schedule the First Homes shall only be Disposed of to First Time Buyers and the price to be paid by the First Time Buyer shall
- 3.1.1. not exceed the Price Cap on the first Disposal of a First Home and
- 3.1.2. not exceed the Discounted Market Price on subsequent Disposals
- 3.2. The Owner covenants that the First Homes shall be actively marketed for sale and shall only be sold (and Disposed of) as First Homes
- 3.2.1. to a person or person(s) who in the first instance meet the Eligibility Criteria (Local) or in the absence of such Eligibility Criteria (Local) to persons who meet the Local Connection Criteria and

3.2.2. then

3.2.2.1. in the absence of such Eligibility Criteria (Local) or

3.2.2.2. where no person meeting the Local Connection Criteria has within three (3) months from when the First Home is first marketed secured the Disposal of the First Home or

3.2.2.3. where there are Eligibility Criteria (Local) and the requirements of Paragraph 3.3 have been complied with

to a person or person(s) who meet the Eligibility Criteria (National)

3.3. (Where there are Eligibility Criteria (Local)) the Owner covenants that if having actively marketed the sale of the First Home in accordance the Eligibility Criteria (Local) an owner of a First Home (which for the purposes of this Paragraph shall include the Owner and any First Homes Owner) has not within three (3) months from when the First Home is first marketed secured the Disposal of the First Home the First Home may be marketed and sold free of the Eligibility Criteria (Local) to a willing purchaser who meets the Eligibility Criteria (National)

3.4. The Owner covenants that no First Home shall be Disposed of unless and until

3.4.1. The Borough Council (care of the Section 106 Monitoring Officer) has been provided with evidence that:

3.4.1.1. the intended purchaser meets the eligibility criteria in Paragraph 3.2

3.4.1.2. the Dwelling is being Disposed of as a First Home in accordance with the requirements of Paragraph 3.2 and the Borough Council will be provided with the Valuer's Market Value valuation by the seller **AND FOR THE AVOIDANCE OF DOUBT** this market valuation shall be provided by the Owner to the Borough Council on first Disposal and by the First Homes Owner on each subsequent Disposal and

3.4.1.3. the transfer of the First Home includes

a) a definition of the "Borough Council" which shall be • Borough Council

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Paragraphs 3.1 to 3.10 (both inclusive) to Schedule 7 (First Homes) of the 106 Agreement a copy of which is attached hereto as the Annexure"

c) A definition of "S106 Agreement" in the following terms:

"means the deed of agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) dated 24th September 2024 made between (1) the Borough Council and (2) Hallam Land Management Limited"

d) a provision that the property comprising the First Home is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

3.4.2. The Borough Council has issued the Compliance Certificate and the Borough Council hereby covenants that it shall issue the Compliance Certificate within 20 (twenty) Working Days of being provided with evidence sufficient to satisfy it that

3.4.2.1. the purchaser has (or in the case of a joint purchase the joint purchasers' have) a first mortgage or other home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% (fifty percent) of the Discounted Market Price or on first Disposal the Price Cap (as may be the case) and

3.4.2.2. the requirements of Paragraph 3.4.1 have been met

3.5. On any Disposal of each and every First Home the Owner (on first disposal) or the First Homes Owner (on any subsequent disposals) shall apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Maidstone Borough Council, Maidstone House, King Street, Maidstone, Kent ME15 6JQ or their conveyancer that the

provisions of clause • (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition”

Disposal without the First Homes Restrictions

- 3.6. The Owner may apply to the Borough Council (care of the Section 106 Monitoring Officer) to Dispose of the First Home other than as a First Home if on first Disposal the Owner has unsuccessfully actively marketed the Dwelling as a First Home for six (6) months from a date when the First Home is first marketed and despite using all reasonable endeavours having been made to Dispose of the Dwelling as a First Home it has not been possible to Dispose of that Dwelling as a First Home
- 3.7. On subsequent Disposals the First Home Owner may apply to the Borough Council (care of the Section 106 Monitoring Officer) to Dispose of the First Home other than as a First Home if despite using all reasonable endeavours to Dispose of the Dwelling as a First Home it has not been possible to Dispose of that Dwelling as a First Home and the Borough Council is satisfied that requiring the First Homes Owner to undertake active marketing for six (6) months from the date when the First Home is first placed on the market before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship
- 3.8. Upon receipt of an application served pursuant to Paragraph 3.6 or 3.7 (as the case may be) the Borough Council shall have the right (but shall not be required) to direct that the relevant Dwelling shall be Disposed of to the Borough Council at the Discounted Market Price who shall use reasonable endeavours to Dispose of the Dwelling as a First Home and in the event that the Borough Council is unable to Dispose of the Dwelling as a First Home then it shall be entitled to convert that Dwelling to an alternative tenure of Affordable Housing
- 3.9. Subject to Paragraph 3.10 if the Borough Council is satisfied that either of the grounds in Paragraph 3.6 or 3.7 (as the case may be) have been made out it shall within 20 (twenty) Working Days of receipt of the request made pursuant to Paragraph 3.6 or 3.7 (as the case may be) (or such longer period of time as may be agreed between the Borough Council and the Owner or the First Homes Owner (as the case may be)) either
 - 3.9.1. direct that the relevant First Home shall be Disposed of to the Borough Council and the Owner or the First Homes Owner (as the case may be) shall Dispose of the First Home to the Borough Council accordingly or

- 3.9.2. confirm (should the Borough Council choose not to acquire the relevant First Home) that the relevant First Home may be Disposed of other than as a First Home and on the issue of that confirmation the restrictions in this Schedule as they relate to First Homes shall cease to bind and shall no longer affect that First Home **SAVE FOR** Paragraph 3.11 below which shall cease to apply on receipt of payment by the Borough Council of the First Homes Contribution
- 3.10. If the Borough Council is not satisfied that either of the grounds in Paragraph 3.6 or 3.7 (as the case may be) have been made out then it shall within 20 (twenty) Working Days of receipt of the request made pursuant to Paragraph 3.6 or 3.7 (as the case may be) serve notice on the Owner or the First Homes Owner (as the case may be) setting out the further steps it requires the Owner or the First Homes Owner (as the case may be) to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months from the date of the notice). If at the end of that period the Owner or the First Homes Owner (as the case may be) has been unable to Dispose of the Dwelling as a First Home he may serve a further notice on the Borough Council pursuant to Paragraph 3.6 or 3.7 (as the case may be) following which the Borough Council shall within 20 (twenty) Working Days of receipt of this notice issue confirmation that the Dwelling may be Disposed of other than as a First Home and on the issue of that confirmation the restrictions in this Schedule as they relate to First Homes shall cease to bind and shall no longer affect that Dwelling **SAVE FOR** Paragraph 3.11 which shall cease to apply on receipt of payment by the Borough Council of the First Homes Contribution
- 3.11. Where a First Home is Disposed of to the Borough Council the price to be paid by the Borough Council shall
- 3.11.1. not exceed the Price Cap on the first Disposal of the First Home or
- 3.11.2. not exceed the Discounted Market Price on subsequent Disposals
- 3.12. Where a First Home is not Disposed of
- 3.12.1. as a First Home or
- 3.12.2. to the Borough Council
- pursuant to Paragraphs 3.9 or 3.10 (as the case may be) the Owner or the First Homes Owner (as the case may be) shall pay to the Borough Council forthwith upon receipt of the proceeds of sale the First Homes Contribution
- 3.13. Upon receipt of the First Homes Contribution the Borough Council shall

3.13.1. as soon as is reasonably practicable (and in any event within 20 (twenty) Working Days) of such receipt provide a completed application to enable the removal of the restriction on the title set out in Paragraph 3.5 where such restriction has previously been registered against the relevant title **BUT FOR THE AVOIDANCE OF DOUBT** the Borough Council is under no obligation to comply with the provisions of this Sub-Paragraph unless and until it has received the First Homes Contribution from the Owner or the First Homes Owner (as the case may be)

3.13.2. apply the First Homes Contribution towards the provision of Affordable Housing

3.14. Any person who purchases a First Home pursuant to either Paragraph 3.9 or 3.10 does so free of the restrictions in this Schedule as they relate to First Homes and shall not be liable to pay the First Homes Contribution to the Borough Council

4. **Use**

4.1. Subject to Paragraph 4.2 and 4.3 the Owner covenants that the First Homes shall not be Occupied or used for any purpose other than as First Homes and shall be retained as First Homes in perpetuity **AND FOR THE AVOIDANCE OF DOUBT** the First Homes are to be used as the First Homes Owner sole or primary residence and shall not be used for investment or commercial gain and shall not be let sub-let or otherwise Disposed of other than in accordance with the terms of this Schedule

4.2. A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years **PROVIDED THAT**

4.2.1. the First Homes Owner notifies the Borough Council (care of the Section 106 Monitoring Officer) before the First Home is Occupied by the prospective tenant or sub-tenant

4.2.2. the lease or sub-lease (as the case may be) is in writing and relate to the whole of the First Home which terms shall expressly prohibit any further sub-letting

4.2.3. a copy of the written lease or sub-lease (as the case may be) is provided to the Borough Council on request

AND the First Homes Owner may let or sub-let their First Home pursuant to this Paragraph 4.2 more than once during that First Homes Owner's period of ownership **PROVIDED THAT** the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years

4.3. A First Homes Owner may let or sub-let their First Home for any period **IF**

- 4.3.1. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of a short employment posting or
- 4.3.2. the First Homes Owner is an Active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting or
- 4.3.3. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting
 - 4.3.3.1. to escape a risk of harm resulting from domestic abuse or
 - 4.3.3.2. as a result of relationship breakdown or
 - 4.3.3.3. as a result of redundancy or
 - 4.3.3.4. to provide care or assistance to a family relative or friend

PROVIDED THAT

- 4.3.4. the First Homes Owner notifies the Borough Council and the Borough Council consents (which consent shall not to unreasonably withheld or delayed) to the proposed letting or sub-letting
 - 4.3.5. the lease or sub-lease (as the case may be) shall be in writing and relate to the whole of the First Home which terms shall expressly prohibit any further sub-letting
 - 4.3.6. a copy of the written lease or sub-lease (as the case may be) shall be provided to the Borough Council (if required) on written request
- 4.4. Nothing in this Paragraph 4 (Use) shall prevent a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence

5. Mortgagee Exclusion

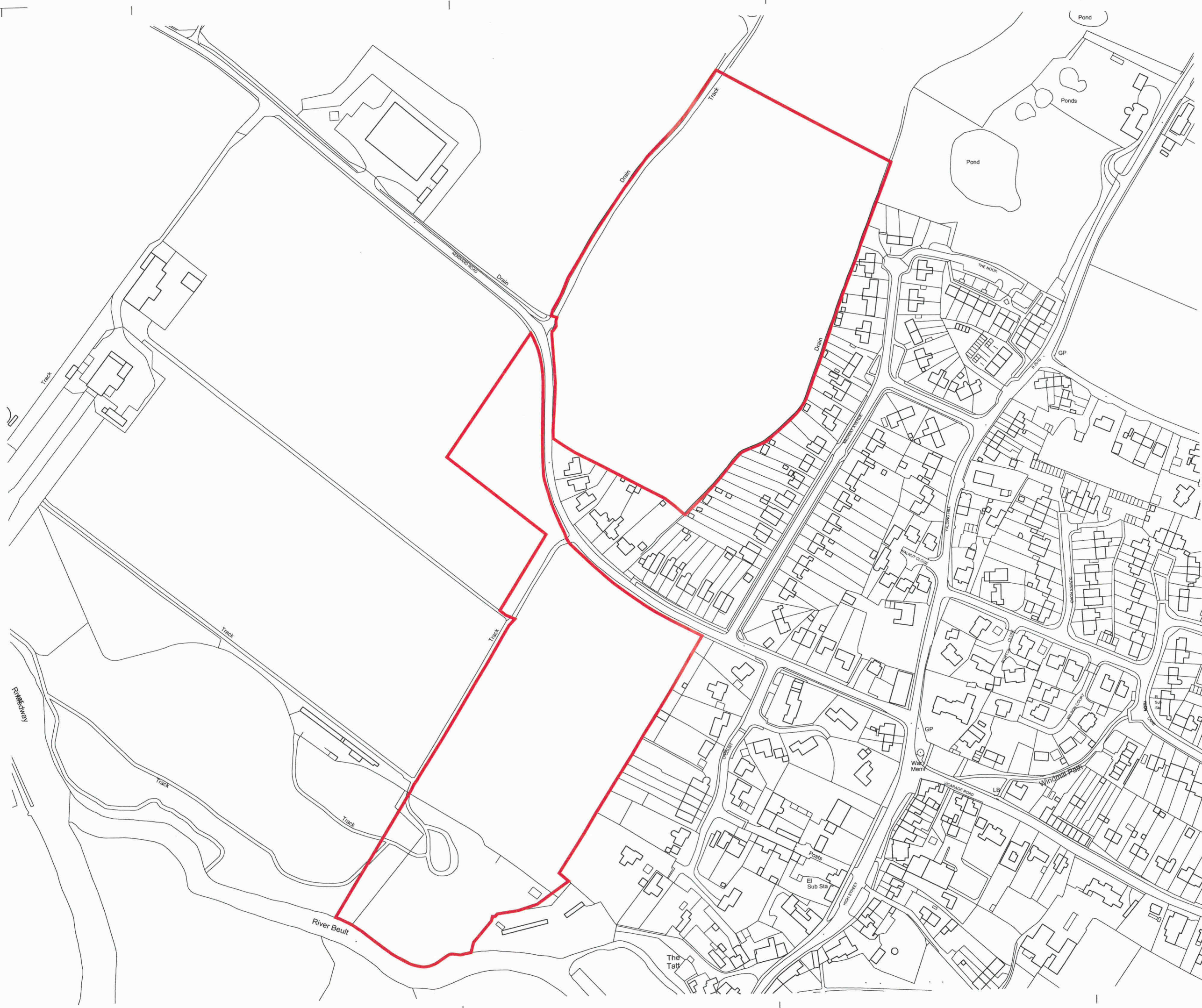
- 5.1. Subject to the terms of this Paragraph 5 the obligations contained in this Schedule as they relate to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a "**Receiver**"))) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver

PROVIDED THAT

- 5.1.1. any power of sale available to any Mortgagee or Receiver (as the case may be) arising under their security documentation in respect of the First Home shall only be exercised in the event of there being a default of any obligation in such security documentation triggering the power of sale and
 - 5.1.2. such Mortgagee or Receiver shall first give notice to the Borough Council (care of the Section 106 Monitoring Officer) of its intention to Dispose of the relevant First Home to the open market and
 - 5.1.3. once notice of intention to Dispose of the relevant First Home to the open market has been given by the Mortgagee or Receiver (as the case may be) to the Borough Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value **SUBJECT ONLY** to Paragraph 5.2 **BUT FOR THE AVOIDANCE OF DOUBT** all other obligations contained in this Deed shall continue to apply
- 5.2. Following the Disposal of the relevant First Home to the open market pursuant to the terms of this Paragraph 5 the Mortgagee or Receiver (as the case may be) shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies interest and reasonable costs and expenses properly incurred pursuant to the security documentation pay to the Borough Council the First Homes Contribution **AND FOR THE AVOIDANCE OF DOUBT** if the remaining proceeds from the sale of the First Home to the open market pursuant to this Paragraph 5
 - 5.2.1. is not sufficient to cover the full amount of the First Homes Contribution then all the remaining proceeds from the sale shall be transferred to the Borough Council or
 - 5.2.2. is sufficient to cover the full amount of the First Homes Contribution any remaining profits from the disposal of the First Home shall be returned to the First Home Owner from whom the Mortgagee or Receiver took possession
- 5.3. Following receipt of notification of the Disposal of the relevant First Home to the open market the Borough Council shall
 - 5.3.1. as soon as is reasonably practicable issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in Paragraph 3.4 and
 - 5.3.2. apply the First Homes Contribution towards the provision of Affordable Housing

Appendix A: S106 Site Plan

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Appendix B: Affordable Housing Commuted Sum

1. Should the Council agree that the affordable housing requirement is best provided as an off-site financial contribution the financial contribution should be calculated as if the units were to be provided on site.
2. The amount should equate to the difference between the market value of the unit and the amount a Registered Provider would pay for that unit based on the required housing mix for that site.
3. The market value of the units would be established and verified on a site by site basis.
4. The applicant would need to demonstrate with evidence from market research and advice from local estate agents the open market values.
5. If necessary, the Council will engage an independent consultant to check that the open market values are fair and reasonable. The cost of this service would be expected to be met by the applicant.
6. This amount is then multiplied by the number of units sought (whole or fraction) based on the policy target percentage.
7. An example of how this would work in practice is shown below

Site in Maidstone Broad Rental Market

Number of units in total 20 x two-bed houses

Affordable housing requirement: 30% = 6 x two-bed houses

Tenure split: 70/30 = 4.2 rent and 1.8 intermediate

Assuming a market value for the 2 bed units of, say £240,000, this equates to a total GDV for the open market units of £1,440,000.

If the units had been provided on site, then the transfer value assumed would be:

Rent: £121,485 x 4.2 = £510,237

Intermediate: £156,000 x 1.8 = £280,800

TOTAL - = £791,037

Difference between open market value and transfer price = £648,963

8. Many Council's make allowances in their financial contribution for the difference in profit levels between providing open market units on site and affordable housing on site. This has the effect of reducing the overall financial contribution.

However, this difference in profit is offset by the extra revenue potentially received by the developer given that the site is now 100% open market and also accounts for the extra costs involved for both the Council and RPs in finding alternative sites and schemes for the off-site contribution.

9. The rental levels used in the calculation sheet will be the latest Local Housing Allowance rates (being 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).