

**DATED**

**MAIDSTONE BOROUGH COUNCIL**

**-and-**

**THE KENT COUNTY COUNCIL**

**-and-**

**SUZANNE PATRICIA SUTTON and ELIZABETH SUTTON and JANE CORKE**

**-and-**

**JOHN ADAMS and SHEILA ANN ADAMS**

**-and-**

**B.YOND HOMES LIMITED**

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**DEED OF AGREEMENT PURSUANT TO  
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO THE DEVELOPMENT OF  
LAND AT EAST OF ALBION ROAD AND NORTH OF COPPER LANE,  
MARDEN, TN12 9EG  
PLANNING APPLICATION REFERENCE NO. 23/504068/OUT  
APPEAL REFERENCE NO. APP/V2235/W/24/3346817**

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



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

**Between**

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House King Street Maidstone Kent ME15 6JQ (the “**Borough Council**”) and
- (2) **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ (the “**County Council**”) and
- (3) **SUZANNE PATRICIA SUTTON** and **ELIZABETH SUTTON** of 9 Sutton Forge, Marden, Tonbridge TN12 9DY and **JANE CORKE** of 10 The Avenue, Liphook GU30 7QD (together the “**First Owners**”) and
- (4) **JOHN ADAMS** and **SHEILA ANN ADAMS** of Beech Oast House, Sheephurst Lane, Marden, Tonbridge TN12 9NU (together the “**Second Owners**”) and
- (5) **B.YOND HOMES LIMITED** (Co. Regn. No.) 04773137 whose registered address is at Luxford Place, Lower Road, Forest Row, East Sussex, RH18 5HE (**the “Developer”**)

**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 local highways libraries youth services community learning adult social care and waste disposal for the area within which the Land is situated and enforcing authority (as the case may be) for the purposes of section 106 of the 1990 Act
- C. The Application was made to the Borough Council
- D. By a notice of refusal dated 22<sup>nd</sup> December 2023 the Borough Council refused planning permission for the Development for the reasons set out therein and the Owner has appealed to the Secretary of State against the refusal and enters into this Deed to the intent that any objections of the Borough Council to the grant of planning permission are overcome
- E. The First Owners and the Second Owners are persons interested in the Land by virtue of being the freehold owners of the Land as set out in Schedule 1
- F. The Developer is the beneficiary of registered restrictions on the title to the Land dated 10<sup>th</sup> January 2017 (relating to an option to purchase) and will observe the restrictions and

perform the obligations contained in this Deed once it shall have acquired a legal interest in the Land being not merely a registered option except those obligations which have been discharged before it acquires such interest

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

## **OPERATIVE PROVISIONS**

**IT IS AGREED** as follows

### **1 Definitions**

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

<b>“1990 Act”</b>	means the Town and Country Planning Act 1990 (as amended)
<b>“All in Tender Price Index”</b>	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors

<p><b>“Appeal”</b></p>	<p>means the appeal against the Borough Council's refusal of the Application which has been made to the Secretary of State by B. Yond Homes Limited and given reference APP/V2235/W/24/3346817</p>
<p><b>“Application”</b></p>	<p>means the application for outline planning permission submitted by B.Yond Homes Limited to the Borough Council to carry out the Development on the Land and given the registered reference number 23/504068/OUT</p>
<p><b>“Borough Council Contributions”</b></p>	<p>means the financial contributions payable to the Borough Council pursuant to Schedule 3 comprising the Sports Off-site Contribution and the BNG Monitoring Contribution</p>
<p><b>“Commencement of Development”</b></p>	<p>means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words <b>“Commence”</b> and <b>“Commencement”</b> and <b>“Commence Development”</b> shall be construed accordingly</p>
<p><b>“Consumer Price Index”</b></p>	<p>means the Consumer Price Index published by the Office for National Statistics and the acronym <b>“CPI”</b> shall be construed accordingly</p>
<p><b>“County Council”</b></p>	<p>means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the responsible authority for education and highways within the area within which the Land is situated</p>
<p><b>“County Council Contributions”</b></p>	<p>means the financial contributions payable to the County Council pursuant to Schedule 4 and Schedule 8 comprising:</p> <ul style="list-style-type: none"> <li>a) the Primary Education Contribution</li> <li>b) the Secondary Education Contribution</li> <li>c) the Special Education Needs and Disabilities Contribution and</li> </ul>

	d) the PROW Contribution
<b>“Deed”</b>	means this deed of agreement together with all Schedules and Appendices
<b>“Development”</b>	means the removal of two (2) former agricultural sheds and erection of up to 117 (one hundred and seventeen) no. dwellings and associated infrastructure including partial footways on Albion Road on the Land as set out in the Application pursuant to the Appeal
<b>“Dwelling”</b>	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
<b>“General Building Cost Index”</b>	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
<b>“Implementation of the Planning Permission”</b>	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and the words <b>“Implement”</b> and <b>“Implemented”</b> and <b>“Implementation”</b> shall be construed accordingly <b>AND FOR THE AVOIDANCE OF DOUBT</b> Implementation of the Planning Permission shall not be construed as Commencement of Development for the purposes of this Deed
<b>“Index Linked”</b>	means adjusted by reference to the relevant index pursuant to the provisions of Clause 18
<b>“Interest Rate”</b>	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

<b>“Land”</b>	means the land against which this Deed may be enforced as detailed in Schedule 1 and shown edged coloured red on the Plan
<b>“Monitoring Fee (Borough Council)”</b>	means the sum of £3,519 (Three thousand five hundred and nineteen pounds) in connection with the monitoring and administration of this Deed
<b>“Monitoring Fee (County Council)”</b>	means the sum of £600.00 (six hundred pounds) in connection with the monitoring and administration of this Deed
<b>“Occupy”</b>	means taking or permitting beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations or marketing or display operations <b>“Occupation”</b> <b>“Occupier”</b> or <b>“Occupied”</b> shall be construed accordingly
<b>“Open Market Dwellings”</b>	means those Dwellings for sale on the open market and which are not Affordable Dwellings or First Homes
<b>“Owner”</b>	means the First Owners and the Second Owners collectively
<b>“Parties”</b>	means the Owner, the Developer the Borough Council and the County Council as the context so requires and <b>“Party”</b> means any one of them
<b>“Plan”</b>	means the plan titled “Site Location Plan” (Drawing No 22037 S101A) and dated 13.10.22 annexed at Appendix A
<b>“Planning Inspector”</b>	means the inspector appointed by the Secretary of State to determine the Appeal

<b>“Planning Permission”</b>	means planning permission for the Development to be granted pursuant to the Appeal subject to conditions
<b>“Practical Completion”</b>	means the stage in the progress of the Development when the works are sufficiently complete in accordance with the approved plans and specifications such that the Development can be occupied and used for its intended purposes, notwithstanding the fact that there may be minor outstanding works or defects which do not materially affect the Occupation and use of the Development. Practical Completion shall be certified by the issuing of a Practical Completion Certificate by the Owner’s architect, engineer or other appropriately qualified professional (as the case may be) and the term <b>“Practically Complete”</b> shall be construed accordingly
<b>“Preparatory Operation”</b>	means an operation or item of work of or connected with or ancillary to a) archaeological investigation b) exploratory boreholes and trial pits c) site surveys d) site clearance e) demolition works f) diversion, decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities g) the erection of fences and hoardings around the Land and h) construction of temporary access and service roads
<b>“Reserved Matters Application”</b>	means an application for approval of reserved matters in accordance with the Planning Permission

<b>“Reserved Matters Approval”</b>	means an approval or approvals given by the Borough Council pursuant to each and every Reserved Matters Application
<b>“Retail Price Index”</b>	means the Retail Price Index published by the Office for National Statistics and the acronym <b>“RPI”</b> shall be construed accordingly
<b>“Secretary of State”</b>	the Secretary of State for Housing and Communities or any other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Housing and Communities by the Planning Act
<b>“Section 106 Monitoring Officer”</b>	means any such officer appointed by the Borough Council for the purposes of monitoring planning obligations secured in respect of development proposals
<b>“Statutory Undertakers”</b>	means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator
<b>“VAT”</b>	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
<b>“Working Day”</b>	means a day which is not a Saturday, Sunday, bank holiday in England (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 or the County Council (as the case may be) shall include any successor to their respective statutory functions
- 2.8 Reference to any officer of the Borough Council and/or County Council (as applicable) means such officer or such other officer as may be lawfully designated by the Borough Council and/or the County Council (as the case may be) for the purposes of discharging such duties and functions
- 2.9 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually
- 2.10 Words denoting an obligation on a Party to do any act matter or thing include an obligation to cause permit or procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.11 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision
- 2.12 Any words following the terms "including" "include" "in particular" "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms

- 2.13 Unless otherwise stated all amounts referred to in this Deed are in Pounds Sterling and all references in this Deed to “pounds” or “pence” or “£” are references to the lawful currency of the United Kingdom
- 2.14 Any financial contributions collected pursuant to the terms of this Deed may be pooled with other funds for use by the receiving party for the purposes for which those contributions were paid and for the avoidance of doubt any financial contribution may be used towards professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the person receiving the financial contribution in order to achieve the purposes for which the requisite contribution was paid
- 2.15 In relation to any financial payments and contributions made pursuant to this Deed the Borough Council or the County Council (as the case may be) shall be entitled to treat any accrued interest or any interest payable under Clause 19 (Interest) as if it were part of the principal sum paid

### **3 Legal Basis**

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

111 of Local Government Act 1972, sections 12 and 93 of the Local Government Act 2003, section 1 of the Localism Act 2011 and all other powers so enabling

#### **4 Conditionality**

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

- 4.1 Each planning obligation in this Deed is also conditional upon the Secretary of State or her appointed Planning Inspector deciding the Appeal being satisfied that it complies in all respects with Regulation 122 of the Community Infrastructure Regulations 2010 and in the event that the Secretary of State or her Planning Inspector deciding the Appeal expressly states in their decision letter that any individual planning obligation within this Deed is not compliant with Regulation 122 of the Community Infrastructure Regulations 2010 then that planning obligation or those planning obligations so identified by the Secretary of State or her appointed Planning Inspector will cease to take effect and shall be void for the purposes of this Deed and the Owner shall not be obliged to comply with the terms of that planning obligation **PROVIDED ALWAYS THAT**

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

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

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

Part 1: the Owner's Covenants

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

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

agents at all times with the Owner's site regulations and requirements and health and safety law and good practice

## Part 2: The Developer's Covenants

5.3 Before completion of this Deed the Developer covenants to pay

5.3.1 to the Borough Council

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

5.3.1.2 the Monitoring Fee (Borough Council)

5.3.2 to the County Council

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

5.3.2.2 the Monitoring Fee (County Council)

whether or not this Deed is delivered in accordance with Clause 23

5.4 Save for clause 5.3 the Developer hereby confirms that it consents to the Owner entering into this Deed and covenants that it will observe the restrictions and perform the obligations contained in this Deed once it shall have acquired a legal interest in the Land being not merely a registered option except those obligations which have been discharged before it acquires such interest

## **6 Council's Covenants**

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

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

any costs incurred by the County Council in monitoring this Deed until the date of such refusal

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

## **7 Successors and Exclusions**

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

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

- 7.3 No obligations contained in this Deed shall be binding on any freehold or leasehold owners or Occupiers of individual Dwellings (or their respective mortgagees or successors in title) constructed pursuant to the Planning Permission save for the provisions of clause 5.2, paragraphs 2.6 and 2.7 of Schedule 5 and paragraph 3 and 4 of Schedule 7 which shall be enforceable against the owners and occupiers of the relevant Affordable Housing Units or their charges mortgagees or successors in title

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

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

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

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

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

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

## **10 Disputes**

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

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

10.2.1 if the dispute relates to

10.2.1.1 transport or highway works, engineering, demolition or construction works a chartered civil engineer being a member of

the Institution of Civil Engineers (having not less than 10 (ten) years' relevant experience in the public or private sector) agreed by the Parties to the dispute but in default of agreement appointed at the request of any of the Parties by or on behalf of the President from time to time of the Institution of Civil Engineers

10.2.1.2 any building within the Development or any similar matter a chartered surveyor (having not less than 10 (ten) years' relevant experience) agreed by the Parties to the dispute but in default of agreement appointed at the request of 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, the Borough Council and the County 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

10.2.6.7 the other Parties shall be entitled to make written submission within 10 (ten) Working Days of the date of notification of the Expert's decision to allow the late submission; and

10.2.6.8 the Expert may take this into account when making any cost order.

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

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

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

10.2.9.1 after the conclusion of any hearing that takes place; or

10.2.9.2 after the Expert has received the representations under Clause 10.2.5 or 10.2.6 (as the case may be) or if none, the expiry of the period referred to in Clause 10.2.5 or 10.2.6 (as the case may be).

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

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

## **11 Notices**

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

service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

<b>The Borough Council</b>	<b>Maidstone Borough Council</b>
<b>Address</b>	The Head of Development Management Maidstone Borough Council Maidstone House King Street Maidstone Kent ME15 6JQ  Reference 23/504068/OUT
With a copy to	The Section 106 Monitoring Officer

<b>The County Council</b>	<b>The Kent County Council</b>
<b>Address</b>	<b>General Counsel</b> Sessions House Maidstone Kent ME14 1XQ  Reference • KEN002:001503  and a copy of such notice, agreement, approval authorisation or other written communication shall be emailed to <a href="mailto:developer.contributions@kent.gov.uk">developer.contributions@kent.gov.uk</a>

<b>The First Owners</b>	• <b>SUZANNE PATRICIA SUTTON</b> and <b>ELIZABETH SUTTON</b> and <b>JANE CORKE</b>
<b>Address</b>	• 9 Sutton Forge, Marden, Tonbridge TN12 9DY (in the case of Suzanne Patricia Sutton and Elizabeth Sutton)  • 10 The Avenue, Liphook GU30 7QD (in the case of Jane Corke)

<b>The Second Owners</b>	• <b>JOHN ADAMS</b> and <b>SHEILA ANN ADAMS</b>
<b>Address</b>	• Beech Oast House, Sheephurst Lane, Marden, Tonbridge TN12 9NU
<b>The Developer</b>	<b>B.Yond Homes Limited</b>

<b>Address</b>	Luxford Place, Lower Road, Forest Row, East Sussex, RH18 5HE
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11.2 Any communication given pursuant to this Deed shall conclusively be deemed to have been received

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

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

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

11.4 This Clause does not apply to Schedule 5 (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 and/or the County Council (as the case may be) for confirmation to that effect and (subject to the payment of the Borough Council's and/or the County Council's (as the case may be) reasonable costs and charges in connection therewith) upon the Borough Council and/or the County Council (as the case may be) being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council and/or the County Council (as the case may be) shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner.

12.3 The Borough Council and/or the County Council's (as the case may be) shall upon the written request of the Owner (and subject to the payment of the Borough Council's

and/or the County Council's (as the case may be) reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council and/or the County Council's (as the case may be) being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable the Borough Council shall cancel all entries made in the local land charges register in respect of this Deed.

### **13 Powers**

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

### **14 Severability**

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

### **15 Rights of Third Parties**

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

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

- 16.1 The Owner warrants that
- 16.1.1 they have full authority to enter into this Deed;
  - 16.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land and that it has not leased mortgaged charged or otherwise created any interest in the Land at the date of this Deed;
  - 16.1.3 they know of no impediment to the validity of this Deed;
  - 16.1.4 they are not aware of any subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed; and
  - 16.1.5 they shall make good any loss to the Borough Council and the County Council

as a result of a breach of this warranty within 10 (ten) Working Days of a request to do so.

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

16.2.1 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

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

16.3 In the event of the Borough Council considering it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owner hereby consents and shall do or concur in doing all things necessary or advantageous to enable the said entries to be made

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

## **17 Waiver**

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

## **18 Indexation**

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

- 18.2 The Sports Off-site Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately preceding the date of the delegated officer report of 21 December 2023 and the quarterly index figure for the quarter immediately preceding the date of actual payment.
- 18.3 The BNG Monitoring Contribution 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.
- 18.4 The County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately preceding Q1 2022 and the quarterly index figure for the quarter immediately preceding the date of actual payment.
- 18.5 Where reference is made to any index in this Deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service, the Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council or the County Council (as the case may be) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council or the County Council (as the case may be) shall approve.
- 18.6 In the event that there is a decrease in the relevant index in this Clause 18 any financial contribution payable pursuant to this Deed shall not fall below the figure set out within this Deed.
19. **Forward-Funding**
- 19.1 If the County Council forward-funds any project, facility, infrastructure or other expenditure from its own resources and/or enters into a commitment to a third party to repay any similar forward-funding provided by that third party (whether in cash and/or in kind) in anticipation of receipt of any relevant contribution or payment under the provisions of this Deed then on such receipt the County Council may credit such contribution or payment (including any indexation element and/or interest received thereon) to its own resources and/or repay such third party accordingly and in either case the receipt shall be treated as being immediately expended by the County Council for the purpose for which the forward-funding was expended PROVIDED

THAT this clause 19 shall only apply to expenditure incurred by the County Council in connection with one or more of the specific purposes for which the County Council Contributions are due to be paid under this Agreement.

## **20. Interest on Late Payments**

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

## **21 VAT**

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

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

## **22 Agreements and Declarations**

22.1 The Parties agree that

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

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

## **23 Governing Law**

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

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

**24 Delivery**

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

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

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

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Authorised Signatory

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

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**Authorised Signatory**

Signed as a **DEED** by **SUZANNE** )  
**PATRICIA SUTTON** in the presence )  
of

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Signature

Signed as a **DEED** by **ELIZABETH** )  
**SUTTON** in the presence of )

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Signature

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Signature of witness

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Name (IN BLOCK CAPITALS)  
Address

Signed as a **DEED** by **JANE CORKE** )  
in the presence of )

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Signature

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Signature of witness

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Name (IN BLOCK CAPITALS)  
Address

Signed as a **DEED** by **JOHN ADAMS** )  
in the presence of )

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Signature

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Signature of witness

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Name (IN BLOCK CAPITALS)  
Address

Signed as a **DEED** by **SHEILA ANN** )  
**ADAMS** in the presence of )

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Signature

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Signature of witness

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Name (IN BLOCK CAPITALS)  
Address

**EXECUTED** as a deed by

**B.YOND HOMES LIMITED**

in the presence of:

Director:

Director/Secretary: \_\_\_\_\_

## **Schedule 1: The Land**

The land against which this Deed is enforceable comprises all that land and premises situate at Land east of Albion Road and north of Copper Lane, Marden, Tonbridge, Kent TN12 9EG as shown on the Plan of which:

1. The First Owners are the registered proprietor of the freehold with title absolute of part of the land and premises shown edged red on the Plan and forming part of the land registered at the Land Registry under title number TT5150 subject to the matters in the Charges Registers but otherwise free from encumbrances.
2. The Second Owners are the registered proprietor of the freehold with title absolute of part all the land and premises shown edged red on the Plan and which is registered at the Land Registry under title number K699475 subject to the matters in the Charges Registers but otherwise free from encumbrances.

## **Schedule 2: Notices**

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

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

### **2. Notices**

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

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

- 2.1. it shall provide the Borough Council and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Implementation;
- 2.2. it shall not Implement the Planning Permission unless and until the notice required by Paragraph 2.1 has been provided to the Borough Council and the County Council;
- 2.3. it shall subsequently notify the Borough Council and the County Council promptly 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 and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of Commencement of Development;
- 2.5. it shall not Commence Development unless and until the notice required by Paragraph 2.4 has been provided to the Borough Council and the County Council;
- 2.6. it shall notify the Borough Council and the County Council promptly 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 and the County Council with no less than 20 (twenty) Working Days prior notice of the intended date of: first Occupation of the Development, Occupation of 50% of the Dwelling, Occupation of 35% of the Open Market Dwellings, Occupation of 50% of the Open Market Dwellings and 65% of the Open Market Dwellings (as the case may be);
- 2.8. the Owner shall not first Occupy any part of the Development or more than 50% of the Dwellings or 35% of the Open Market Dwellings or Occupation of 50% of the Open Market Dwellings or 65% of the Open Market Dwellings (as the case may be) unless

and until the notice required by Paragraph 2.7 (as the case may be) has been provided to the Borough Council and the County Council;

- 2.9 it shall notify the Borough Council and the County Council promptly and in any event within 5 (five) Working Days of the actual date of first Occupation of the Development, Occupation of 50% of the Dwellings, Occupation of 35% of the Open Market Dwellings, Occupation of 50% of the Open Market Dwellings and 65% of the Open Market Dwellings (as the case may be;)

**Notification of Completion**

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

## Schedule 3: Borough Council Contribution

### 1 Interpretation of this Schedule

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

<b>“BNG Monitoring Contribution”</b>	means a contribution of £20,000 (Twenty Thousand pounds) towards the Borough Council's costs of monitoring compliance with a Biodiversity Management Plan approved by the Borough Council
<b>“Biodiversity Management Plan”</b>	means a plan submitted to and approved by the Borough Council pursuant to a condition of the Planning Permission which requires the Development to deliver net gain of Biodiversity Units across the Land of at least 20%
<b>“Biodiversity Units”</b>	means biodiversity units calculated in accordance with the statutory biodiversity metric issued by the Department for Environment, Food and Rural Affairs as at the date of this Deed
<b>“Sports Off-site Contribution”</b>	means a contribution towards the Sports Facilities where the total contribution shall be calculated in accordance with the following formula $D \times \text{£}1575 \text{ (Index Linked)} \times 0.173$ <p>WHERE  D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval</p>
<b>“Sports Facilities”</b>	means a replacement pavilion at Southons Field with utilities (including toilets) and associated services or towards an alternative sports facility in the Parish of Marden
<b>“Spend”</b>	for the purposes of this Schedule includes facilitate the delivery of or apply or spend or allocate or commit or use for the purpose for which the relevant contribution was paid and the word <b>“Spent”</b> shall be construed accordingly

## **2 Sports Off-site Contribution**

### **2.1 The Owner covenants that it shall**

2.1.1 pay to the Borough Council 50% of the Sports Off-site Contribution prior to Commencement of the Development and covenants further that it shall not Commence the Development unless and until 50% of the Sports Off-site Contribution has been paid to the Borough Council; and

2.1.2 pay to the Borough Council the balance of the Sports Off-site Contribution prior to first Occupation of the Development and covenants further that it shall not Occupy any of the Dwellings unless and until the balance of the Sports Off-site Contribution has been paid to the Borough Council.

2.2 The Borough Council covenants with the Owner that it shall Spend the Sports Off-site Contribution (or any part thereof) following payment by the Owner on the Sports Facilities or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree and not to Spend the Sports Off-site Contribution otherwise than on the Sports Facilities.

2.3 In the event that all or any part of the Sports Off-site Contribution has not been Spent for the purpose for which it was paid pursuant to Paragraph 2.2 within 10 (ten) years from the date the final payment was made to the Borough Council and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on request from the person that made such payment to repay such sum or amount (or such part thereof) as the Borough Council is holding) to the person who paid the Sports Off-site Contribution together with any accrued interest that has not been Spent (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses and for the avoidance of doubt if part of the Sports Off-site Contribution has been Spent by the Borough Council pursuant to Paragraph 2.2 then there shall be no requirement to repay such sums as have already been Spent by the Borough Council.

## **3 BNG Contribution**

3.1 The Owner covenants that in the event that the Planning Inspector grants Planning Permission subject to a condition which requires the Development to deliver net gain of Biodiversity Units across the Land it shall pay to the Borough Council the BNG Monitoring Contribution prior to first Occupation of the Development.

3.2 The Borough Council covenants with the Owner that it shall Spend the BNG Monitoring Contribution (or any part thereof) following payment by the Owner for the purpose of

monitoring compliance with the Biodiversity Management Plan approved by the Borough Council

## Schedule 4: County Council Education Contributions

### 1 Interpretation of this Schedule

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

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

	<p>WHERE</p> <p><b>D</b> is the number of Applicable Dwellings to be provided pursuant to the Reserved Matters Approval</p>
<p><b>“Special Education Needs and Disabilities Contribution”</b></p>	<p>means the sum of £559.83 (Five hundred and fifty-nine pounds and eighty-three pence) per Applicable Dwelling where the total contribution shall be calculated in accordance with the following formula</p> <p><b>D x £559.83 (Index Linked)</b></p> <p>WHERE</p> <p><b>D</b> is the number of Applicable Dwellings to be provided pursuant to the Reserved Matters Approval</p>
<p><b>“Primary Education Facilities”</b></p>	<p>means the expansion of schools in the Marden and Staplehurst primary education planning group serving the development, including Marden Primary School</p>
<p><b>Secondary Education Facilities</b></p>	<p>means the expansion of secondary schools in the Maidstone District non-selective and Maidstone and Malling selective planning groups</p>
<p><b>Special Education Needs &amp; Disabilities Facilities</b></p>	<p>Special Education Needs &amp; Disability places with the Maidstone District</p>
<p><b>“Spend”</b></p>	<p>for the purposes of this Schedule includes facilitate the delivery of or apply or spend or allocate or commit or use for the purpose for which the relevant contribution was paid and the word <b>“Spent”</b> shall be construed accordingly</p>

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

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

2.1.1 pay to the County Council:

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

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

2.1.2 pay to the County Council:

- (a) the balance of the Primary Education Contribution
  - (b) the balance of the Secondary Education Contribution; and
  - (c) the balance of the Special Education Needs & Disabilities Contribution
- before first Occupation of any Dwelling and covenants further that it shall not Occupy any Dwelling unless and until the contributions payable pursuant to this paragraph 2.1.2 have been paid to the County Council and the Borough Council have been notified that payment has been made.

2.2 The County Council covenants with the Owner that:

- 2.2.1 it shall Spend the Primary Education Contribution (or any part thereof) on the Primary Education Facilities or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree and not to Spend the Primary Education Contribution otherwise than on the Primary Education Facilities;
- 2.2.2 it shall Spend the Secondary Education Contribution (or any part thereof) on the Secondary Education Facilities or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree and not to Spend the Secondary Education Contribution otherwise than on the Secondary Education Facilities;
- 2.2.3 it shall Spend the Special Education Needs & Disabilities Contribution (or any part thereof) on the Special Education Needs & Disabilities Facilities or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree and not to Spend the Special Education Needs & Disabilities Contribution otherwise than on the Special Education Needs & Disabilities Facilities;
- 2.2.4 From the date of this Deed until the date upon which payment falls due under paragraph 2.1.1 and 2.1.2 of this Schedule the County Council shall use reasonable endeavours to bid to the Borough Council for CIL for the Primary

Education Facilities and the Secondary Education Facilities to coincide with available CIL bidding rounds as advised by the Borough Council

2.3 In the event that all or any part of:

2.3.1 the Primary Education Contribution; or

2.3.2 the Secondary Education Contribution; or

2.3.3 the Special Education Needs & Disabilities Contribution

has not been Spent for the purpose for which it was paid pursuant to this Schedule 4 within 10 (ten) years from the date upon which the final payment of the Primary Education Contribution the Secondary Education Contribution and/or the Special Education Needs & Disabilities Contribution (as applicable) was made to the County Council and unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made the relevant payment to repay such sum or amount (or such part thereof) as the County Council is holding to the person who paid the relevant contribution together with any accrued interest that has not been Spent (if any) but less any tax that may be payable thereon and the County Council's administration expenses and for the avoidance of doubt if part of the Primary Education Contribution, the Secondary Education Contribution or the Special Education Needs & Disabilities Contribution has been Spent by the County Council pursuant to this Schedule 4 then there shall be no requirement to repay such sums as have already been Spent by the County Council.

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

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

- 2.4.2 the County Council need to be reasonably satisfied that the application of the CIL monies will meet the needs arising from the Development only;
- 2.4.3 if no CIL monies or insufficient CIL monies have been received towards the Primary Education Facilities and/or the Secondary Education Facilities by the triggers at paragraphs 2.1.1 and 2.1.2 then the relevant amount of the Primary Education Contribution and the Secondary Education Contribution will be due to be paid by the Owner to the County Council in accordance with paragraphs 2.1.1 and 2.1.2

## 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

<b>"Affordable Dwellings "</b>	<p>means a maximum of 40% (forty percent) of the total amount of Dwellings (rounded up to the nearest whole Dwelling) approved pursuant to the Reserved Matters Approval to be provided by the Owner on the Land together with rights and easements over the Land to provide access to the Dwelling and such entrance way, corridors, parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including vehicle and cycle parking and curtilage of which:</p> <p>1) a maximum of 25% (twenty five percent) (rounded to the nearest whole Dwelling) shall be First Homes (as defined in Schedule 8) (the <b>"First Homes Requirement"</b>) or where the Borough Council makes an election pursuant to paragraph 6 of this Schedule 5 the First Homes Requirement shall be reduced by the number of First Homes that are to come forward as Shared Ownership Units (the <b>"Shared Ownership Requirement"</b>)</p> <p>and</p> <p>2) the balance (a maximum of 75% (seventy five percent)) shall be either (i) Social Rented Units (the <b>"Social Rent Requirement"</b>) which are to be transferred to a Registered Provider or (ii) where paragraph 7 of this Schedule 5 applies Affordable Rented Housing Units (the Affordable Rented Housing Requirement) for housing persons in</p>
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	<p>Housing Need in accordance with the provisions of this Schedule</p> <p><b>PROVIDED ALWAYS THAT</b> where the rounding up of the Social Rented Units, the Affordable Rented Housing Units, the Shared Ownership Units and First Homes (as the case may be) to the nearest whole Dwelling results in more Affordable Dwellings being secured than is required then the Affordable Dwellings shall be rounded up or down (as the case may be) in the following order provided that preference shall always be given to Social Rented Units which will always be rounded up to the nearest whole:</p> <ol style="list-style-type: none"> <li>1. the First Homes Requirement shall be rounded down to the nearest whole Dwelling;</li> <li>2. the Shared Ownership Units shall be rounded down to the nearest whole Dwelling;</li> <li>3. The Social Rented Units shall be rounded up to the nearest whole Dwelling</li> </ol> <p><b>AND FOR THE PURPOSES OF THIS SCHEDULE</b> the reference to “<b>Affordable Dwellings</b>” shall be a reference to the Social Rented Units or the Affordable Rented Housing Units and Shared Ownership Units to be provided on the Affordable Housing Land (<b>AND NOT</b> the First Homes to be provided pursuant to Schedule 7)</p>
<p><b>“Affordable Housing”</b></p>	<p>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</p>
<p><b>"Affordable Housing Land"</b></p>	<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>

<p><b>“Affordable Housing Scheme”</b></p>	<p>means a scheme for the provision of the Affordable Dwellings to be provided by the Owner on the Land which scheme shall (as a minimum) include:</p> <ul style="list-style-type: none"> <li>• a plan showing the location of the Affordable Dwellings on the Land appropriately distributed throughout the Development so as not to be segregated from the Open Market Dwellings and ensure inclusive and mixed communities;</li> <li>• details of the tenure and tenure split;</li> <li>• the type and size of Dwelling to be provided as the Affordable Dwelling which shall be in accordance with the Indicative Affordable Housing Mix;</li> <li>• identifying which of the Affordable Dwellings (being no less than 15% (fifteen percent) of the Affordable Dwellings) is to comprise fully wheelchair accessible Dwellings their location within the Development (as shown on the plan above) and the type and size of Affordable Dwelling to be provided as fully wheelchair accessible</li> </ul> <p><b>AND</b> such other matters as the Borough Council may reasonably require</p>
<p><b>“Affordable Rented Housing Units”</b></p>	<p>means the Affordable Housing Units to be occupied as Affordable Rented Housing</p>
<p><b>“Affordable Rented Housing”</b></p>	<p>means Affordable Housing let by a local authority or private registered provider of social housing to households who are eligible for social rented housing where the rent level is capped at 80% (eighty percent) of the local market rent (including any service charges where applicable)</p>
<p><b>“Allocations Scheme”</b></p>	<p>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</p>

<b>"HE"</b>	means the body known as Homes England established pursuant to Part 1 of the Housing and Regeneration Act 2008 or any successor body performing substantially the same functions
<b>"Housing Need"</b>	Means: a) in relation to the Social Rented Units the requirement by a person for social housing allocation in accordance with the Allocations Scheme and b) in relation to the Shared Ownership Units the requirement by a person to be registered with a Registered Provider and in accordance with current government guidance to be granted a Shared Ownership Lease because the person's income is insufficient to enable them to rent or buy housing available locally on the open market determined with regard to local incomes and local house prices
<b>"Indicative Affordable Housing Mix"</b>	means the mix for the Affordable Housing which (unless otherwise agreed with the Borough Council) shall be in accordance with Appendix B of this Deed
<b>"Local Housing Allowance"</b>	means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework or body that may replace it
<b>"Part M4(2)"</b>	means Part M4(2) "Category 2: Accessible and adaptable dwellings" of Schedule 1 to the Building Regulations 2010 as supported by "Approved Document M: Access to and use of buildings, volume 1: Dwellings" as may be amended, updated or replaced from time to time or such other equivalent standard as approved by the Borough Council
<b>"Part M4(3)"</b>	means Part M4(3) "Category 3: Wheelchair user dwellings" of Schedule 1 to the Building Regulations 2010 as supported by "Approved Document M: Access

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

## **2. General Provisions**

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

## **3. Transfer of the Affordable Dwellings**

Subject to paragraph 7 of this Schedule 5:

- 3.1. The Social Rented Units and the Shared Ownership Units shall be transferred to and managed by a Registered Provider.
- 3.2. Prior to Occupation of 40% (forty percent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed by the Borough Council it shall ensure that:

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

AND the Owner covenants that no more than 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 by the Borough Council.

- 3.3. Prior to Occupation of 60% (sixty percent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed by the Borough Council it shall ensure that:
  - 3.3.1. 75% (seventy five percent) of the Affordable Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (and on Practical Completion of the Affordable Dwellings the Owner further covenants that it shall provide a copy of the certificate of Practical Completion to the Borough Council); and

- 3.3.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings Practically Completed has been transferred or granted to the Registered Provider (or the Borough Council as the case may be pursuant to Paragraph 6) free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings; and
- 3.3.3. the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the Affordable Dwellings Practically Complete in accordance with the Allocations Scheme and the provisions of this Deed

AND the Owner covenants that no more than 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 by the Borough Council.

- 3.4. Prior to Occupation of 80% (eighty per cent) of the Open Market Dwellings the Owner covenants that unless otherwise agreed by the Borough Council it shall ensure that:
  - 3.4.1. all of the Affordable Dwellings shall have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (and on Practical Completion of the Affordable Dwellings the Owner further covenants that it shall provide a copy of the certificate of Practical Completion to the Borough Council); and
  - 3.4.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings Practically Completed has been transferred or granted to the Registered Provider (or the Borough Council as the case may be pursuant to Paragraph 6) free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings; and
  - 3.4.3. the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the

Affordable Dwellings Practically Complete in accordance with the Allocations Scheme and the provisions of this Deed

AND the Owner covenants that no more than 65% (sixty 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 by the Borough Council.

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

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

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

## **5. Exclusions**

- 5.1. The Affordable Housing Provisions in this Agreement shall not be binding on nor be enforceable against:
- 5.1.1. subject to compliance with Schedule 5 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 or an Affordable Rented Units (as the case may be) who has exercised a statutory right to acquire;
  - 5.1.3. a tenant of a Social Rented Unit or an Affordable Rented Unit (as the case may be) who has exercised a statutory right to buy;
  - 5.1.4. a Shared Ownership leaseholder who has acquired 100% (one hundred percent) of the shares in the Shared Ownership Unit: and
  - 5.1.5. any successor in title of any persons detailed in Sub-Paragraphs 5.1.2, 5.1.3 and 5.1.4 above or their mortgagee or charge.

## **6. Shared Ownership Election**

- 6.1. At any time prior to or as part of the approval of the Affordable Housing Scheme the Borough Council may elect to reduce the overall number of First Homes to be provided as part of the Development and to require that all or part of the First Home Requirement is instead delivered as Shared Ownership Units and where such an election is made the Affordable Housing Scheme shall be issued or updated to reflect the Borough Council's election.

## **7. Affordable Rented Housing**

- 7.1 In the event that, following the expiry of 6 months from the date upon which the Social Rented Units are Practically Completed, the Owner has been unable to exchange contracts with a Registered Provider for the Social Rented Units and where the Owner has demonstrated the same by way of the provision of written evidence to the reasonable satisfaction of the Council then the Owner shall be entitled to substitute the Social Rented Units with Affordable Rent Housing Units.

## 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

<p><b>“Charge”</b></p>	<p>means a mortgage, charge or other security or loan documentation granting a security interest in the Relevant Affordable Housing in favour of the Chargee</p>
<p><b>“Chargee”</b></p>	<p>means any mortgagee or chargee of the Registered Provider of the Relevant Affordable Housing and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator</p>
<p><b>“Date of Deemed Service”</b></p>	<p>means in each instance where a Chargee has served a Default Notice under Paragraph 2.1.1</p> <p>(a) in the case of service by delivery by hand of the Default Notice to the Borough Council’s offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ during 09h00 and 17h00 on a Working Day the date on which the Default Notice is so delivered <b>PROVIDED THAT</b> if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or</p> <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) <b>PROVIDED THAT</b> the Chargee is able to evidence that the Default Notice was actually delivered to the LPA (by Royal Mail proof of delivery or otherwise)</p>
<b>“Default Notice”</b>	<p>means a notice in writing served on the Borough Council by the Chargee under Paragraph 2.1.1 of the Chargee's intention to enforce its security over the Relevant Affordable Housing</p>
<b>“Intention Notice”</b>	<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>
<b>“Moratorium Period”</b>	<p>means in each instance where a Chargee has served a Default Notice under Paragraph 2.1.1 the period from (and including) the Date of Deemed Service on the Borough Council of the Default Notice to (and including) the date falling 3 (three) months after such Date of Deemed Service (or such longer period as may be agreed between the Chargee and the Borough Council)</p>
<b>“Option”</b>	<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>
<b>“Relevant Affordable Housing”</b>	<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>

<b>“Sums Due”</b>	means all sums due to a Chargee of the Relevant Affordable Housing pursuant to the terms of its Charge including (without limitation) all interest and reasonable legal and administrative fees costs and expenses.
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## **2. Mortgagee Protection**

- 2.1. In order to benefit from the protection granted by Paragraph 5.1.1 of Schedule 5 a Chargee must
- 2.1.1. serve a Default Notice on the Borough Council by:
- 2.1.1.1. delivery by hand to the Borough Council's offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ during 09h00 and 17h00; or
  - 2.1.1.2. using first class registered post or other next Working Day delivery service within the United Kingdom to the Borough Council's offices at Maidstone House, King Street, Maidstone, Kent ME15 6JQ
- in either case addressed to the Section 106 Monitoring Officer of the Borough Council prior to seeking to dispose of the Relevant Affordable Housing
- 2.1.2. when serving the Default Notice the Chargee will clearly identify the Relevant Affordable Housing to which the Default Notice applies and
- 2.1.3. subject to Paragraph 2.6 not exercise its power of sale over or otherwise dispose of the Relevant Affordable Housing before the expiry of the Moratorium Period except in accordance with Paragraph 2.3
- 2.2. From the first day of the Moratorium Period to (but excluding) the date falling one (1) calendar month later the Borough Council may serve an Intention Notice on the Chargee
- 2.3. Not later than 15 (fifteen) Working Days after service of the Intention Notice (or such later date during the Moratorium Period as may be agreed in writing between the Borough Council and the Chargee) the Chargee will grant the Borough Council (and/or the Borough Council's nominated substitute Registered Provider) an exclusive option to purchase the Relevant Affordable Housing which shall contain the following terms:

- 2.3.1. the sale and purchase will be governed by the Standard Commercial Property Conditions (Third Edition – 2018 Revision) (with any variations that may be agreed between the parties to the Option (acting reasonably));
- 2.3.2. the price for the sale and purchase will be agreed in accordance with Paragraph 2.4.2 or determined in accordance with Paragraph 2.5;
- 2.3.3. provided that the purchase price has been agreed in accordance with Paragraph 2.4.2 or determined in accordance with Paragraph 2.5 but subject to Paragraph 2.3.4 the Borough Council (or its nominated substitute Registered Provider) may (but is not obliged to) exercise the Option and complete the purchase of the Relevant Affordable Housing at any time prior to the expiry of the Moratorium Period;
- 2.3.4. the Option will expire upon the earlier of:
  - 2.3.4.1. notification in writing by the Borough Council (or its nominated substitute Registered Provider) that it no longer intends to exercise the Option; or
  - 2.3.4.2. the expiry of the Moratorium Period and
- 2.3.5. any other terms agreed between the parties to the Option (acting reasonably).
- 2.4. Following the service of the Intention Notice:
  - 2.4.1. the Chargee shall use reasonable endeavours to reply to enquiries raised by the Borough Council (or its nominated substitute Registered Provider) in relation to the Relevant Affordable Housing as expeditiously as possible having regard to the length of the Moratorium Period; and
  - 2.4.2. the Borough Council (or its nominated substitute Registered Provider) and the Chargee shall use reasonable endeavours to agree the purchase price for the Relevant Affordable Housing which shall be the higher of:
    - 2.4.2.1. the price reasonably obtainable in the circumstances having regard to the restrictions as to the use of the Relevant Affordable Housing contained in Schedule 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 (ten) years' experience in the valuation of affordable/social housing within the Maidstone area to determine the dispute and if the identity is agreed shall appoint such independent surveyor to determine the dispute;
  - 2.5.2. if on the date falling 15 (fifteen) Working Days after service of the Intention Notice the Borough Council (or its nominated substitute Registered Provider) and the Chargee have not been able to agree the identity of an independent surveyor either party may apply to the President for the time being of the Royal Institution of Chartered Surveyors or his deputy to appoint an independent surveyor having at least 10 (ten) years' experience in the valuation of affordable/social housing within the Borough of Maidstone to determine the dispute;
  - 2.5.3. the independent surveyor shall determine the price reasonably obtainable referred to at Sub-Paragraph 2.4.2.1 due regard being had to all the restrictions imposed upon the Relevant Affordable Housing by this Agreement;
  - 2.5.4. the independent surveyor shall act as an expert and not as an arbitrator;
  - 2.5.5. the fees and expenses of the independent surveyor are to be borne equally by the parties;
  - 2.5.6. the independent surveyor shall make their decision and notify the Borough Council, the Borough Council's nominated substitute Registered Provider (if any) and the Chargee of that decision no later than 10 (ten) Working Days after their appointment and in any event within the Moratorium Period; and
  - 2.5.7. the independent surveyor's decision will be final and binding (save in the case of manifest error or fraud).
- 2.6. The Chargee may dispose of the Relevant Affordable Housing free from the obligations and restrictions contained in Paragraphs 2.5, 2.6, 3.6 and 3.7 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

<p><b>“Active Armed Services Member”</b></p>	<p>means an active member of the Royal Navy, the Royal Marines, the British Army or the Royal Air Force</p>
<p><b>"Affordable Housing"</b></p>	<p>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</p>
<p><b>“Allocations Scheme”</b></p>	<p>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</p>
<p><b>“Armed Services Member”</b></p>	<p>Means:</p> <ul style="list-style-type: none"> <li>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</li> <li>b) a divorced or separated spouse or civil partner of a member; or</li> <li>c) a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service</li> </ul>

<p><b>“Compliance Certificate”</b></p>	<p>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)</p>
<p><b>“Discounted Market Price”</b></p>	<p>means a sum which is the Market Value of the Dwelling discounted by the First Homes Discount</p>
<p><b>“Disposal”</b></p>	<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"> <li>a) a letting or sub-letting pursuant to Paragraph 4 (Use);</li> <li>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; or</li> <li>c) an Exempt Disposal</li> </ul> <p>and <b>“Disposed”</b> and <b>“Disposing”</b> shall be construed accordingly</p>
<p><b>“Eligibility Criteria (Local)”</b></p>	<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"> <li>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</li> <li>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</li> </ul>

	<p>the Borough Council and is in force at the time of the relevant Disposal of the First Home (or any subsequent Disposal) <b>PROVIDED THAT</b> 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"> <li>(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</li> <li>(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</li> <li>(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 <b>AND FOR THE AVOIDANCE OF DOUBT</b> 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</li> </ul> <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><b>“Eligibility Criteria (National)”</b></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"> <li>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</li> <li>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</li> <li>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</li> </ul>
<p><b>“Exempt Disposal”</b></p>	<p>means the Disposal of a First Home in one of the following circumstances:</p> <ul style="list-style-type: none"> <li>a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner; or</li> <li>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; or</li> <li>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; or</li> </ul>

	<p>d) Disposal to a trustee in bankruptcy prior to sale of the relevant First Home (<b>AND FOR THE AVOIDANCE OF DOUBT</b> Paragraph 5 (Mortgage Exclusion) shall apply to such sale)</p> <p><b>PROVIDED THAT</b> in each case other than (d) the person to whom the Disposal is made complies with the terms of Paragraph 4 (Use)</p>
<p><b>“First Home”</b></p>	<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>
<p><b>“First Homes Contribution”</b></p>	<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 <b>BUT FOR THE AVOIDANCE OF DOUBT</b> shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home</p>

	<p><b>AND WHICH FOR THE AVOIDANCE OF DOUBT</b> 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</p>
<p><b>“First Homes Discount”</b></p>	<p>means</p> <ul style="list-style-type: none"> <li>a) a minimum discount of 30% (thirty percent) below the Market Value of the First Home; or</li> <li>b) such higher minimum discount of either 40% (forty percent) or 50% (fifty percent) below the Market Value as may be set by the Borough Council as part of its local development plan documents; or</li> <li>c) such higher discount below the Market Value as the Owner may choose to offer <b>PROVIDED ALWAYS THAT</b> this discount shall not be lower than the minimum discount offered in a) or (where applicable) b) above (as the case may be)</li> </ul> <p><b>AND PROVIDED ALWAYS THAT</b> 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</p>
<p><b>“First Homes Owner”</b></p>	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <ul style="list-style-type: none"> <li>a) the Owners; or</li> <li>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</li> <li>c) the freehold a tenant or sub-tenant of a permitted letting under Paragraph 4 (Use)</li> </ul>

<p><b>“First Homes Plan”</b></p>	<p>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</p>
<p><b>“First Homes Requirement”</b></p>	<p>means a maximum of 25% (twenty five percent) of the Dwellings (rounded up to the nearest whole Dwelling) 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 Provided That where the Borough Council makes an election pursuant to paragraph 6 of Schedule 5 the First Homes Requirement shall be reduced by the number of First Homes that are to come forward as Shared Ownership Units</p>
<p><b>“First Homes Scheme”</b></p>	<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"> <li>• a plan showing the location of the First Homes Requirement on the Land:</li> <li>• the type and size of Dwelling to be provided as the First Home which shall be in accordance with the Indicative Affordable Housing Mix:</li> <li>• (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):</li> </ul>

	<b>AND</b> such other matters as the Borough Council may require
<b>“First Time Buyer”</b>	means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
<b>“Local Connection Criteria”</b>	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 <b>AND FOR THE AVOIDANCE OF DOUBT</b> 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
<b>“Market Value”</b>	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 <b>AND FOR THE AVOIDANCE OF DOUBT</b> the valuation shall not take into account the First Homes Discount
<b>“Mortgagee”</b>	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 Islamic Law compliant finance for the purpose of acquiring a First Home
<b>“Part M4(2)”</b>	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
<b>“Part M4(3)”</b>	means Part M4(3) “Category 3: Wheelchair user dwellings” of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council
<b>“Price Cap”</b>	<p>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 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State</p> <p><b>OR</b></p> <p>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:</p> <p>a) £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</p> <p>b) such other amount as may be set by the Borough Council as part of its local development plan documents <b>PROVIDED THAT</b> such other amount does not exceed the amount in a) above or such other amount as may be published from time to time by the Secretary of State</p>
<b>“SDLT”</b>	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
<b>“Secretary of State”</b>	means the Secretary of State for Levelling Up Housing and Communities from time to time appointed and includes any successor in function

<b>"Valuer"</b>	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
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## 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 5.
- 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 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 Maidstone 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 \_\_\_\_\_ made between (1) the Borough Council and (2) Kent County Council and (3) Suzanne Patricia Sutton and Elizabeth Sutton and Jane Corke (4) John Adams and Sheila Ann Adams”

- 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; and
- 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 [clause to be inserted] (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 (including reducing the asking price) 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 (including reducing the asking price) 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 Owners (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 Councilpursuant 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 following 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); and

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 Owners 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; and

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 be 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; and
  - 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.

## Schedule 8: PROW Improvements

### 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 the other Schedules

**“PROW Contribution”** means the sum of £7,500 (seven thousand five hundred pounds) Index Linked to be paid to the County Council plan titled “Proposed Public Right of Way Improvement – Public Footpath KM281” (Drawing No ITB15098-GA-051 Rev B) prepared by the Developer and dated 8<sup>th</sup> November 2022 annexed to this Deed as Appendix C

**“PROW Improvement Works”** means surface improvement works to Public Footpath KM281 between Albion Road and Blossom Way

### 2. PROW Contribution

- 2.1. The Owner covenants that it shall pay to the County Council the PROW Contribution prior to Commencement of the Development and covenants further that it shall not Commence the Development unless and until the PROW Contribution has been paid to the County Council.
- 2.2. The County Council covenants with the Owner that it shall Spend the PROW Contribution (or any part thereof) on the PROW Improvement Works or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree and not to Spend the PROW Contribution otherwise than on the PROW Improvement Works.
- 2.3. In the event that all or any part of the PROW Contribution has not been Spent for the purpose for which it was paid pursuant to Paragraph 2.2 within 10 (ten) years from the date of Practical Completion of the Development (as notified to the Borough Council and the County Council by the Owner pursuant to Paragraph 2.10 to Schedule 2) and unless the County Council and the Owner agree otherwise the County Council covenants on request from the person that made such payment to repay such sum or amount (or such part thereof) as the County Council is holding) to the person who paid

the PROW Contribution that has not been Spent (if any) but less any tax that may be payable thereon and the County Council's administration expenses and for the avoidance of doubt if part of the PROW Contribution has been Spent by the County Council pursuant to Paragraph 2.2 then there shall be no requirement to repay such sums as have already been Spent by the County Council.

## Appendix A: Site Location Plan

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## Appendix B: Indicative Housing Mix

<b>Beds</b>	<b>Ratio</b>	<b>No. of units</b>	<b>First Homes</b>	<b>Social rent</b>
1 bed, 2 person flat	34%	16	3	13
2 bed, 4 person flat	32%	15	9	6
3 bed, 4 person flat	26%	1	0	1
3 bed, 5 person house		11	0	11
4 bed, 5 person house	4.5%	2	0	2
4 bed 6 person house	4.5%	2		2
<b>Total</b>		<b>47</b>	<b>12</b>	<b>35</b>

## Appendix C: PROW Drawing