

Maidstone Borough Council
Specimen Draft s.106 Agreement

DATED

MAIDSTONE BOROUGH COUNCIL

-and-

THE KENT COUNTY COUNCIL

-and –

[Owner]

-and-

[Mortgagee]

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND AT **[insert site name]**
Planning Application Ref No **●/●**

Head of Mid Kent Legal Services
Maidstone Borough Council
Maidstone House
King Street
Kent ME15 6JQ
Ref.: ●



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THIS DEED OF AGREEMENT is dated the _____ day of _____

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) ● (Company Registration No ●) whose registered office is at ● (the “**Owner**”) and
- 4) ● (Company Registration No ●) whose registered office is at ● (the “**Mortgagee**”) and
- 5) ● [Any other parties]

RECITALS

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated
- B. The County Council is a local planning authority for the purposes of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and the education authority the local highway authority the transport authority the social care authority and the libraries authority for the area within which the Land is situated
- C. The Application was made to the Borough Council for ●
- D. The Borough Council by its Planning Committee at its meeting held on ● resolved that planning permission be granted for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused) making provision for *inter alia* planning obligations
- E. The **Owner** is a person interested in the Land by virtue of being the registered proprietor with [freehold or leasehold title absolute] of the Land as set out in Schedule 1
- F. ● [Recite Other Parties' interests in the Land as necessary]

Comment [RF1]:

- Where the Company is registered outside the UK, a legal opinion letter may be required.
- The circumstances may require entry into a bond(s) obligation and/or if registered off-shore evidence of identity/authority

Comment [RF2]:

Recitals are not operative parts of the obligation but they can be of more use than simple rudimentary background. If the circumstances are complicated (or there is concern that the agreement may be scrutinized by a third party with a view to challenge), then the recitals can help to explain this to the uninformed reader and provide justification.

Comment [RF3]: To be edited accordingly.

Comment [RF4]: At this point you may wish to recite what the application is for (taken off the application description) - although this may not be necessary as the Development is defined as part of the definition of “Application”.

Comment [RF5]:

- Site Index Map (SIM) search together with OCEs to be provided by the Owner prior to drafting.
- Further up-to-date SIM search and associated OCE's to be provided prior to completion.

Comment [RF6]: As regards the Developer (who is not the landowner) being a party to the agreement is dependent on the circumstances. Clearly if the Developer owns the freehold/leasehold title of the land then the Developer will naturally be a party to the agreement. However it is the Council's view that if the developer is a party to a contract conditional upon obtaining planning permission for the land, or has a right under an option to purchase the land, these interests are of such limited value and as such insufficient for the purposes of s.106. In such circumstances the developer will not be a party to the agreement but rather will be a successor in title to the owner once it has acquired the relevant estate. Whilst the Council appreciates that the Developer may in fact negotiate the terms of the agreement, it is the owners who are to be bound by the terms of the s.106 with the developer succeeding to the planning obligations once (and if) it becomes the owner of the relevant estate. We are happy to acknowledge the existence of the Developer's limited interest in the recitals, but the obligations will be given by the registered owners.

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- G. The Mortgagee is a person interested in the Land by virtue of being the proprietor of a registered charge on the Land as set out in Schedule 1
- H. 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
- I.
- J. The Owner [other parties and the Mortgagee] has agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Borough Council's Planning Committee hereinbefore recited which Deed may also secure other planning benefits
- K. The Borough Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate be conducive to and be incidental to the Borough Council's functions
- L. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

OPERATIVE PROVISIONS

IT IS AGREED as follows

1. DEFINITIONS

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

“1990 Act” means the Town and Country Planning Act 1990 (as amended)

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“All in Tender Price Index”	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Application”	means the application for <u>full/outline</u> planning permission submitted by <u>●</u> to the Borough Council to carry out the Development at the Land and given the registered reference number <u>●</u>
“Borough Council Contributions”	means the financial contributions payable to the Borough Council pursuant to Schedule <u>●</u> comprising <ol style="list-style-type: none">a) the Open Space Contributionb) the NHS Healthcare Contributionc) the <u>●</u> Contribution
“Commencement”	means the carrying out of a material operation as defined in <u>section 56(4) of the 1990 Act</u> which is not a Preparatory Operation and the words “Commence” and “Commenced” shall be construed accordingly
“County Council Contributions”	means the financial contributions payable to the County Council pursuant to Schedule <u>●</u> comprising <ol style="list-style-type: none">a) the Libraries Contributionb) the Youth Services Contributionc) the Primary Education Contributiond) the Secondary Education Contributione) the <u>●</u> Contribution
“Deed”	means this deed of agreement
“Development”	means <u>●</u> on the Land as set out in the Application pursuant to the Planning Permission

Comment [RF7]:
[section 56\(4\) of the 1990 Act](#)

Comment [RF8]: To reflect the description in the Application (or the subsequently amended description agreed between the Council and the Applicant and consulted on)

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<u>“Dwelling”</u>	<u>means any residential unit to be erected on the Land pursuant to the Planning Permission including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings including any Flats</u>
“General Building Cost Index”	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Index Linked”	means adjusted by reference to the relevant index pursuant to the provisions of Clause 21 SAVE THAT where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institute 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 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
“Interest Rate (Borough Council)”	for the purposes of Clause 22 means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment
“Interest Rate (County Council)”	for the purposes of Clause 22 means interest at 4% per annum above the base lending rate of National Westminster Bank plc from time to time applicable at the actual date of payment
“Land”	means the land against which this Deed may be enforced as detailed in Schedule 1 and shown for identification

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purposes only edged red on the Plan

“Occupy” means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed accordingly

“Open Market Dwellings” means those Dwellings for sale on the open market and which are not Affordable Dwellings

“Parties” means the Owner *[recite other parties]* the Mortgagee the Borough Council and the County Council as the context so requires and **“Party”** means any one of them

“Plan” means the plan entitled “●” (Drawing No ●) prepared by ● and dated ● annexed as Appendix 1

Comment [RF9]: All plans must be signed by all the parties.

“Planning Permission” means planning permission for the Development to be granted pursuant to the Application subject to conditions a draft of which is annexed as Appendix 2

“Practical Completion” means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to this Deed or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term **“Practically Complete”** shall be construed accordingly

“Preparatory Operation” means an operation or item of work of or connected with or ancillary to

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- a) archaeological investigation
- b) exploratory boreholes and trial pits
- c) site clearance (but excluding demolition of any building or structure)
- d) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
- e) the erection of fences and hoardings around the Land and
- f) construction of temporary access and service roads

Comment [RF10]: To be agreed by the planning officer on each occasion in relation to the particular development.

“Reserved Matters Application”

means an application for approval of reserved matters in accordance with the Planning Permission

“Reserved Matters Approval”

means an approval given by the Borough Council of a Reserved Matters Application

Comment [RF11]: For Outline Applications where the number of Dwellings is not fixed.

“Section 106 Monitoring Officer”

means the Borough Council’s section 106 Monitoring Officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions

“Statutory Undertakers”

means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator

“VAT”

means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)

“Working Day”

means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act

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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
- 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 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 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.6 Reference to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that Party and in the case of the Borough Council and the County Council shall include any successor to their respective statutory functions
- 2.7 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 2.8 Words denoting an obligation on a Party to do any act matter or thing include an obligation to 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
- 2.9 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time
- 2.10 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail

Comment [RF12]: All clauses, paragraphs, etc. to be cross referenced prior to engrossment.

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2.11 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

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 section 278 of the Highways Act 1980 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 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 intent to bind the Owners [recite other parties] and the Mortgagee's interest(s) 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 local planning authority

3.2.6 are executed by the respective Parties as a deed

3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of Local Government Act 1972 section 278 of the Highways Act 1980 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling

4. CONDITIONALITY

4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.3 5.4 and 8 to 25

Comment [RF13]: To be cross referenced prior to engrossment.

Comment [RF14]: Conditionality

Comment [RF15]: Definitions

Comment [RF16]: Interpretation

Comment [RF17]: Legal Basis

Comment [RF18]: Access & verification

Comment [RF19]: Payment of legal costs

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inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

5. COVENANTS AND OBLIGATIONS OF THE OWNER

5.1 The Owner covenants with the Borough Council to perform the obligations and observe the relevant restrictions contained herein

5.2 The Owner covenants with the County Council to perform the obligations and observe the relevant restrictions contained herein

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

5.4 The Owner covenants to pay before completion of this Deed

5.4.1 the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed

5.4.2 the County Council's reasonable legal and administrative costs in connection with the negotiation preparation and execution of this Deed

whether or not this Deed is delivered in accordance with Clause 26

6. COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL

6.1 The Borough Council covenants with the Owner that subject to the Owner carrying out the Owner's obligations as set out herein it will perform the Borough Council's covenants as set out herein

7. COVENANTS AND OBLIGATIONS OF THE COUNTY COUNCIL

7.1 The County Council covenants with the Owner that subject to the Owner carrying out the Owner's obligations as set out herein it will perform the County Council's covenants as set out herein

Comment [RF20]: The Council is not prepared to cap its costs. The Council's charges are set by the Council annually and published on the Council's website – for ease of reference, the Council's fees and charges for 2016/17 can be found [here](#). You will note that the hourly charge out rate for the completion of Section 106 Planning Agreements is £207 per hour. These are reviewed annually and are accordingly subject to change.

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8. MORTGAGEE'S CONSENT

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its charge over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee 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 will be bound by the provisions of this Deed as a person deriving title from the Owner

9. RELEASE AND EXCLUSIONS

9.1 Save for Clause 5.3 the obligations contained in this Deed shall not be binding upon nor enforceable against

Comment [RF21]: Access & verification.

9.1.1 any Statutory Undertaker with any existing interest in any part of the Land or 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

9.1.2 the Owner *[recite other parties]* and the Mortgagee (or any person deriving an interest in the Land from such Party) after they have disposed of their interest in the Land (or in the event of a disposal of part in relation to the part disposed of) but not so as to release the Owner *[recite other parties]* and the Mortgagee from any antecedent breach non-performance or non-observance of their obligations or other provisions of this Deed arising prior to parting with such interest

10. DETERMINATION OF THE PLANNING PERMISSION

10.1 Save for Clause 5.4 this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to Commencement of Development without the consent of the Owner

Comment [RF22]: Legal costs.

10.2 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

11. DISPUTES AND EXPERT DETERMINATION

11.1 Without prejudice to the rights of the Borough Council or the County Council (as the case may be) to take immediate alternative action any dispute arising under this Deed 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

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

11.2.1 if the dispute relates to

11.2.1.1 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 15 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

11.2.1.2 any building within the Development or any similar matter a chartered surveyor (having not less than 15 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

11.2.1.3 financial matters or matters of accounting usually and properly within the knowledge of a chartered accountant a chartered accountant (having not less than 15 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

11.2.1.4 any legal requirement or interpretation or other matter regarding this Deed the same shall be referred to Counsel of at

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least 15 years' experience in such matters who shall be appointed in default of agreement between the Owner and the Borough Council by the President of the Bar Council for England and Wales or his deputy

in all other cases the expert shall be an independent and suitable person holding appropriate professional qualifications with least 15 years' post qualification experience in the subject matter of the dispute

- 11.2.2 The expert shall be an independent and suitable person holding appropriate professional qualifications with least 15 years' post qualification experience in the subject matter of the dispute
- 11.2.3 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 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
- 11.2.4 The expert shall be required to give notice of his appointment to each of the parties to the dispute
- 11.2.5 The persons calling for the determination shall make written submissions together with any supporting material to the expert and the other parties within 10 Working Days of the date of notification of the expert's appointment pursuant to Clause 11.2.4
- 11.2.6 The other parties shall have 10 Working Days from the receipt of such

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written submission to make counter written submissions together with any supporting material

11.2.7 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

11.2.7.1 an explanation as to why it was not submitted as part of the originating submission or counter submission and

11.2.7.2 an explanation of how and why the material is relevant and

11.2.7.3 the opposing party's views on whether it should be accepted

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

11.2.7.4 it is not covered in the submissions already received and

11.2.7.5 it is directly relevant and necessary for his decision and

11.2.7.6 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 Working Days of receipt of the late submission

AND where such further submission is permitted

11.2.7.7 the other parties shall be entitled to make written submission within 10 Working Days of the date of notification of the expert's decision to allow the late submission

11.2.7.8 the expert may take this into account when making any cost order

11.2.8 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

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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

11.2.9 Unless otherwise agreed between the parties to the dispute the expert shall disregard any representations made out of time

11.2.10 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 Working Days

11.2.10.1 after the conclusion of any hearing that takes place or

11.2.10.2 after the expert has received the representations under Clause 11.2.6 or 11.2.7.7 (as the case may be) or if none the expiry of the period referred to in Clause 11.2.6 or 11.2.7.7 (as the case may be)

11.2.11 The expert's decision shall be in writing and give reasons for his decision

11.2.12 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

12. NOTICES

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

12.1.1 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development *of each Phase* and the Owner shall not Commence Development of *any Phase* unless and until this notice has been provided to the Borough Council and

12.1.2 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Commencement of *each Phase* of Development and

Comment [RF23]: The Notices to be provided pursuant to the Deed depend on the covenants and the triggers.

These Notifications provisions in Clause 12.1 are required in addition to any other notices that may be required pursuant to any of the obligations contained in the Schedules. These 'other' notifications are contained in the schedules and are to be finalized once the covenants and triggers have been settled and will need to be signed-off by the Section 106 Monitoring Officer.

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12.1.3 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the Development and the Owner shall not Occupy the Development unless and until this notice has been provided to the Borough Council

12.1.4 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development

12.1.5 it shall provide the Borough Council with the final Certificate of Practical Completion of the Development as a whole

12.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other similar communication to be given under this Deed 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 or Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Borough Council Maidstone Borough Council

Address **The Head of Planning & Development**
Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Reference ●/●-●

With a copy to The Section 106 Monitoring Officer

Where required The Housing and Enabling Manager

Where required ●

The County Council **The Kent County Council**

Address **The Director of Governance and Law**

Comment [RF24]: Planning reference number and site address.

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County Hall
Maidstone
Kent
ME14 1XQ

Reference ●

The Owner ●

Address ●

The Mortgagee ●

Address ●

12.3 Any such notice or other communication given in accordance with this Clause shall conclusively be deemed to have been received

12.3.1 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

12.3.2 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 Working Days after the date of posting

12.4 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other similar communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates

12.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution

13. LOCAL LAND CHARGE

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

14. SUCCESSORS IN TITLE

- 14.1 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

15. POWERS OF THE COUNCIL

- 15.1 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 their functions as a local authority

16. SEVERABILITY

- 16.1 If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed

thereby to be affected impaired or called into question

17. RIGHTS OF THIRD PARTIES

17.1 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 save for the successors in title to the Parties and in the case of the Borough Council and the County Council (as the case may be) the successor to their respective statutory functions

18. CHANGE OF OWNERSHIP AND NEW INTEREST

18.1 The Owner warrants that no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land

18.2 The Owner shall give the Borough Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give

18.2.1 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

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

19. WAIVER

19.1 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

20. INDEXATION

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- 20.1 All the financial contributions payable to the Borough Council and the County Council pursuant to this Deed shall be Index Linked
- 20.2 The Borough 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 the date of this Deed and the quarterly index figure for the quarter immediately preceding the date of actual payment
- 20.3 The County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the monthly index figure immediately preceding the date of this Deed and the monthly index figure for the month of the date of actual payment

21. INTEREST

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

22. VAT

- 22.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT
- 22.2 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

23. AGREEMENTS AND DECLARATIONS

- 23.1 The Parties agree that
- 23.1.1 nothing in this Deed constitutes a planning permission or an obligation to

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Authorised Signatory

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

Authorised Signatory

| Signed as a DEED by in the)
presence of)

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

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Executed as a deed by **LIMITED**)
acting by)

[insert full name]

a director and

[insert full name]

a director/its secretary]

Director

Director/Secretary

Comment [RF26]: [Practice guide 8: execution of deeds](#)

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SCHEDULE 1: THE LAND

Comment [RF27]: Per OCE. Recite all the titles relating to the land comprising the Development showing each of the parties interests

The land against which this Deed is enforceable comprises all that land and premises situate at ● and known as ● as shown on the Plan and which is more fully described in the title held at the Land Registry of which

1. The Owner is the registered proprietor with freehold/leasehold title absolute of all the freehold/leasehold land and premises situate at ● and known as ● and the same is shown for the purposes of identification only coloured ● on the Plan and is registered at the Land Registry under title number ●
2. *[recite all other interests per OCE]*
3. The Mortgagee is the proprietor of a registered charge dated ● on title number ● of the land and premises situate at ● and known as ●

SCHEDULE 2: PHASING

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 relevant Schedules

“Phase” means a phase of the Development as shown on the Phasing Plan

“Phasing Plan” means a programme provided by the Owner to the Borough Council identifying the details and mechanisms for how the Development will be phased and/or sequenced which programme shall include

- a) a site plan showing the proposed final Development and overall phasing/sequencing of the Development
- b) identify the location of the Affordable Dwellings in each Phase ensuring that each Phase has 40% Affordable Housing appropriately distributed so as not to be segregated from the Open Market Dwellings and ensure inclusive and mixed communities throughout the Phase of which 60% of the Affordable Dwellings within each Phase shall be Affordable Rented Units and 40% of the Affordable Dwellings within each Phase shall be Shared Ownership Units
- c) identify the Affordable Dwelling
 - i. tenure and tenure split
 - ii. the type of Dwellings being provided as Affordable Housing
 - iii. the size of each Affordable Dwelling Housing

Comment [RF28]: Seeks to ensure 'pepper potting' of the development across the Development.

See PINS decision ([click here](#)) where the approval of details pursuant to outline permission for 40 houses on the edge of a Devon village was denied by an inspector after finding that the 16 affordable dwellings should be better distributed and socially integrated within the development. Also see [click here](#) where detailed approval for up to 80 dwellings in Cheshire concluded that the distribution of affordable housing would provide for an inclusive community.

See NPPF para. 50 and 69.

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iv. arrangement for managing the Affordable Housing Units

Comment [RF29]: Where necessary.

d) identify which of the Affordable Dwellings is to comprise fully wheelchair accessible Dwellings pursuant to Schedule 2 (Affordable Housing)

e) a written statement including a plan describing each phase of the Development including the uses and identify the estimated duration of the build out period of each Phase

f) set out details as to phasing/sequencing of the Strategic LEMP and Phase Specific LEMP

AND such other requirements as the Borough Council may require

2. Phasing Plan

2.1. The Owner covenants that it shall

2.1.1. prior to Commencement of Development submit to the Borough Council for its approval the Phasing Plan

2.1.2. not Commence Development unless and until the Phasing Plan has been approved by the Borough Council (in consultation with the Housing and Enabling Manager)

2.1.3. following Commencement of Development carry out the Development strictly in accordance with the approved Phasing Plan

2.2. Following approval of the Phasing Plan

2.2.1. the Owner shall be entitled to submit a new or revised Phasing Plan to the Borough Council for approval by the Borough Council (in consultation with the Housing and Enabling Manager) (and following such approval the Phasing Plan shall take effect as replaced or revised)

2.2.2. the Owner shall pay the Borough Council's reasonable costs and expenses

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(including any professional fees that may be incurred and any abortive costs and expenses in the event that the new or revised Phasing Plan is withdrawn by the Owner prior to approval by the Borough Council) associated with assessing and approving the new or revised Phasing Plan submitted pursuant to this Sub-Paragraph within 10 Working Days of the date of written notification for payment by the Borough Council

- 2.3. No proposed new or revised Phasing Plan submitted by the Owner to the Borough Council for approval under this Paragraph 2 shall come into force unless and until it has been approved by the Borough Council

SCHEDULE 1: FINANCIAL CONTRIBUTIONS TO THE BOROUGH COUNCIL

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 relevant Schedules

“NHS Healthcare Contribution” means the sum of £● Index Linked

[OR in the event of Phasing or an Outline application where the number of units is not fixed]

means the sum of £● per Open Market Dwelling where the total contribution *in each Phase* shall be calculated in accordance with the following formula

$$\text{OMD} \times \text{£} \bullet = \text{£NHS Index Linked}$$

WHERE

OMD is the number of Open Market Dwellings to be provided *pursuant to the Reserved Matters Approval OR in the Phase*

£NHS Index Linked is the NHS Healthcare Contribution (Index Linked) payable *for the Phase*

“NHS Property Services” means NHS Property Services Limited (Company Registration No 07888110) or its successor in title or successor to its functions on behalf of NHS England (Kent and Medway Area Team)

“Open Space Contribution ” means the sum of £● Index Linked

[OR in the event of Phasing or an Outline application where the number of units is not fixed]

means the sum of £● per Dwelling where the total

Comment [RF30]: In an ideal world payment of all contributions would be payable prior to commencement. However, the reality is that, due to the developers financial arrangements or the cost in simply 'getting out of the ground', it may not be realistic or practical to ask for all contributions to be payable upfront.

On each Occasion the Council will assess the appropriate trigger for payment. However, please bear in mind that whilst the impact of the Development may only be felt sometime after completion of the development the payment needs to be made sufficiently early during the construction process to ensure not only that the Council is able to provide the mitigation required but that it retains effective enforcement control (pursuant to s.106) over the Development.

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contribution in each Phase shall be calculated in accordance with the following formula

D x £● = £OSC Index Linked

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval OR in the Phase

£OSC Index Linked is the Open Space Contribution payable for the Phase

2. Open Space Contribution

- 2.1. The Owner covenants that it shall pay to the Borough Council the Open Space Contribution before [Commencement of Development or Occupation of ●% of the Dwellings in each Phase]
- 2.2. The Owner covenants that it shall not [Commence Development/Occupy ●% or more of the Dwellings in each Phase] unless and until the Open Space Contribution has been paid to the Borough Council in respect of such Phase
- 2.3. The Borough Council covenants with the Owner that it shall apply the Open Space Contribution as a contribution towards ● or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree in writing and not to use the Open Space Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 22 of the Deed as if it were part of the principal sum paid by the Owner
- 2.4. In the event that all or any part of the Open Space Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development as a whole [or Occupation of the last Dwelling to be constructed on the Development pursuant to the Phasing Plan] (as notified to the Borough Council by the Owner pursuant to Paragraph ● of Schedule 2 to this Deed) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof)

Comment [RF31]: If the triggers differ from the Notice provisions in Clause 12.1, insert associated Notice provisions.

Comment [RF32]: Please note that it is not a requirement of s.106 to repay monies. s.106 allows for the payment of monies to the Council in order to mitigate the impact of the development. The Council is however agreeable to repaying the monies after 10 year from date of last occupation/completion of the Development as it is usually only a number of years after last occupation/completion that the actual impact of the development is felt and the mitigation is required – naturally the Council wants to mitigate the impacts of the development sooner rather than later, but it is the nature of local government that various factors (incl. procurement legislation) militate against this. The Council would be well within its rights to delete this clause altogether but it is prepared to incorporate a repayment provision. Where the development is to be phased it also needs to be borne in mind that the Council may only be able to carry out the works to which the contribution is to be paid once all the monies have been received (i.e. once the development as a whole is completed). The Council is not in a position to forward fund works.

Furthermore, if collecting funds for a specific project that is being funded from several developments the council has no control over when or if development by third parties actually comes forward so repayment provisions to be considered in relation to the circumstances of each case.

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to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses

3. NHS Healthcare Contribution

3.1. The Owner covenants that it shall pay to the Borough Council the NHS Healthcare Contribution before [Commencement of Development or Occupation of ●% of the Dwellings in each Phase]

3.2. The Owner covenants that it shall not [Commence Development/Occupy ●% or more of the Dwellings in each Phase] unless and until the NHS Healthcare Contribution has been paid to the Borough Council in respect of such Phase

3.3. **The Borough Council shall**

3.3.1. as soon as is reasonably practicable after receipt of the NHS Healthcare Contribution from the Owner transfer the NHS Healthcare Contribution to NHS Property Services

3.3.2. advise NHS Property Services that the NHS Healthcare Contribution (together with any interest accrued thereon) shall only be used towards ●

3.3.3. provide the Owner with written confirmation that the NHS Healthcare Contribution has been transferred to NHS Property Services

Comment [RF33]: If the triggers differ from the Notice provisions in Clause 12.1, insert associated Notice provisions.

Comment [RF34]: Owing to the assessed impact the development would have on local NHS resources, the Owner is required (pursuant to the Committee Resolution) to make this payment. The Council is agreeable to receiving the money on behalf of and paying it to the NHS. Outside of that, it is not within the Council's purview or statutory functions to police the NHS's spending and, as such the Council cannot agree to something over which it has absolutely no control. In the absence of the NHS being a party to the agreement, the Council cannot agree to a recovery provision.

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SCHEDULE 1: AFFORDABLE HOUSING (WHERE THERE IS NO PHASING)

Comment [RF35]: Please note the provisions of Annex N (para. N.8 – Planning obligations and the provisions of affordable housing) to the PINS [Procedural Guide: Planning Appeals – England](#) (presently 23 March 2016)

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 relevant Schedules

"Affordable Housing" means the Affordable Dwellings to be provided within the Development which are available to persons in Housing Need and which are to be made permanently available to such persons nominated by the Borough Council

"Affordable Housing Land" *means plot numbers ● and ● on the Land as shown on the plan entitled "●" (Drawing No ●) prepared by ● and dated ● annexed as Appendix 4 to this Deed on which the Affordable Dwellings will be constructed and provided in accordance with the obligations set out in this Deed*

Comment [RF36]: To be used in all cases where the location of the Affordable Housing Units is known and been agreed with the Council's Housing and Enabling Manager, which should be the case for all FULL planning consents.

"Affordable Dwellings" means the 40% of the Dwellings (rounded up to the nearest whole Dwelling) together with associated vehicle and cycle parking to be provided by the Owner on the Land *(equating to ● Dwellings)* of which

- a) 60% shall be Affordable Rented Units *(equating to ● Dwellings)* and
- b) 40% shall be Shared Ownership Units *(equating to ● Dwellings)*

and which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule

"Affordable Rented Units" means the Affordable Dwellings that will be let to persons in Housing Need at an Affordable Rent in accordance with the HCAs **Tenancy Standard (April 2012)** as may be amended updated or replaced from

Comment [RF37]: [Tenancy Standard \(April 2012\)](#)

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time to time

“Affordable Rent”

means chargeable rent that is subject to the HCA’s **Rent Standard (April 2015)** as expanded on by the **Rent Standard Guidance (April 2015)** as such document and/or associated guidance may be amended updated or replaced from time to time and is required is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location

Comment [RF38]: [Rent Standard \(April 2015\)](#)

Comment [RF39]: [Rent Standard Guidance \(April 2015\)](#) - The Rent Standard Guidance expands upon the Rent Standard, explaining how social housing/affordable rents are set and covers many other aspects of rent policy and interpretation.

“Allocations Scheme”

means the Borough Council’s published scheme of allocations presently contained in the Borough Council’s document entitled **“Allocation Scheme” (version 1.6 (dated 27 August 2015))** or any amendment update or variation thereto or any subsequent replacement thereof

Comment [RF40]: [MBC Allocation Scheme \(27 August 2015\)](#) or [click here](#) and look at “Useful Documents”

“Deed of Nomination Rights”

means the Deed agreed between the Borough Council and the Registered Provider in relation to the nomination rights in respect of the Affordable Dwellings in the form annexed as Appendix 3 or such similar form as the Owner or Registered Provider (as the case may be) and the Borough Council shall agree

"HCA"

means the body known as the Homes and Communities Agency (or any successor body to its functions) within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates Registered Providers in England

“HCAs East and South East Operating Area”

consists of the counties of Buckinghamshire Cambridgeshire East Sussex Essex Hertfordshire Kent Norfolk Suffolk Surrey and West Sussex and the unitary authorities of Brighton and Hove Medway

Comment [RF41]: As to the extent of the operating area [click here](#) and/or [click here](#).

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Towns Peterborough Southend-on-Sea and Thurrock
but shall not include Greater London

- “Help to Buy Agent”** means an agent commissioned by the HCA to provide a one stop shop service to qualifying applicants enquiring about and applying for the low cost home ownership schemes within Maidstone Borough Council including shared ownership schemes
- “Housing and Enabling Manager”** means the Borough Council’s Housing and Enabling Manager or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging his duties and functions
- “Housing Need”** means
- a) in relation to the Affordable Rented Units the requirement by a person for social housing allocation in accordance with the Borough Council’s Allocations Scheme and
 - b) in relation to the Shared Ownership Units the requirement by a person to be registered with the Help to Buy Agent to be granted a Shared Ownership Lease because the persons income is insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices
- “Part M4(2)”** means **Part M4(2)** Category 2: Accessible and adaptable dwellings of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council
- “Part M4(3)”** means **Part M4(3)** Category 2: Wheelchair user

Comment [RF42]: [click here](#)

Comment [RF43]: [click here](#)

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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 Council

“Neighbouring Councils” means Ashford Borough Council and Tonbridge and Malling Borough Council who share the same housing market within the Borough Council's Strategic Housing Market Assessment

"Registered Provider" means any person body or entity which is registered with the HCA as a provider of social housing in accordance with section 80(2) and chapter 3 of the Housing and Regeneration Act 2008 (or any other body defined by subsequent legislation as having a similar role)

“Shared Ownership Lease” means a lease which accords with the HCA's model form of lease issued from time to time

"Shared Ownership Units” means the Affordable Dwellings to be occupied by persons who are in Housing Need whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 25% and not more than 75% 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% or such other equity sharing or retention terms from time to time approved by the Borough Council

2. General Provisions

- 2.1. The Owner covenants that it shall provide the Affordable Dwellings within the Development in accordance with the provisions of this Schedule

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- 2.2. The Owner covenants that the Affordable Dwellings shall be built by the Owner in accordance with Part M4(2)
- 2.3. The Owner covenants that
- 2.3.1. of the Affordable Dwellings shall be fully wheelchair accessible and be built by the Owner in accordance with Part M4(3)
- 2.3.2. prior to Commencement of Development the Owner shall submit to the Borough Council for its approval a plan showing the location and type of Affordable Dwellings that are to be fully wheelchair accessible in accordance with Paragraph 2.3.1 and the Owner shall not Commence Development unless and until the Borough Council's approval pursuant to this Paragraph has been obtained
- 2.4. The Owner covenants that it shall provide of the Dwellings as Affordable Housing on the Affordable Housing Land [OR in a location to be agreed by the Borough Council] to be split in the following way
- 2.4.1. Affordable Rented Units comprising
- 2.4.1.1. x bedroom person house/flat which are to be provided on plots to (both inclusive) of the Affordable Housing Land
- 2.4.1.2. x bedroom person house/flat which are to be provided on plots to (both inclusive) of the Affordable Housing Land
- 2.4.2. Shared Ownership Units comprising
- 2.4.2.1. x bedroom person house/flat which are to be provided on plots to (both inclusive) of the Affordable Housing Land
- 2.4.2.2. x bedroom person house/flat which are to be provided on plots to (both inclusive) of the Affordable Housing Land
- [AND the Development shall not be Commenced unless and until the location of the Affordable Dwellings have been approved by the Borough Council]
- 2.5. The Owner covenants that the Affordable Dwellings shall be Practically Completed within 24 calendar months of the date of Commencement of the Development

Comment [RF44]: Where there is no Affordable Housing Land Plan consider:

"2.4 The Owner covenants that prior to Commencement of Development the Owner shall submit to the Council for its approval

2.4.1A plan identifying the location of the Affordable Housing appropriately distributed throughout the Development

2.4.2 in respect of each Affordable Housing details of

2.4.2.1 the tenure and tenure split

2.4.2.2 the type of Dwelling being provided as Affordable Housing and

2.4.2.3 the size of each Affordable Dwelling Housing being provided

2.4.2.4 (where appropriate) arrangement for managing the Affordable Housing Units

AND the Owner shall not Commence Development unless and until the Council's approval pursuant to this clause has been obtained"

Comment [RF45]: Pursuant to the Strategic Housing Market Assessment, the Council is obligated to meet housing targets. The Council's adopted housing strategy requires the Council to deliver circa 322 Affordable housing units each year to meet the stated targets, hence the need for the paragraph.

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- 2.6. Subject to Paragraph 5 of this Schedule (Exclusions) the Owner covenants that the Affordable Dwellings shall not be Occupied or used for any other purpose other than as Affordable Dwellings unless otherwise agreed by the Borough Council
- 2.7. The Owner covenants that
- 2.7.1. the Affordable Rented Units shall not be Occupied other than by persons who are in Housing Need
- 2.7.2. the Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need and registered with the Help to Buy Agent

3. Transfer of the Affordable Dwellings

- 3.1. Prior to Commencement of Development the Owner covenants that it shall have secured the transfer of the Affordable Dwellings to a Registered Provider and shall provide to the Borough Council sufficient evidence as the Borough Council shall require to show that this Paragraph 3 has been complied with and the Owner covenants that it shall not Commence Development unless and until the provisions of this Paragraph have been complied with
- 3.2. The Owner covenants that no Open Market Dwellings or no more than • of the Open Market Dwellings shall be Occupied unless and until
- 3.2.1. 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 (a copy of the Certificate of Practical Completion shall be provided to the Strategic Housing and Health Manager with a copy to the Section 106 Monitoring Officer) 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 free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings
- 3.2.3. 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

Comment [RF46]: This depends on the circumstances. Where justified the Council may be agreeable to this equating to 25% of the Open Market Dwellings, and in exceptional circumstances and where justified the Council may be agreeable to going up to 50%.

Comment [RF47]: This should ensure that the Affordable Dwellings are visually indistinguishable from the Open Market Units in terms of build quality, materials, details, levels, etc.

This is also a legal requirement due to the councils being required to apply the public sector equality duty.

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Affordable Dwellings in accordance with the Borough Council's published Allocations Scheme and the provisions of this Deed and on the terms set out in the Deed of Nomination Rights

- 3.3. The Owner covenants that it shall provide evidence of the transfer of the freehold or leasehold interest of the Affordable Dwellings referred to in Paragraph 3.2.2 of this Schedule to the Housing and Enabling Manager within 5 Working Days of completion of the transfer
- 3.4. The Owner covenants that it shall ensure that the price to be paid for the Affordable Rented Units by the Registered Provider (or the Borough Council as the case may be) shall be at a level that allows the Affordable Rented Units to be paid for through rents to be charged as Affordable Rent
- 3.5. The Owner covenants that no more than a 25% to 75% 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% of the capital value of the unsold equity in that particular individual Shared Ownership Unit with each subsequent annual rent increase or increases limited to further increases in the Consumer Prices Index plus 1%
- 3.6. Unless otherwise agreed by the Borough Council the Owner covenants that it shall ensure that any proceeds derived from the sale of a Shared Ownership Unit or the proceeds from the right to buy or right to acquire an Affordable Housing Rental Unit shall be used by the Registered Provider to re-invest in Affordable Housing within (in order of priority)
 - 3.6.1. the local authority district of Maidstone
 - 3.6.2. then Neighbouring Councils
 - 3.6.3. then the County of Kent and
 - 3.6.4. then the HCA's East and South East Operating Area (but excluding the County of Kent)

with priority given to the provision of new dwellings for Affordable Rent

Comment [RF48]: Per NPPF Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

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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
- 4.1.2. all private roads footways and footpaths (if any) serving the Affordable Dwellings shall be in place and constructed to an adoptable standard
- 4.1.3. all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Dwellings shall be constructed laid connected operational and serviceable

5. Exclusions

- 5.1. **SAVE FOR** Clause 5.3 (**BUT IN ADDITION TO** Clause 9) the obligations contained in this Schedule shall (**SAVE FOR** Schedule • which shall continue to be binding and enforceable) not be binding upon nor enforceable against

- 5.1.1. any mortgagee or chargee of a Registered Provider of the Affordable Housing Land and/or Affordable Dwellings or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee and in the event of any such mortgagee chargee receiver or manager exercising a power of sale over the Affordable Housing Land and/or Affordable Dwellings the provisions of this Agreement shall cease to apply to the Affordable Dwellings over which the power is exercised (as the case may be) **PROVIDED ALWAYS THAT**

- 5.1.1.1. any power of sale available to any such mortgagee charge receiver or manager arising under their mortgage or charge or loan over any such Affordable Dwellings shall only be exercised in the event of there being a default of any obligation to such mortgage or charge or loan

- 5.1.1.2. such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee shall first have notified the Borough Council and the Housing and Enabling

Comment [RF49]: Access & Verification

Comment [RF50]: Release and Exclusions

Comment [RF51]: This will relate to any ongoing obligations like Landscape and Ecological Management.

Comment [RF52]: The intention is to ensure that every effort is made to ensure the retention of the Affordable Housing. The council is required to exercise diligence in ensuring that affordable housing is both constructed and retained as such.

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Manager that it wishes to exercise its statutory power of sale

- 5.1.1.3. within 6 clear calendar months of the date of such notification the mortgagee or chargee or receiver having used best endeavours (in consultation with the Borough Council and the Housing and Enabling Manager) shall have been unable to exchange contracts for the transfer of the relevant Affordable Dwelling to another Registered Provider (who shall take subject to the provisions of this Deed) on terms that on completion thereof the mortgagee or chargee or receiver shall recover the total sum outstanding under its charge or mortgage together with all interest cost and expenses incurred by the mortgagee in respect of the charge or mortgage

- 5.1.2. a tenant of an Affordable Rented Units who has exercised a statutory right to acquire

- 5.1.3. a tenant of an Affordable Rented Unit who has exercised a statutory right to buy

- 5.1.4. a Shared Ownership leaseholder who has acquired 100% 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 or their mortgagee or charge

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SCHEDULE 1: AFFORDABLE HOUSING (WHERE THERE IS PHASING)

Comment [RF53]: Please note the provisions of Annex N (para. N.8 – Planning obligations and the provisions of affordable housing) to the PINS Procedural Guide: Planning Appeals – England (presently 23 March 2016)

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

“Affordable Housing” means the Affordable Dwellings to be provided within the Development which are available to persons in Housing Need and which are to be made permanently available to such persons nominated by the Borough Council

"Affordable Dwellings" means the 40% of the Dwellings (rounded up to the nearest whole Dwelling) together with associated vehicle and cycle parking to be provided by the Owner on the Land (*equating to • Dwellings*) of which

- a) 60% shall be Affordable Rented Units (*equating to • Dwellings*) and
- b) 40% shall be Shared Ownership Units (*equating to • Dwellings*)

and which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule

"Affordable Rented Units" means the Affordable Dwellings that will be let to persons in Housing Need at an Affordable Rent in accordance with the HCA's **Tenancy Standard (April 2012)** as may be amended updated or replaced from time to time

Comment [RF54]: [Tenancy Standard \(April 2012\)](#)

“Affordable Rent” means chargeable rent that is subject to the HCA's **Rent Standard (April 2015)** as expanded on by the **Rent Standard Guidance (April 2015)** as such document and/or associated guidance may be amended updated or replaced from time to time and is

Comment [RF55]: [Rent Standard \(April 2015\)](#)

Comment [RF56]: [Rent Standard Guidance \(April 2015\)](#) - The Rent Standard Guidance expands upon the Rent Standard, explaining how social housing/affordable rents are set and covers many other aspects of rent policy and interpretation.

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required is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location

“Allocations Scheme” means the Borough Council’s published scheme of allocations presently contained in the Borough Council’s document entitled **“Allocation Scheme”** (version 1.6 (dated 27 August 2015)) or any amendment update or variation thereto or any subsequent replacement thereof

Comment [RF57]: [MBC Allocation Scheme \(27 August 2015\)](#) or [click here](#) and look at “Useful Documents”

“Deed of Nomination Rights” means the Deed agreed between the Borough Council and the Registered Provider in relation to the nomination rights in respect of the Affordable Dwellings in the form annexed as Appendix 3 or such similar form as the Owner or Registered Provider (as the case may be) and the Borough Council shall agree

“HCA” means the body known as the Homes and Communities Agency (or any successor body to its functions) within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates Registered Providers in England

“HCA’s East and South East Operating Area” consists of the counties of Buckinghamshire Cambridgeshire East Sussex Essex Hertfordshire Kent Norfolk Suffolk Surrey and West Sussex and the unitary authorities of Brighton and Hove Medway Towns Peterborough Southend-on-Sea and Thurrock but shall not include Greater London

Comment [RF58]: As to the extent of the operating area [click here](#) and/or [click here](#).

“Help to Buy Agent” means an agent commissioned by the HCA to provide a one stop shop service to qualifying applicants enquiring about and applying for the low cost home ownership schemes within Maidstone Borough Council

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including shared ownership schemes

“Housing and Enabling Manager”

means the Borough Council’s Housing and Enabling Manager or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging his duties and functions

“Housing Need”

means

- a) in relation to the Affordable Rented Units the requirement by a person for social housing allocation in accordance with the Borough Council’s Allocations Scheme and
- b) in relation to the Shared Ownership Units the requirement by a person to be registered with the Help to Buy Agent to be granted a Shared Ownership Lease because the persons income is insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices

“Part M4(2)”

means **Part M4(2)** Category 2: Accessible and adaptable dwellings of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

Comment [RF59]: [click here](#)

“Part M4(3)”

means **Part M4(3)** Category 2: 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 such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

Comment [RF60]: [click here](#)

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“Neighbouring Councils” means Ashford Borough Council and Tonbridge and Malling Borough Council who share the same housing market within the Borough Council’s Strategic Housing Market Assessment

"Registered Provider" means any person body or entity which is registered with the HCA as a provider of social housing in accordance with section 80(2) and chapter 3 of the Housing and Regeneration Act 2008 (or any other body defined by subsequent legislation as having a similar role)

“Shared Ownership Lease” means a lease which accords with the HCA’s model form of lease issued from time to time

"Shared Ownership Units” means the Affordable Dwellings to be occupied by persons who are in Housing Need whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 25% and not more than 75% 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% or such other equity sharing or retention terms from time to time approved by the Borough Council

2. General Provisions

- 2.1. The Owner covenants that it shall provide the Affordable Dwellings within the Development in accordance with the provisions of this Schedule ●
- 2.2. The Owner covenants that the Affordable Dwellings shall be built by the Owner in accordance with Part M4(2)
- 2.3. The Owner covenants that ● of the Affordable Dwellings shall be fully wheelchair accessible and be built by the Owner in accordance with Part M4(3)
- 2.4. The Owner covenants that it shall provide 40% Affordable Housing within each Phase

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in accordance with the Phasing Plan ensuring

- 2.5. The Owner covenants that the Affordable Dwellings in each Phase shall be Practically Completed within 24 calendar months of the date of Commencement
- 2.6. Subject to Paragraph 5 of this Schedule (Exclusions) the Owner covenants that the Affordable Dwellings shall not be Occupied or used for any other purpose other than as Affordable Dwellings unless otherwise agreed by the Borough Council
- 2.7. The Owner covenants that
- 2.7.1. the Affordable Rented Units shall not be Occupied other than by persons who are in Housing Need
- 2.7.2. the Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need and registered with the Help to Buy Agent

3. Transfer of the Affordable Dwellings

- 3.1. Prior to Commencement of Development in each Phase the Owner covenants that it shall have secured the transfer of the Affordable Dwellings to a Registered Provider and shall provide to the Borough Council sufficient evidence as the Borough Council shall require to show that this Paragraph 3 has been complied with and the Owner covenants that it shall not Commence Development unless and until the provisions of this Paragraph have been complied with
- 3.2. The Owner covenants that no more than no Open Market Dwellings or no more than ● of the Open Market Dwellings in each Phase shall be Occupied unless and until
- 3.2.1. 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 (a copy of the Certificate of Practical Completion shall be provided to the Strategic Housing and Health Manager with a copy to the Section 106 Monitoring Officer) 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 free from all encumbrances (other than those on the title of the Land at the date of this Deed) and free

Comment [RF61]: Pursuant to the Strategic Housing Market Assessment, the Council is obligated to meet housing targets. The Council's adopted housing strategy requires the Council to deliver circa 322 Affordable housing units each year to meet the stated targets, hence the need for the paragraph.

Comment [RF62]: This depends on the circumstances. Where justified the Council may be agreeable to this equating to 25% of the Open Market Dwellings, and in exceptional circumstances and where justified the Council may be agreeable to going up to 50%.

Comment [RF63]: This should ensure that the Affordable Dwellings are visually indistinguishable from the Open Market Units in terms of build quality, materials, details, levels, etc.

This is also a legal requirement due to the councils being required to apply the public sector equality duty.

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from all financial charges for the Affordable Dwellings

- 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 Borough Council's published Allocations Scheme and the provisions of this Deed and on the terms set out in the Deed of Nomination Rights
- 3.3. The Owner covenants that it shall provide evidence of the transfer of the freehold or leasehold interest of the Affordable Dwellings referred to in Paragraph 3.2.2 of this Schedule to the Housing and Enabling Manager within 5 Working Days of completion of the transfer
- 3.4. The Owner covenants that it shall ensure that the price to be paid for the Affordable Rented Units by the Registered Provider (or the Borough Council as the case may be) shall be at a level that allows the Affordable Rented Units to be paid for through rents to be charged as Affordable Rent
- 3.5. The Owner covenants that no more than a 25% to 75% 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% of the capital value of the unsold equity in that particular individual Shared Ownership Unit with each subsequent annual rent increase or increases limited to further increases in the Consumer Prices Index plus 1%
- 3.6. Unless otherwise agreed by the Borough Council the Owner covenants that it shall ensure that any proceeds derived from the sale of a Shared Ownership Unit or the proceeds from the right to buy or right to acquire an Affordable Housing Rental Unit shall be used by the Registered Provider to re-invest in Affordable Housing within (in order of priority)
- 3.6.1. the local authority district of Maidstone
- 3.6.2. then Neighbouring Councils
- 3.6.3. then the County of Kent and

Comment [RF64]: Per NPPF Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

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3.6.4. then the HCA's East and South East Operating Area (but excluding the County of Kent)

with priority given to the provision of new dwellings for Affordable Rent

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

4.1.2. all private roads footways and footpaths (if any) serving the Affordable Dwellings shall be in place and constructed to an adoptable standard

4.1.3. all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Dwellings shall be constructed laid connected operational and serviceable

5. Exclusions

5.1. **SAVE FOR** Clause 5.3 (**BUT IN ADDITION TO** Clause 9) the obligations contained in this Schedule shall **(SAVE FOR Schedule 1 which shall continue to be binding and enforceable)** not be binding upon nor enforceable against

5.1.1. any mortgagee or chargee of a Registered Provider of the Affordable Dwellings or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee and in the event of any such mortgagee chargee receiver or manager exercising a power of sale over the Affordable Dwellings the provisions of this Agreement shall cease to apply to the Affordable Dwellings over which the power is exercised (as the case may be) **PROVIDED ALWAYS THAT**

5.1.1.1. any power of sale available to any such mortgagee charge receiver or manager arising under their mortgage or charge or loan over any such Affordable Dwellings shall only be exercised in the event of there being a default of any obligation to such mortgage or charge or loan

Comment [RF65]: Verification and Enforcement

Comment [RF66]: Release and Exclusions

Comment [RF67]: This will relate to any ongoing obligations like Landscape and Ecological Management.

Comment [RF68]: The intention is to ensure that every effort is made to ensure the retention of the Affordable Housing. The council is required to exercise diligence in ensuring that affordable housing is both constructed and retained as such.

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- 5.1.1.2. such mortgagee or chargee or any receiver or manager appointed by such mortgagee or chargee shall first have notified the Borough Council and the Housing and Enabling Manager that it wishes to exercise its statutory power of sale
- 5.1.1.3. within 6 clear calendar months of the date of such notification the mortgagee or chargee or receiver having used best endeavours (in consultation with the Borough Council and the Housing and Enabling Manager) shall have been unable to exchange contracts for the transfer of the relevant Affordable Dwelling to another Registered Provider (who shall take subject to the provisions of this Deed) on terms that on completion thereof the mortgagee or chargee or receiver shall recover the total sum outstanding under its charge or mortgage together with all interest cost and expenses incurred by the mortgagee in respect of the charge or mortgage
- 5.1.2. a tenant of an Affordable Rented Units who has exercised a statutory right to acquire
- 5.1.3. a tenant of an Affordable Rented Unit who has exercised a statutory right to buy
- 5.1.4. a Shared Ownership leaseholder who has acquired 100% 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 or their mortgagee or chargee

SCHEDULE 2: LANDSCAPE AND ECOLOGICAL MANAGEMENT

Comment [RF69]: Ordinarily this is conditioned but in the case of large or more complex developments this is likely to be included in the s.106 Agreement.

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

“Allotments” means allotments to be provided on the Land for the general public (**AND FOR THE AVOIDANCE OF DOUBT** not merely the Occupiers of the Development) for the growing of fruit and vegetables and ornamental plants and which shall provide as a minimum running water drainage vehicle and pedestrian gated access parking and be suitably enclosed which allotments shall be managed in accordance with a LEMP

“Ecological Design Strategy” means a design strategy whose aim is to minimise as far as reasonably practicable the environmentally destructive impacts of the Development or a Phase (as the case may be) and enhance secure and deliver the maximum benefit reasonably practicable and/or enhancement for the natural environment and biodiversity

“Landscaped Areas” means all those communal areas and areas of open space within the Development (other than privately owned domestic gardens that form the curtilage of each Dwelling and/or not identified on the plan in Paragraph 3.3.2.1 of this Schedule) and shall include areas of the Land comprising a mixture of formal and semi-natural areas to be given over to

Comment [RF70]: Landscaped Areas exclude private garden areas but include communal areas and public open space.

Comment [RF71]: Areas adjacent to a dwelling which are not large enough to be public open space but has visual amenity value (particularly on junctions and corners within the development) is often conveyed to the adjoining owner and then subsequently used by the owner as land within the curtilage of the dwelling, thus benefiting/enjoying the GPDO Rights.

The intention is to ensure that if such land is identified on the plan (in para. 3.3.2.1) then that land, even if it is conveyed to the adjacent owner, will be managed in accordance with the LEMP and maintained as such.

a) communal landscaping

b) Public Open Space

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to be provided remediated monitored managed and maintained in accordance with this Schedule

“Landscape Management Strategy”	means a landscape strategy to manage monitor and maintain and where necessary remediate the Landscaped Areas within the Development or a Phase (as the case may be) which strategy shall have regard to and be aligned with the ecological mitigation and enhancement measures to be provided on the Land pursuant to the Ecological Design Strategy
“LEMP”	as the context so requires means a Strategic LEMP and/or a Phase Specific LEMP where the acronym “LEMP” means Landscape and Ecological Management Plan
“Natural England”	means the executive non-departmental public body established pursuant to the Natural Environment and Rural Communities Act 2006 who is responsible for ensuring that the natural environment is conserved enhanced and managed for the benefit of present and future generations or any successor body that replaces it
“Phase Specific LEMP”	means a landscape and ecological management plan for a Phase approved pursuant to the terms of this Deed in respect of each Phase
“Phase Specific LEMP Works”	means the works approved by the Borough Council pursuant to the Phase Specific LEMP
“Public Open Spaces”	includes those areas within the Development allocated to a) ecological mitigation and enhancement including wildlife/reptile corridor new woodland and tree planting landscape buffers

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b) new water network including new and existing ponds

c) Allotments

“Strategic LEMP” means a landscape and ecological management plan approved pursuant to the terms of this Deed for the Development as a whole

2. ALLOTMENTS

- 2.1. The Owner covenants with the Borough Council that it shall provide the Allotments prior to Occupation of the ● Dwelling
- 2.2. The Owner covenants with the Borough Council that it shall not Occupy the ● or any subsequent Dwelling unless and until it has provided the Allotments to the Borough Council’s satisfaction

3. LANDSCAPE AND ECOLOGICAL MANAGEMENT

- 3.1. Prior to Commencement of Development the Owner covenants that it shall submit to and have approved by the Borough Council the Strategic LEMP and that it shall not Commence Development unless and until the Strategic LEMP has been submitted to and approved by the Borough Council
- 3.2. Prior to Commencement of each Phase the Owner covenants that it shall submit to and have approved by the Borough Council a Phase Specific LEMP in accordance with the approved Strategic LEMP and that it shall not Commence Development of each Phase unless and until the Phase Specific LEMP has been submitted to and approved by the Borough Council in respect of such Phase

Content of the LEMP

- 3.3. The content of any LEMP submitted pursuant to this Deed shall include
 - 3.3.1. (save to the extent as may be varied by a European Protected Species Licence issued by Natural England which must not result in the reduction in the quality or quantity of mitigation/compensation provided) an Ecological Design Strategy which strategy shall as a minimum (and without limitation)

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- 3.3.1.1. identify the purpose and conservation objectives for any proposed works
- 3.3.1.2. review site potential and constraints as may be informed by further appropriate surveys as required
- 3.3.1.3. provide detailed design(s) and/or working method(s) to achieve stated objectives (which may comprise a set of method statements)
- 3.3.1.4. provide for the incorporation of bird and bat boxes and swift bricks in the fabric of the Dwellings and on trees within the Landscaped Areas
- 3.3.1.5. identifying the on-site role and responsibilities of an ecological clerk of works or similarly competent person
- 3.3.1.6. identify the extent and location/area of the proposed works on appropriately scaled maps and plans
- 3.3.1.7. identify the type and source of materials to be used where appropriate (eg native species of local provenance)
- 3.3.1.8. identify a timetable and the triggers for implementation of the works which works shall be aligned with the proposed Phasing Plan

AND such other matters as the Borough Council may require

- 3.3.2. A Landscape Management Strategy which strategy shall as a minimum (and without limitation)
 - 3.3.2.1. identify describe and evaluate all landscape features and areas to be managed in relation to a plan
 - 3.3.2.2. identify ecological trends and constraints on the Land that might influence its management
 - 3.3.2.3. identify and describe the long term aims and objectives of management and maintenance of the areas identified on the

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plan and how this is to be secured and achieved

- 3.3.2.4. where any natural or manmade features are identified including watercourses streams ponds and ditches details to manage and maintain such features shall be provided
- 3.3.2.5. prepare and provide a work schedule (including an annual work plan capable of being rolled forward over a 5 year period)

AND such other matters as the Borough Council may require

3.3.3. The LEMP shall also

- 3.3.3.1. provide details of the body or organisation responsible for implementation of the LEMP and associated works and include details of the legal and funding mechanism(s) by which the initial aftercare and long-term maintenance of the Landscaped Area shall be secured and delivered by the Owner
- 3.3.3.2. provide for on-going monitoring and remedial measures of the Landscaped Areas and on-going species and habitat monitoring
- 3.3.3.3. set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action and measures will be identified agreed and implemented so that the Development still delivers the fully functioning biodiversity objectives of the originally approved scheme

AND such other matters as the Borough Council may require

Implementation

- 3.4. Following Commencement of Development the Owner shall implement and adhere to the approved Strategic LEMP and the triggers approved pursuant thereto including any approved works required as they relate to a specific Phase in which case such works in so far as they may not form part of the Phase Specific LEMP Works shall be in addition to any Phase Specific LEMP Works

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- 3.5. Following Commencement of Development the Owner shall implement and adhere to the approved Phase Specific LEMP and carry out the approved Phase Specific LEMP Works to the Borough Council's satisfaction and subject to Paragraph 3.6 of this Schedule the Owner covenants that no more than 50% of any subsequent Phase shall be Occupied unless and until the Phase Specific LEMP Works (including where applicable any works required pursuant to the Strategic LEMP in relation to that Phase) for the previous Phase to which the Phase Specific LEMP applies shall have been carried out and completed to the Borough Council's satisfaction
- 3.6. The Owner shall not **Occupy 25% or more of the last and final Phase** unless and until the Phase Specific LEMP Works for the last and final Phase and all and any outstanding works required pursuant to the Strategic LEMP shall have been carried out in accordance with the Phase Specific LEMP and/or Strategic LEMP (as the case may be) and completed to the Borough Council's satisfaction
- 3.7. The Owner covenants that
- 3.7.1. the certificate of Practical Completion in relation to each Phase shall not be issued unless and until the Phase Specific LEMP Works (including where applicable any works required pursuant to the Strategic LEMP in relation to that Phase) shall have been completed for that Phase to the Borough Council's satisfaction
- 3.7.2. the final certificate of Practical Completion in relation to the whole Development shall not be issued unless and until all works required pursuant to the LEMP have been carried out to the Borough Council's satisfaction

Comment [RF72]: The clause is inserted for enforcement reasons and to ensure the carrying out of the LEMP works. Whilst the Council is certainly not seeking to micro manage the development and the Council accepts that it probably would not be in the owners interest not to complete the LEMP works, we are seeking to secure appropriate enforcement provisions to ensure that what the owner said it would deliver is delivered.

General

- 3.8. The Owner shall manage monitor and maintain (including where necessary carry out such remedial works and measures as may be necessary) the Landscaped Areas in perpetuity in accordance with the approved LEMP or any subsequent revision or amendment thereto as may be approved by the Borough Council
- 3.9. On completion of each Phase Specific LEMP Works (including where applicable any works required pursuant to the Strategic LEMP in relation to that Phase) to the Borough Council's satisfaction the Owner covenants to set aside and make available

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in perpetuity for use by the public such of the Landscape Areas as are to be made available to the public in accordance with the LEMP subject to such reasonable restrictions as may reasonably be required in relation to access to the Allotments and the ongoing maintenance of the Landscaped Areas in accordance with the LEMP

- 3.10. The Owner covenants that no permanent operational development will take place on the Landscape Areas other than works required or permitted pursuant to the LEMP or as otherwise permitted under the Planning Permission **PROVIDED THAT** this will not prevent the
- 3.10.1. laying beneath the Landscape Areas of underground pipes cables and conduits which may be required to supply the Development with electricity gas water telephone television internet and related services and the maintenance of the same thereafter or
- 3.10.2. temporary occupation of and/or operational development on the Landscape Areas which is temporary and assists construction activities directly related to the Development **PROVIDED THAT** this shall be done in accordance with the Strategic LEMP and Phase Specific LEMP and the Owner shall remove all such temporary operational development as soon as reasonably practicable after they are no longer required and the land is restored to the Borough Council's satisfaction

Review of the LEMP

- 3.11. Following approval of a LEMP
- 3.11.1. the Owner shall be entitled to submit a new or revised LEMP to the Borough Council for approval by the Borough Council (and following such approval the LEMP shall take effect as replaced or revised)
- 3.11.2. on approval the Owner shall implement the new or revised LEMP as approved by the Borough Council pursuant to this Schedule the Owner shall pay the Borough Council's reasonable costs and expenses (including any professional fees that may be incurred and any abortive costs and expenses in the event that the new or revised LEMP is withdrawn by the Owner prior to approval by the Borough Council) associated with assessing and approving the new or revised LEMP submitted pursuant to this Sub-

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Paragraph within 10 Working Days of the date of written notification for payment by the Borough Council

3.12. Where the Borough Council (in its sole discretion) believes that the extant approved LEMP requires amendments or revisions in that the LEMP fails to deliver either an adequate system of monitoring or is not adequately maintained or managed in accordance with the approved LEMP

Comment [RF73]: This paragraph is inserted to deal with those circumstances where the approved LEMP does not achieve what the parties thought it would, alternatively, it creates unforeseen hazards or concerns brought to the council's attention by members of the public, etc. (e.g. issues arising out of unkempt allotments, frontages, etc.).

3.12.1. the Borough Council may request the Owner to submit within 1 calendar month of the date of such request for approval a new or revised LEMP for the monitoring management and/or maintenance of the Landscaped Areas to reflect such amendments or revisions

3.12.2. in the event that a revised LEMP is not submitted within 1 calendar month of the date of request pursuant to Paragraph 3.12.1 or is not approved within 3 calendar months of such request a revised LEMP will be provided by the Borough Council and the provisions of Paragraph 3.4 and/or 3.5 of this Schedule (as the case may be) shall apply until the Owner submits a revised LEMP and the same is approved by the Borough Council

3.12.3. the Borough Council's reasonable costs and expenses associated with providing a new or revised LEMP in accordance with this Paragraph 3.12 shall be paid by the Owner to the Borough Council as notified to the Owner and will be paid within 10 Working Days of the date of notification by the Borough Council and may be charged on the Owners interest in the Land

3.13. No proposed new or revised LEMP submitted by the Owner to the Borough Council for approval pursuant to this Schedule shall come into force unless and until it has been approved by the Borough Council

Disposal or Transfer

3.14. The Owner covenants that it shall not dispose or transfer the Landscape Areas or any part thereof without the consent of the Borough Council

3.15. **IN THE EVENT THAT** the Owner proposes to dispose of or transfer the monitoring maintenance and/or management of the Landscaped Areas to a management company then

Comment [RF74]: The Council presently does not have the resources to take on amenity land. As such maintenance, etc. is either to remain with the Owner or it is to be transferred to a management company.

The Council's concern is that the Owner will simply hand over the management, etc. of the Landscaped Areas to a shell company or a Residents Association which may not have any form of funding arrangements in place to ensure that it is able to comply with the terms of the s.106. Under s.106 of the 1990 Act, the Council has two enforcement options – injunction or step in rights. If the site (particularly those parts that are available to the public or front onto public highways, etc.) is unkempt, the Council can only realistically exercise step in rights, but it would not be prepared to do so at its cost and as such requires certainty that in the event that it has to exercise its step in rights there is funding in place to cover the Council's costs (or to allow the Council to recover its costs).

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- 3.15.1. the management company shall be established as a management company limited by guarantee for the purposes of monitoring managing and maintaining the Landscaped Areas in perpetuity
- 3.15.2. the management company shall carry out the monitoring management and maintenance of the Landscaped Areas in accordance with the terms of this Deed and the approved LEMP
- 3.15.3. the management company shall be funded by means of annual service charges payable by all owners of the Dwellings
- 3.15.4. each of the owners of the Dwellings shall be a member of the management company whose liability shall be set at the equivalent of 1 year's annual service charge which shall be reflected in the articles of association of the management company
- 3.15.5. the Owner shall procure that there is included in the transfer deed of the freehold or leasehold interest in each of the Dwellings a requirement that each transferee shall pay an annual service charge to the management company for the ongoing monitoring maintenance and management of the Landscaped Areas and the Owner shall ensure that the annual service charge shall be at a level that allows the management company to pay for the monitoring management and maintenance of the Landscaped Areas in accordance with the LEMP to be paid for through the annual service charge levied against each of the Dwellings
- 3.15.6. prior to any disposal or transfer the Owner shall produce to the Borough Council a certified copy of the certificate of incorporation of the management company and evidence of financial viability for at least 10 years after Practical Completion of the Development as a whole (as notified to the Borough Council pursuant to Clause 11.1) unless otherwise agreed in writing with the Borough Council
- 3.15.7. the Owner covenants that it shall not dispose of or transfer the monitoring maintenance and/or management of the Landscaped Areas without the prior approval of the Borough Council and the Borough Council may withhold its approval until such time as it is satisfied that *inter alia* the proposed disposal or transfer will not undermine the requirements and

Comment [RF75]: 10 or 20 years?

objectives of this Schedule

Enforcement of the LEMP

- 3.16. Without prejudice to the Borough Council's powers where there is any breach or non-compliance by the Owner with any term of the approved LEMP for the time being in force or any of the obligations contained in this Schedule the Borough Council may
- 3.16.1. (and the Owner hereby grants authority for the Borough Council and its authorised employees and agents) enter the Land with staff contractors plant and equipment and carry out such steps measures or operations on the Land as the Borough Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with and/or to remedy any non-compliance with the approved LEMP and
- 3.16.2. recover from the Owner the costs and expenses reasonably incurred by the Borough Council in remedying such non-compliance (which shall be paid within 10 Working Days of the date of notification for payment from the Borough Council and may be charged on the Owners interest in the Land)

PROVIDED THAT the Borough Council shall (unless otherwise agreed by the Borough Council) give the Owner not less than 20 Working Days prior notice of its intention to remedy such non-compliance to allow the Owner an opportunity to remedy the same themselves

General

- 3.17. The Owner shall have due regard to any requirements and/or recommendations made by the Borough Council in relation to the drafting and operation of any LEMP submitted pursuant to the terms of this Deed and/or any subsequent review or amendment thereto
- 3.18. Any LEMP approved pursuant to this Schedule shall be deemed to be incorporated within this Deed and enforceable by the Borough Council as part of this Deed
- 3.19. The Owner shall ensure that a total area of at least ● hectares shall be retained on the Land as Landscaped Areas in perpetuity for use by the public and that any ecological design features built into the fabric of the Development shall likewise be retained in perpetuity

SCHEDULE 2: FINANCIAL CONTRIBUTIONS TO THE COUNTY COUNCIL

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

“Applicable Flat” means those Dwellings comprising Flats but excluding those Flats (if any) of less than 56sqm GIA and excluding sheltered accommodation

“Applicable House” means all Dwellings but excluding those Dwellings (if any) of less than 56sqm GIA and excluding sheltered accommodation

“GIA” means Gross Internal Area being the area of an individual Dwelling measured to the internal face of the perimeter walls (being the brick/block work or plaster coat applied to the brick/block work not the surface of internal linings installed by the occupier) of the Dwelling at each floor level and includes

- areas occupied by internal walls and partitions
- columns piers chimney breasts stairwells lift-wells other internal projections vertical ducts and the like
- internal open-sided balconies walkways and the like
- structural raked or stepped floors are property to be treated as a level floor measured horizontally
- horizontal floors with permanent access below structural raked or stepped floors
- mezzanine floor areas with permanent access

Comment [RF76]: Per RICS Guidance Note “Code of Measuring Practice - A guide for Property Professionals (6th Edition)” ([click here](#)). This definition has been adapted for Housing Units and will need to be considered on each occasion to reflect the Development. KCC will need to settle the definition as it affects their definitions of “Applicable House” and “Applicable Flat”.

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- garages
- conservatories

BUT excluding

- perimeter wall thicknesses and external projections
- external open-sided balconies covered ways and fire escapes
- canopies
- voids over or under structural, raked or stepped floors
- greenhouses garden stores fuel stores and the like in residential

“Highways Contribution”

means the sum of £● Index Linked

[OR in the event of Phasing or an Outline application where the number of units is not fixed]

means the sum of £● per Dwelling where the total contribution *in each Phase* shall be calculated in accordance with the following formula

D x £● = £HC Index Linked

WHERE

D is the number of Dwellings to be provided *pursuant to the Reserved Matters Approval OR in the Phase*

£HC Index Linked is the Highways Contribution (Index Linked) payable *for the Phase*

“Libraries Contribution ” means the sum of £● Index Linked

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“Primary Education Contribution”

means the sum of £● Index Linked

[OR in the event of Phasing or an Outline application where the number of units is not fixed]

means the sum of

a) £● per Applicable House and

b) £● per Applicable Flat

(as the case may be) where the total contribution *in each Phase* calculated in accordance with the following formula

$$(AH \times \text{£}●) + (AF \times \text{£}●) = \text{£PEC Index Linked}$$

WHERE

AH is the number of Applicable Houses to be provided *pursuant to the Reserved Matters Approval OR in the Phase*

AF is the number of Applicable Flats to be provided *pursuant to the Reserved Matters Approval OR in the Phase*

£PEC Index Linked is the Primary Education Contribution (Index Linked) payable *for the Phase*

“Secondary Education Contribution”

means the sum of £● Index Linked

[OR in the event of Phasing or an Outline application where the number of units is not fixed]

means the sum of

c) £● per Applicable House and

d) £● per Applicable Flat

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(as the case may be) where the total contribution in each Phase is calculated in accordance with the following formula

$$(AH \times \text{£}\bullet) + (AF \times \text{£}\bullet) = \text{£SEC Index Linked}$$

WHERE

AH is the number of Applicable Houses to be provided pursuant to the Reserved Matters Approval OR in the Phase

AF is the number of Applicable Flats to be provided pursuant to the Reserved Matters Approval OR in the Phase

£SEC Index Linked is the Secondary Education Contribution (Index Linked) payable for the Phase

“Youth Services Contribution”

means the sum of £• Index Linked

2. Libraries Contribution

- 2.1. The Owner covenants that it shall pay to the County Council the Libraries Contribution before Commencement of Development
- 2.2. The Owner covenants that it shall not Commence Development unless and until
 - 2.2.1. the Libraries Contribution has been paid to the County Council and
 - 2.2.2. the Owner has notified the Borough Council of this payment
- 2.3. The County Council covenants with the Owner that it shall apply the Libraries Contribution as a contribution towards • or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree in writing and not to use the Libraries Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council

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shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 22 of the Deed as if it were part of the principal sum paid by the Owner

- 2.4. In the event that all or any part of the Libraries Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development as a whole for Occupation of the last Dwelling to be constructed on the Development pursuant to the Phasing Plan (as notified to the County Council by the Owner pursuant to Paragraph 2.4 of Schedule 2 to this Deed) and unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

3. Youth Services Contribution

- 3.1. The Owner covenants that it shall pay to the County Council the Youth Services Contribution before Commencement of Development
- 3.2. The Owner covenants that it shall not Commence Development unless and until
- 3.2.1. the Youth Services Contribution has been paid to the County Council and
- 3.2.2. the Owner has notified the Borough Council of this payment
- 3.3. The County Council covenants with the Owner that it shall apply the Youth Services Contribution as a contribution towards 2.4 or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree in writing and not to use the Youth Services Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 22 of the Deed as if it were part of the principal sum paid by the Owner
- 3.4. In the event that all or any part of the Youth Services Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development as a whole for Occupation of the last Dwelling to be constructed on the Development pursuant to the Phasing Plan

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to the Phasing Plan] (as notified to the County Council by the Owner pursuant to Paragraph ● of Schedule 2 to this Deed) and unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

4. Primary Education Contribution

- 4.1. The Owner covenants that it shall pay to the County Council the Primary Education Contribution before Occupation [of ●%] of the Dwellings in each Phase
- 4.2. The Owner covenants that it shall not Occupy [●% or more of] the Dwellings in each Phase unless and until
 - 4.2.1. the Primary Education Contribution has been paid to the County Council in respect of such Phase and
 - 4.2.2. the Owner has notified the Borough Council of this payment
- 4.3. The County Council covenants with the Owner that it shall apply the Primary Education Contribution as a contribution towards ● or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree in writing and not to use the Primary Education Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 22 of the Deed as if it were part of the principal sum paid by the Owner
- 4.4. In the event that all or any part of the Primary Education Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development as a whole [or Occupation of the last Dwelling to be constructed on the Development pursuant to the Phasing Plan] (as notified to the County Council by the Owner pursuant to Paragraph ● of Schedule 2 to this Deed) and unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part

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thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

5. Secondary Education Contribution

5.1. The Owner covenants that it shall pay to the County Council the Secondary Education Contribution before Occupation [of ●%] of the Dwellings in each Phase

5.2. The Owner covenants that it shall not Occupy [●% or more of] the Dwellings in each Phase unless and until

5.2.1. the Secondary Education Contribution has been paid to the County Council in respect of such Phase and

5.2.2. the Owner has notified the Borough Council of this payment

5.3. The County Council covenants with the Owner that it shall apply the Secondary Education Contribution as a contribution towards ● or for such other purposes for the benefit of the Development as the Owner and the County Council may otherwise agree in writing and not to use the Secondary Education Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 22 of the Deed as if it were part of the principal sum paid by the Owner

5.4. In the event that all or any part of the Secondary Education Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development as a whole [or Occupation of the last Dwelling to be constructed on the Development pursuant to the Phasing Plan] (as notified to the County Council by the Owner pursuant to Paragraph ● of Schedule 2 to this Deed) and unless the County Council and the Owner agree otherwise the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

6. Highways Contribution

Comment [RF77]: Where the development is contributing only a proportion of the costs towards the costs of the Highways Works to which the development has contributed, the Council is generally not agreeable to a mechanism giving the Owner the right to recover unused contributions.

This may be one of a number of developments (coming forward or proposed to come forward) which are contributing to the highways works. This may extend beyond the 10 year period. Also, the development may not necessarily contribute its full quota of contribution if the whole development is not constructed as the contribution is based on a "per Housing Unit" built amount.

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- 6.1. The Owner covenants that it shall pay to the County Council the Highways Contribution before Occupation [of ●%] of the Dwellings in each Phase
- 6.2. The Owner covenants that it shall not Occupy [●% or more of] the Dwellings in each Phase unless and until
 - 6.2.1. the Highways Contribution has been paid to the County Council in respect of such Phase and
 - 6.2.2. the Owner has notified the Borough Council of this payment

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APPENDIX 1: PLAN

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APPENDIX 2: DRAFT CONDITIONS

APPENDIX 3: DEED OF NOMINATIONS

APPENDIX 4: AFFORDABLE HOUSING LAND