

DATED 14 MARCH 2023

SWALE BOROUGH COUNCIL

- and -

DEREK EPSLEY AND CATHERINE MARY EPSLEY AND GRAHAM DEREK EPSLEY

-and-

GLADMAN DEVELOPMENTS LIMITED

**DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND AT SWANSTREE AVENUE SITTINGBOURNE KENT ME10 4LU
Planning Application Ref No 21/505498/OUT**

Mid Kent Legal Services
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent ME10 3HT
Ref.: S017181



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THIS DEED OF AGREEMENT is dated the 14 day of MARCH 2023

BETWEEN

- 1) **SWALE BOROUGH COUNCIL** of Swale House East Street Sittingbourne Kent ME10 3HT (the “**Borough Council**”) and
- 2) **DEREK EPSLEY AND CATHERINE MARY EPSLEY** of Chilton Manor Farm Highsted Road Rodmersham Sittingbourne Kent ME9 0AA **AND GRAHAM DEREK EPSLEY** formerly of 31 Wood Court Close Sittingbourne Kent ME10 1QT and now residing at Chilton Manor Farm Highsted Road Rodmersham Sittingbourne Kent ME9 0AA (the “**Owners**”) and
- 3) **GLADMAN DEVELOPMENTS LIMITED** (Company Registration No 3341567) whose registered office is at Gladman House Alexandria Way Congleton Cheshire CW12 1LB (the “**Promoter**”)

RECITALS

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated and the appropriate statutory body to enforce this Deed for the purposes of Section 106 of the 1990 Act
- B. The County Council is the statutory authority responsible for education local highways waste libraries youth services community learning and adult social care for the area within which the Land is situated
- C. The Application was made to the Borough Council
- D. The Borough Council has failed to determine the application within the statutory time period and the Promoter has appealed to the Secretary of State against the non-determination of the Application and the Owners and the Promoter enter into this obligation to the intent that any objections of the Borough Council to the grant of planning permission are overcome
- E. The Owners are interested in the Land by virtue of being the registered proprietor with freehold with title absolute of the Land as set out in Schedule 1
- F. The Promoter is the beneficiary of registered restrictions on the title to the Land dated

10 August 2018 and 17 January 2022 and will observe the restrictions and perform the obligations contained in this Deed in the event that it shall have acquired a legal interest in the Land being not merely a registered option or an interest in the proceeds of sale of the Land except those obligations which have been discharged before it acquires such interest

- G. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 as amended
- H. The Owners and the Promoter have agreed to enter into this Deed to regulate the Development and to give effect to the terms of the Appeal decision should the Inspector grant planning permission
- I. 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
- J. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

OPERATIVE PROVISIONS

IT IS AGREED as follows

1. DEFINITIONS

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

“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
“Annual Infrastructure Funding Statement”	means an annual infrastructure funding statement as required by regulation 121A of the CIL Regulations
“Appeal”	means the appeal against the Borough Council’s non-determination of the Application which has been made to the Secretary of State by the Promoter and given reference APP/V2255/W/22/3311224
“Application”	means the application for outline planning permission submitted by the Developer to the Borough Council to carry out the Development at the Land and given the registered reference number 21/505498/OUT
“Borough Council Contributions”	<p>means the financial contributions payable to the Borough Council pursuant to Schedule 3 and Schedule 4 comprising</p> <ul style="list-style-type: none"> a) The Air Quality Damage Cost Contribution b) The Formal Sports Contribution c) the Healthcare Contribution d) the Play and Recreation Contribution e) the SPA Mitigation Contribution f) the Wheelie Bin Contribution
“CIL”	means Community Infrastructure Levy as defined in Regulation 3 of the CIL Regulations
“CIL Regulations”	means the Community Infrastructure Levy Regulations 2010 (as amended)
“Commencement of Development”	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a

Preparatory Operation and the words “**Commence**” and “**Commence Development**” shall be construed accordingly

“Consumer Price Index” means the Consumer Price Index published by the Office for National Statistics

“County Council” means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the education authority the local highway authority the transport authority the community learning authority the social care authority the youth services authority the waste authority the PROW authority and the libraries authority for the area within which the Land is situated

“County Council Contributions” means the financial contributions payable to the County Council pursuant to Schedule 3 comprising

- a) the Community Learning Contribution
- b) the Highways Contribution
- c) the Libraries Contribution
- d) the Primary Education Contribution
- e) the Primary Education Land Contribution
- f) the Public Rights of Way Contribution
- g) the Secondary Education Contribution
- h) the Secondary Education Land Contribution
- i) the Social Care Contribution
- j) the Waste Contribution
- k) the Youth Services Contribution

“Decision Letter” means the decision letter issued by the Inspector of the Secretary of State confirming whether or not the Appeal

is allowed

“Deed”	means this deed of agreement together with all Schedules and Appendices
“Development”	means up to 135 dwellings with public open space landscaping and sustainable drainage system (SuDS) and vehicular access point (all matters are reserved except for access) on the Land as set out in the Application pursuant to the Appeal
“Dwelling”	means any residential unit to be erected on the Land pursuant to the Planning Permission (and approved pursuant to any Reserved Matters Approval) including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings
“General Building Cost Index”	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Implementation of the Planning Permission”	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act and the words “Implement” and “Implemented” and “Implementation” shall be construed accordingly AND FOR THE AVOIDANCE OF DOUBT Implementation of the Planning Permission is not to be construed as Commencement of Development
“Index Linked”	means adjusted by reference to the relevant index pursuant to the provisions of Clause 19
“Infrastructure”	has the meaning ascribed to it in Section 216(2) of the Planning Act 2008
“Inspector”	means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal

“Interest”	means interest at 6% per annum above the base lending rate of Lloyds 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 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 for the avoidance of doubt the completion of the sale of any Dwelling shall constitute permitting its occupation and “Occupation” “Occupier” or “Occupied” shall be construed accordingly
“Open Market Dwellings”	means those Dwellings for sale on the open market and which are not Affordable Dwellings
“Parties”	means the Owners the Promoter and the Borough Council as the context so requires and “Party” means any one of them
“Plan”	means the plan entitled “Location Plan” (Drawing No 06302-FPCR-ZZ-ZZ-DR-L-0003) prepared by FPCR Environment and Design Ltd and dated 20 September 2021 annexed as Appendix 1
“Planning Permission”	means planning permission for the Development to be granted pursuant to the Appeal subject to conditions
“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 (for the purposes of this Deed and for no other purpose) operation or item of work of or connected with or ancillary to

- a) archaeological investigation
- b) exploratory boreholes and trial pits and investigations for the purpose of assessing ground conditions
- c) site clearance (but including demolition of a 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
- g) temporary display of site notices or advertisements
- h) remedial work in respect of any contamination or other adverse conditions

“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

“Retail Price Index” means the Retail Price Index published by the Office for National Statistics

“Secretary of State”	means the Secretary of State for Levelling Up Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act and includes any successor function
“Statutory Undertakers”	means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator
“VAT”	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
“Working Day”	means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

2. INTERPRETATION

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed
- 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 shall include any successor to their respective statutory functions

- 2.7 Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions
- 2.8 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
- 2.9 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
- 2.10 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
- 2.11 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
- 2.12 Any financial contributions collected pursuant to the terms of this Deed may be pooled with other funds for use by the receiving party for the purposes for which those contributions were paid **AND FOR THE AVOIDANCE OF DOUBT** any financial contribution may be used towards professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the person receiving the financial contribution in order to achieve the purposes for which the requisite contribution was paid

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
- 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act

- 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
- 3.2.3 relate to the Land
- 3.2.4 are entered into with intent to bind the Owners' and the Promoter's interests in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come
- 3.2.5 are enforceable by the Borough Council as local planning authority
- 3.2.6 are executed by the respective Parties as a deed
- 3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling

4. CONDITIONALITY

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 7 to 24 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the Appeal being allowed and (save in respect of any obligations in this Deed requiring compliance prior to the (Commencement of Development) the Commencement of Development
- 4.2 If in determining the Appeal the Secretary of State or the Inspector expressly states in the Decision Letter that any obligation contained in this Deed:
 - 4.2.1 Is not a material planning consideration; or
 - 4.2.2 can be given no or little weight in determining the Appeal; or
 - 4.2.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations then subject to Clause 115.1 of this Deed such planning obligation as identified in the Decision Letter shall not be enforceable pursuant to this Deed and shall cease to have effect within this Deed save as set out in the Decision Letter
- 4.3 In the event that the Secretary of State or the Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning

Permission an Annual Infrastructure Funding Statement has been published by the Borough Council any contribution payable under the terms of this Deed which is for an Infrastructure project or type of Infrastructure which is identified in the Annual Infrastructure Funding Statement as an Infrastructure project or Infrastructure to be funded wholly or partly by CIL shall cease to be payable

5. COVENANTS AND OBLIGATIONS OF THE OWNERS AND THE PROMOTER

- 5.1 The Owners covenant with the Borough Council to perform and observe the covenants obligations restrictions and requirements contained in this Deed
- 5.2 The Owners 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 Owners' site regulations and requirements and health and safety law and good practice
- 5.3 The Promoter covenants to pay before completion of this Deed the Borough Council's reasonable legal and administrative costs and disbursements incurred in connection with the negotiation preparation execution completion and registration (as a local land charge) of this Deed
- 5.4 The Owners covenant to pay the sum of £24,897 to the Borough Council in connection with the monitoring and administration of this Deed prior to the submission of the first Reserved Matters Application
- 5.5 The Owners further covenant to pay to the Borough Council for the use of the County Council in monitoring compliance with the County Council Contributions a monitoring fee of £500.00 (five hundred pounds) for each trigger point in respect of payments for County Council Contributions secured by Schedule 3 to this Deed such payment to be made prior to payment of each County Council Contribution

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

6. COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL

- 6.1 The Borough Council covenants with the Owners that subject to the Owners carrying out and observing the Owners' covenants obligations restrictions and requirements

herein it will perform the Borough Council's covenants as set out in this Deed

- 6.2 The Borough Council shall on request by the payor repay such unspent funds as the Borough Council is holding to the payor of the monies paid under Clause 5.4 within 20 (twenty) Working Days of the Planning Permission

6.2.1 being quashed revoked withdrawn expiring or failing to be issued pursuant to Clause 9.1 or

6.2.2 failing to be Implemented but less any costs incurred by the Borough Council in monitoring the Deed including confirming whether or not the Planning Permission has in fact been Implemented together with any administrative expenses

7. MORTGAGEE'S CONSENT

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

8. RELEASE AND EXCLUSIONS

- 8.1 Save for Clause 5.2 no planning obligations contained in this Deed shall be binding on any Statutory Undertaker with any existing interest in any part of the Land or 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
- 8.2 Save for Clause 5.2 and subject to Clause 17.2 those obligations contained in this Deed specifically regulating the use of land or buildings after construction no planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings (or their respective mortgagees or successors in title) constructed pursuant to the Planning Permission
- 8.3 No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Borough Council in relation to any subsisting or any

antecedent breach non-performance or non-observance arising prior to parting with such interest

9. DETERMINATION OF THE PLANNING PERMISSION

- 9.1 Save for Clause 5.3 this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is not issued or shall be revoked or modified pursuant to section 97 of the 1990 Act or quashed or otherwise withdrawn (without the consent of the Owners) or expires prior to Implementation of the Planning Permission
- 9.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or modification variation or amendment thereof) granted after the date of this Deed
- 9.3 If the Borough Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission **UNLESS** the Borough Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the section 73 application in which circumstances a separate deed under section 106 or section 106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission **BUT** nothing in this Deed shall in any way fetter the Borough Council's discretion in relation to the section 73 application or the determination thereof

10. DISPUTES AND EXPERT DETERMINATION

- 10.1 Without prejudice to the rights of the Borough Council to take immediate alternative action in the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference

- 10.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 10.1 within 10 (ten) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert 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 a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares
- 10.3 The Expert shall act as an expert and save in case of manifest error his decision 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 by the Parties to the dispute or difference in equal shares
- 10.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within 10 (ten) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further 10 (ten) Working Days in respect of any such submission and supporting material
- 10.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall 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 28 (twenty-eight) Working Days after the conclusion of any hearing that takes place or 28 (twenty-eight) Working Days after he has received the last submission or written representation
- 10.6 Nothing in this Clause 10 shall be taken to fetter or limit the ability of the Borough Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England

11. NOTICES

- 11.1 Any notice approval refusal consent certificate confirmation direction authority

agreement action expression of satisfaction request or other 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 and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Borough Council Swale Borough Council

Address

The Head of Planning Services
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent ME10 3HT

Reference 21/505498/OUT – Land at Swanstree Avenue
Sittingbourne Kent

With a copy to

The Section 106 Monitoring Officer
The Affordable Housing Manager

The Owners

- 1. DEREK EPSLEY AND CATHERINE MARY EPSLEY**
- 2. GRAHAM DEREK EPSLEY**

Address

Chilton Manor Farm Highsted Road Sittingbourne Kent ME9 0AA

The Promoter

Gladman Developments Limited

Address

Gladman House Alexandria Way Congleton Cheshire CW12 1LB

11.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received

11.2.1 if delivered by hand on signature of a delivery receipt provided that if delivery

occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or

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

11.3 Any notice or request by the Owners for approval consent certificate direction authority agreement action expression of satisfaction or other 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

11.4 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

12. LOCAL LAND CHARGE

12.1 This Deed is a local land charge and shall be registered as such by the Borough Council

12.2 Where in the opinion of the Owners any of the provisions of this Deed have been satisfied the Owners shall be entitled to apply to the Borough Council for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a confirmation to such effect to the Owners

12.3 The Borough Council shall upon the request of the Owners (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 Owners under this Deed have been performed or otherwise discharged and the Borough Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed

13. SUCCESSORS IN TITLE

- 13.1 The Owners enter into the obligations set out in this Deed for themselves and their successors in title for the benefit of the Borough Council to the intent that the obligations in this Deed shall be enforceable not only against the Owners but also against the successors in title of the Owners and any person claiming through or under the Owners an interest or estate in the Land or any part thereof

14. POWERS OF THE BOROUGH COUNCIL

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

15. SEVERABILITY

- 15.1 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

16. RIGHTS OF THIRD PARTIES

- 16.1 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

17. CHANGE OF OWNERSHIP AND NEW INTEREST

- 17.1 The Owners warrant that

17.1.1 they have full authority to enter into this Deed

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

17.1.3 they know of no impediment to the validity of this Deed

17.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed

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

17.2 The Owners shall not complete the transfer or lease of any Open Market Dwelling if any monies due to be paid to the Borough Council pursuant to the terms of this Deed by the date of Occupation of that Open Market Dwelling have not been paid

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

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

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

17.4 In the event of the Borough Council considering it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owners hereby consent and shall do or concur in doing all things necessary or advantageous to enable the said entries to be made and shall reimburse the Borough Council its costs and expenses in relation to effecting such entries

18. WAIVER

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

19. INDEXATION

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

- 19.2 Save for the SPA Mitigation Contribution mentioned in Schedule 4 (Special Protection Area) all 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 the delegated officer report of and the quarterly index figure for the quarter immediately preceding the date of the actual payment
- 19.3 The SPA Mitigation Contribution payable pursuant to Schedule 4 (Special Protection Area) of this Deed shall be increased in the same proportion as the percentage increase in the Retail Price Index between the quarterly index figure immediately preceding the date of the delegated officer report of and the quarterly index figure for the quarter immediately preceding the date of the actual payment
- 19.4 The Highways Contribution payable pursuant to Schedule 3 (Financial Contributions) of this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately preceding the date of the delegated officer report and the quarterly index figure for the quarter immediately preceding the date of the actual payment becoming due
- 19.5 The Public Rights of Way Contribution payable pursuant to Schedule 3 (Financial Contributions) of this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost 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 the actual payment becoming due
- 19.6 The remaining County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index from April 2020 (Index 360.3) and the monthly index figure for the month of the date of the actual payment
- 19.7 Where reference is made to any index in this Deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council or the County Council (where it relates to a County Council Contribution) 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 (where it relates to a County Council Contribution) shall approve

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

20. INTEREST

- 20.1 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 with such Interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

21. VAT

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

22. AGREEMENTS AND DECLARATIONS

- 22.1 The Parties agree that
- 22.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 22.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough Council in the exercise of any other statutory function

23. GOVERNING LAW

- 23.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England
- 23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of

the courts of England

24. DELIVERY

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

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

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



Authorised Signatory

Signed as a DEED by **DEREK EPSLEY**)
in the presence of)



Signature

Name (IN BLOCK CAPITALS):



Signature of witness

Name (IN BLOCK CAPITALS)

Address


CB WACHER (Solicitor)
Furley Page
39 St. Margarets St
Canterbury
Kent CT1 2TX

Signed as a DEED by **CATHERINE**)
MARY EPSLEY in the presence of)



Signature

Name (IN BLOCK CAPITALS):



Signature of witness

Name (IN BLOCK CAPITALS)
Address

as above.

Signed as a DEED by **GRAHAM DEREK**)
EPSLEY in the presence of)



Signature

Name (IN BLOCK CAPITALS):



Signature of witness

Name (IN BLOCK CAPITALS)
Address

as above

EXECUTED as a Deed by

GLADMAN DEVELOPMENTS LIMITED

Acting by a director



In the presence of ;

Witness signature



Witness name in block capitals

LISA SIMMONS

Witness address

Gladman House
Alexandra Way
Croydon

Witness occupation

Legal Secretary

SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises all that land and premises situate at Swanstree Avenue Sittingbourne Kent ME10 4LU and known as land at Swanstree Avenue as shown on the Plan of which

1. The Owners are the registered proprietor of the freehold with title absolute of all the land and premises as the same is shown edged red on the Plan and is registered at the Land Registry comprising part of title number K882272 and part of title number K433166 subject to the matters in the Charges Registers but otherwise free from encumbrances
2. The Promoter is the beneficiary of a registered restriction on both title numbers K882272 and K433166

SCHEDULE 2: NOTICES

1. Interpretation of this Schedule

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

2. Notices

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owners covenant that

Notification of Implementation of Planning Permission

- 2.1 they shall provide the Borough Council with no less than 20 (twenty) Working Days prior notice of the intended date of Implementation of the Planning Permission
- 2.2 they shall not Implement the Planning Permission unless and until this notice has been provided to the Borough Council and
- 2.3 they shall subsequently notify the Borough Council promptly and in any event within 5 (five) Working Days of the actual date on which the Planning Permission is Implemented

Notification of Commencement of Development

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

Notification of Occupation

- 2.7 they shall provide the Borough Council with no less than 20 (twenty) Working Days prior notice of the intended date of
- 2.7.1 first Occupation of the Development

2.7.2 25% Occupation of the Development

2.7.3 50% Occupation of the Development

2.7.4 75% Occupation of the Development

2.7.5 95% Occupation of the Development and

2.7.6 of the last Dwelling to be Occupied on the Development

2.8 the Owners shall not Occupy the Development or any specified percentage of the Development or the last Dwelling to be Occupied on the Development (as the case may be) unless and until the relevant notice pursuant to Paragraph 2.7 above has been provided to the Borough Council

2.9 they shall notify the Borough Council promptly and in any event within 5 (five) Working Days of the actual date of Occupation of the Development or any specified percentage of the Development or the last Dwelling to be Occupied on the Development (as the case may be)

Notification of Completion

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

3 **FOR THE AVOIDANCE OF DOUBT** the triggers contained in this Deed shall not be deemed to have been triggered unless and until the requisite notice pursuant to this Schedule have been provided and a failure to provide any notice pursuant to this Schedule shall constitute a breach of the terms of this Deed

SCHEDULE 3: FINANCIAL CONTRIBUTIONS

1 Interpretation of this Schedule

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

“Air Quality Assessment”	means the Air Quality Assessment by Wardell Armstrong dated July 2022 submitted to the Borough Council pursuant to the Application
“Air Quality Damage Cost Contribution”	means a contribution in the sum of £39,696.00 (thirty-nine thousand six-hundred and ninety-six pounds) Index Linked
“Air Quality Mitigation Measures”	means measures to mitigate air quality impacts of the Development by providing a Car Club Scheme and any other on-Site measures identified in the Air Quality Assessment or which are supportive of the Car Club Scheme and agreed in writing between the Owner and the Borough Council up to the value of the Air Quality Damage Cost Contribution AND FOR THE AVOIDANCE OF DOUBT such measures may include alternative measures submitted and approved pursuant to Paragraph 2.2.2. The Air Quality Mitigation Measures shall indicatively contribute <ul style="list-style-type: none">• £36,540.00 for the cost of 3 fully serviced EVs for the Car Club Scheme to be operated by the Approved Operator• £3,156.00 as a contribution towards the Car Club Scheme including provision of hardstanding / parking spaces and charging infrastructure
“Applicable Flat”	means those Dwellings comprising flats but excluding Applicable Houses and those flats (if any) of less than

	56sqm GIA and excluding sheltered accommodation
“Applicable House”	means all Dwellings but excluding Applicable Flats and those Dwellings (if any) of less than 56sqm GIA and excluding sheltered accommodation
“Approved Operator”	means an existing operator of car clubs approved by the Borough Council and who shall operate and manage the Car Club Scheme and who shall be accredited by Collaborative Mobility UK (CoMoUK)
“Car Club Scheme”	<p>means details of a pay-as-you-drive car club offering members access to 3 (three) fully serviced electric vehicles without ownership and which is designed to reduce the levels of combustion engine car ownership and use by residents and Occupiers of the Development and in the vicinity of the Development and which:</p> <ul style="list-style-type: none"> • identifies the Approved Operator of the Car Club Scheme; • identifies the duration of the scheme funded by the Owners (after which the scheme is expected to be self funding or part funded by the Approved Operator)
“Community Learning Contribution”	<p>means a contribution in the sum of £16.42 (sixteen pounds and forty-two pence) per Dwelling where the total contribution shall be calculated in accordance with the following formula</p> <p>$D \times £16.42 = \text{£CLC Index Linked}$</p> <p>WHERE</p> <p>D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval</p> <p>£CLC Index Linked is the Community Learning</p>

	Contribution payable
“Community Learning Facilities”	means the provision of additional equipment, resources and classes at Sittingbourne Adult Education Centre
“Formal Sports Contribution”	means a contribution in the sum of £593.00 (five hundred and ninety-three pounds) per Dwelling where the total contribution shall be calculated in accordance with the following formula $D \times £593.00 = \text{£FSC Index Linked}$ WHERE D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval £FSC Index Linked is the Fornal Sports Contribution payable
“Formal Sports Provision”	means the provision of new facilities and / or improvement to existing sports facilities within a 5km radius of the Land in accordance with the Council’s adopted Open Spaces and Play Area Strategy 2018-2022 (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Borough Council)
“GIA”	means Gross Internal Area as measured in accordance with the ‘International Property Measurement Standards: Residential Buildings (IPMS 2 – Residential (Internal))’ (September 2016) or any amendment update or variation thereto or any subsequent replacement thereof or such other standard as may be approved by the Royal Institution of Chartered Surveyors (RICS)
“Healthcare	means a contribution in the sum of £116,640.00 (one

Contribution"	hundred and sixteen thousand six hundred and forty pounds) Index Linked and based on an average occupancy per Dwelling of 2.4 persons at £360.00 per person
"NHS Kent & Medway CCG"	means the NHS Kent & Medway Clinical Commissioning Group which is a statutory body established under the Health and Social Care Act 2012 which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 or its successor to its statutory functions
"Healthcare Facilities"	means refurbishment reconfiguration and/or extension of the Chestnuts Surgery and/or Teynham Surgery and/or Memorial Medical Centre and/or Green Porch Medical Partnership and /or towards new general practices development in the area AND in the event that any of the above beneficiaries cease to exist or have merged practices into a primary healthcare facility then that primary healthcare facility shall take the benefit of the Healthcare Contribution provided that the primary healthcare facility services some or all of the healthcare requirements of the occupiers of the Development
"Highways Contribution"	means an overall contribution in the sum of £212,149 (two hundred and twelve thousand one hundred and forty-nine pounds) Index Linked
"Highways Works"	means works to improve highway capacity and safety in the vicinity of the Development comprising <ul style="list-style-type: none"> • the Highsted Road pedestrian footway and safety scheme indicatively demonstrated on drawing 1464/20 (£182,434.00) • highway improvement works to the A2/Rectory Road signalised junction (14,339.00)

- highway improvement works to the A2/Swanstree Avenue junction (£15,376.00)

“Libraries Contribution” means a contribution in the sum of £55.45 (fifty-five pounds and forty-five pence) per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £55.45 = \text{£LC Index Linked}$$

WHERE

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

£LC Index Linked is the Libraries Contribution payable

“Libraries Facilities” means additional resources, equipment, stock and works to Sittingbourne Library to meet the demands of the additional borrowers which will be generated by the proposed Development

“Play and Recreation Contribution” means a contribution in the sum of £446.00 (four hundred and forty-six pounds) per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £446.00 = \text{£PRC Index Linked}$$

WHERE

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

£PRC Index Linked is the Play and Recreation Contribution payable

“Play and Recreation Facilities” means the provision of new facilities and / or improvement to existing play and recreation facilities *in the vicinity* ~~within a 5km radius~~ of the Land in accordance with the Council’s adopted Open Spaces and Play Area Strategy

2018-2022 (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Borough Council)

“Primary Education Contribution”

means the sum of

- a) £6,800 (six thousand eight hundred pounds) per Applicable House and
- b) £1,700.00 (one thousand seven hundred pounds) per Applicable Flat

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

$$(AH \times £6,800.00) + (AF \times £1,700.00) = \text{£PEC Index Linked}$$

WHERE

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

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

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

“Primary Education Facilities”

means the provision of a new primary school in north west Sittingbourne and/or a new primary school in the Sittingbourne South planning group

“Primary Education Land Contribution”

means the sum of

- c) £2,026.22 (two thousand and twenty-six pounds and twenty-two pence) per Applicable House and
- d) £506.56 (five hundred and six pounds and fifty-six

pence) per Applicable Flat

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

$$(AH \times £2,026.22) + (AF \times £506.56) = \text{£PLC Index Linked}$$

WHERE

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

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

£PLC Index Linked is the Primary Education Land Contribution (Index Linked) payable

“Primary Education Land”

means the acquisition of land for the new primary school in Northwest Sittingbourne and/or the new primary school in the Sittingbourne South planning group

“Public Rights of Way Contribution”

means an overall contribution in the sum of £51,180.00 (fifty-one thousand one hundred and eighty pounds) Index Linked

“Public Rights of Way Improvements”

means works to improve public rights of way the vicinity of the Development comprising

- **improvements to Public Footpath ZU31:** from junction with north side of Swanstree Avenue to junction with Peregrine Avenue, 2m wide tarmac/sealed surface for 81m (£6,480.00)
- **improvements to Public Footpath ZU30:** South of Swanstree Avenue, from junction with Highsted Road to site boundary –clearance and surface scrape 331m (9,930.00)
- **improvements to Public Footpath ZU31:**

South of Swanstree Avenue, from site boundary to connection with ZU31A –clearance and surface scrape, 575m (17,250.00)

- **improvements to Restricted Byway ZU35:**
South of Swanstree Avenue from junction with Swanstree Avenue to connection with ZU31, clearance and surface scrape of 584m (17,520.00)

“Secondary Education Contribution”

means the sum of

- e) £5,176.00 (five thousand one hundred and seventy-six pounds) per Applicable House and
- f) £1,294.00 (one thousand two hundred and ninety-four pounds) per Applicable Flat

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

$$(AH \times £5,176.00) + (AF \times £1,294.00) = \text{£SEC Index Linked}$$

WHERE

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

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

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

“Secondary Education Facilities”

means the provision of a new secondary school in Northwest Sittingbourne (Local Plan Policy MU1) and/or a new secondary school in Sittingbourne non-selective and Sittingbourne & Sheppey selective planning groups

**“Secondary Education
Land Contribution”**

means the sum of

g) £2635.73 (two thousand six hundred and thirty five pounds and seventy-three pence) per Applicable House and

h) £658.93 (six hundred and fifty-eight pounds and ninety-three pence) per Applicable Flat

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

$$(AH \times £2657.73) + (AF \times £658.93) = \text{£SLC Index Linked}$$

WHERE

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

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

£SLC Index Linked is the Secondary Education Land Contribution (Index Linked) payable

**“Secondary Education
Land”**

means the acquisition of land for the new secondary school in Northwest Sittingbourne (Local Plan Policy MU1) and/or new secondary school in Sittingbourne non-selective and Sittingbourne & Sheppey selective planning groups

**“Social Care
Contribution”**

means a contribution in the sum of £146.88 (one hundred and forty-six pounds and eighty-eight pence) per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £146.88 = \text{£SCC Index Linked}$$

WHERE

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

£SCC Index Linked is the Social Care Contribution payable

“Social Care Facilities” means specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting community facilities, sensory facilities and Changing Places locally in the borough

“Waste Contribution” means a contribution in the sum of £183.67 (one hundred and eighty-three pounds and sixty-seven pence) per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £183.67 = \text{£WC Index Linked}$$

WHERE

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

£WC Index Linked is the Waste Contribution payable

“Waste Facilities” means increased capacity at the Sittingbourne Household Waste and Recycling Centre and Waste Transfer Station site to accommodate the increased waste throughput and mitigate the impact arising from the proposed Development

“Wheelie Bin Contribution” means an overall contribution Index Linked and based on the following calculation

£109.40 (one hundred and nine pounds and forty pence) Index Linked per house permitted pursuant to the reserved Matters Approval

£984.90 (nine hundred and eighty-four pounds and ninety pence) Index Linked per 5 flats permitted

pursuant to the reserved Matters Approval

“Wheelie Bin Provision”

Means the provision of sufficient refuse bins for each Dwelling comprising:

for each house

1 x 180ltr green refuse bin @ £46.60 per bin

1 x 240ltr blue recycling bin @ £46.60 per bin

1 x 23ltr black food bin @ £10.80 per bin

1 x 5ltr kitchen caddy @ £5.40 per bin

and for every five flats

1 x 1100ltr refuse bin per 5 flats @ £451.80 per bin

1 x 1100ltr recycling bin per 5 flats @ £451.80 per bin

1 x 140ltr food bin per 5 flats @ £81.30 per bin

“Youth Services Contribution”

means a contribution in the sum of £65.50 (sixty-five pounds and fifty pence) per Dwelling where the total contribution shall be calculated in accordance with the following formula

$D \times £65.50 = \text{£YSC Index Linked}$

WHERE

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

£YSC Index Linked is the Youth Services Contribution payable

“Youth Services Facilities”

means additional resources and upgrade of existing youth facilities including the New House Sports and Youth Centre in Sittingbourne as well as resources and equipment to enable outreach services in the vicinity of the Development

2 Air Quality Damage Cost and Mitigation

- 2.1 The Owners covenant with the Borough Council that they shall prior to Commencement of Development submit to the Borough Council for its written approval full details of the Air Quality Mitigation Measures that the Owners shall deliver
- 2.2 The Owners shall not Commence Development unless and until
 - 2.2.1 full details of the Air Quality Mitigation Measures have been submitted to and approved by the Borough Council and if applicable
 - 2.2.2 evidence has been submitted to the Borough Council to show that despite reasonable endeavours having been made by the Owners to secure an Approved Operator for the Car Club Scheme it has not been possible to secure an Approved Operator for the Car Club Scheme and the Borough Council accepts such evidence in which case Paragraph 2.4 shall not apply and the Owners shall submit to the Borough Council for its written approval full details of an alternative mitigation package which may include a car club scheme in the vicinity of the Development, contributing to the cost of an existing car club scheme to serve the Development or other on-site mitigation measures identified in the Air Quality Assessment that in the reasonable opinion of the Borough Council will mitigate the impact of the Development up to the value of the Air Quality Damage Cost Contribution and which must include details of and a timetable for implementation of the proposed alternative measures
- 2.3 The Owners covenant that the details of the Air Quality Mitigation Measures submitted shall include details of the cost to the Owners of the implementation of such measures
- 2.4 Subject always to sub Paragraph 2.2.2 the Owners covenant with the Borough Council that they shall commission the agreed Air Quality Mitigation Measures that shall comprise the Car Club Scheme and shall appoint the Approved Operator before Occupation of any Dwelling and it shall not Occupy nor allow the Occupation of any Dwelling unless and until the agreed Air Quality Mitigation Measures have been fully commissioned and the Approved Operator has been appointed
- 2.5 In the event that an alternative package of mitigation measures is agreed pursuant to sub Paragraph 2.2.2 the Owners covenant that they shall deliver such measures strictly in accordance with the timetable approved by the Borough Council

- 2.6 In the event that the cost of the Air Quality Mitigation Measures pursuant to Paragraph 2.3 is less than the full amount of the Air Quality Damage Cost Contribution the Owners shall pay to the Borough Council the balance of the Air Quality Damage Cost Contribution prior to Occupation of any Dwelling
- 2.7 Subject to Paragraph 2.5 the Owners shall not Occupy any Dwelling unless and until the balance of the Air Quality Damage Cost Contribution (if any) has been paid to the Borough Council
- 2.8 The Borough Council covenant that they will use the Air Quality Damage Cost Contribution (if any) towards Air Quality Mitigation Measures and return it to the payer if it remains unspent 10 years after receipt by the Borough Council

3 Community Learning Contribution

- 3.1 The Owners covenant that they shall pay to the Borough Council the Community Learning Contribution in the following instalments:
- 3.1.1 50% on the first Occupation of 25% of the Dwellings
- 3.1.2 the balance prior to the first Occupation of 50% of the Dwellings
- 3.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 25% of the Dwellings unless and until the payment referred to in paragraph 3.1.1 above has been paid to the Borough Council
- 3.3 The Owners shall not first Occupy nor permit the first Occupation of more than 50% of the Dwellings unless and until the payment referred to in paragraph 3.1.2 above has been paid to the Borough Council
- 3.4 The Borough Council shall not transfer the Community Learning Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt “apply” includes allocated or committed) the Community Learning Contribution to the Community Learning Facilities within 10 years of the date of receipt in full thereof
- 3.5 If the Borough Council are of the view that the Community Learning Contribution will not be spent in accordance with Paragraph 3.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Community Learning Contribution as the Borough Council is holding to the person who

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

4 Formal Sports Contribution

- 4.1 The Owners covenant that they shall pay to the Borough Council the Formal Sports Contribution before first Occupation of the Development
- 4.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of the Development unless and until the Formal Sports Contribution has been paid to the Borough Council
- 4.3 The Borough Council covenants with the Owners that it shall apply the Formal Sports Contribution as a contribution towards the Formal Sports Facilities or for such other purposes for the benefit of the Development as the Owners and the Borough Council may otherwise agree and not to use the Formal Sports 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 20 as if it were part of the principal sum paid by the Owners
- 4.4 In the event that all or any part of the Formal Sports 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 notified to the Borough Council by the Owners pursuant to Paragraph 2.10 to Schedule 2) and unless the Borough Council and the Owners agree otherwise the Borough Council covenants on request from the person that made such payment to repay such sum or amount (or such part thereof) 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

5 Healthcare Contribution

- 5.1 The Owners covenant that they shall pay to the Borough Council the Healthcare Contribution before the first Occupation of the Development
- 5.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of the Development unless and until the Healthcare Contribution has been paid to the Borough Council
- 5.3 The Borough Council shall not transfer the Healthcare Contribution (or any part thereof)

to NHS Kent & Medway CCG unless the Borough Council is satisfied that NHS Kent & Medway CCG will apply (and for the avoidance of doubt “apply” includes allocated or committed) the Healthcare Contribution on the Healthcare Facilities within 10 years of the date of receipt in full thereof

- 5.4 If the Borough Council are of the view that the Healthcare Contribution will not be spent in accordance with Paragraph 5.3 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Healthcare Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

6 Highways Contribution

- 6.1 The Owners covenant that they shall pay to the Borough Council the Highways Contribution before Occupation of Development
- 6.2 The Owners covenant that they shall not first Occupy the Development nor permit the first Occupation of the Development unless and until the Highways Contribution has been paid to the Borough Council
- 6.3 The Borough Council shall not transfer the Highways Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt “apply” includes allocated or committed) the Highways Contribution to the Highways Works within 10 years of the date of receipt in full thereof
- 6.4 If the Borough Council are of the view that the Highways Contribution will not be spent in accordance with Paragraph 6.3 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Highways Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

7 Libraries Contribution

- 7.1 The Owners covenant that they shall pay to the Borough Council the Libraries Contribution in the following instalments:
- 7.1.1 50% on the first Occupation of 25% of the Dwellings

7.1.2 the balance prior to the first Occupation of 50% of the Dwellings

- 7.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of 25% of the Dwellings unless and until the payment referred to in paragraph 7.1.1 above has been paid to the Borough Council
- 7.3 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 50% of the Dwellings until the payment referred to in paragraph 7.1.2 above has been paid to the Borough Council
- 7.4 The Borough Council shall not transfer the Libraries Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt "apply" includes allocated or committed) the Libraries Contribution to the Libraries Facilities within 10 years of the date of receipt in full thereof
- 7.5 If the Borough Council are of the view that the Libraries Contribution will not be spent in accordance with Paragraph 7.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Libraries Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

8 Play and Recreation Contribution

- 8.1 The Owners covenant that they shall pay to the Borough Council the Play and Recreation Contribution before first Occupation of the Development
- 8.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of the Development unless and until the Play and Recreation Contribution has been paid to the Borough Council
- 8.3 The Borough Council covenants with the Owners that it shall apply the Play and Recreation Contribution as a contribution towards the Play and Recreation Facilities or for such other purposes for the benefit of the Development as the Owners and the Borough Council may otherwise agree and not to use the Play and Recreation 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 20 as if it were part of the principal sum paid by the Owners

- 8.4 In the event that all or any part of the Play and Recreation 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 notified to the Borough Council by the Owners pursuant to Paragraph 2.10 to Schedule 2) and unless the Borough Council and the Owners agree otherwise the Borough Council covenants on request from the person that made such payment to repay such sum or amount (or such part thereof) 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

9 Primary Education Contribution

- 9.1 The Owners covenant that they shall pay to the Borough Council the Primary Education Contribution in the following instalments:
- 9.1.1 50% on the first Occupation of 25% of the Dwellings
- 9.1.2 the balance prior to the first Occupation of 50% of the Dwellings
- 9.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 25% of the Dwellings unless and until the payment referred to in paragraph 9.1.1 has been paid to the Borough Council
- 9.3 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 50% of the Dwellings unless and until the payment referred to in paragraph 9.1.2 has been paid to the Borough Council
- 9.4 The Borough Council shall not transfer the Primary Education Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt "apply" includes allocated or committed) the Primary Education Contribution to the Primary Education Facilities within 10 years of the date of receipt in full thereof
- 9.5 If the Borough Council are of the view that the Primary Education Contribution will not be spent in accordance with Paragraph 9.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Primary Education Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

10 Primary Education Land Contribution

10.1 The Owners covenant that they shall pay to the Borough Council the Primary Education Land Contribution in the following instalments:

10.1.1 50% on the first Occupation of 25% of the Dwellings

10.1.2 the balance prior to the first Occupation of 50% of the Dwellings

10.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 25% of the Dwellings unless and until the payment referred to in paragraph 10.1.1 has been paid to the Borough Council

10.3 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 50% of the Dwellings unless and until the payment referred to in paragraph 10.1.2 has been paid to the Borough Council

10.4 The Borough Council shall not transfer the Primary Education Land Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt "apply" includes allocated or committed) the Primary Education Land Contribution to the Primary Education Land within 10 years of the date of receipt in full thereof

10.5 If the Borough Council are of the view that the Primary Education Land Contribution will not be spent in accordance with Paragraph 10.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Primary Education Land Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

10.6 Where the County Council acquires the Primary Education Land at nil cost or a lower than anticipated cost and some or all of the Primary Education Land Contribution is not required or in the event that no land is acquired by the County Council the Owners shall be entitled to request a repayment of all or part (as the case may be) of the Primary Education Land Contribution

11 Public Rights of Way Contribution

11.1 The Owners covenant that they shall pay to the Borough Council the Public Rights of Way Contribution before Occupation of the Development

- 11.2 The Owners covenant that they shall not first Occupy the Development nor permit the first Occupation of the Development unless and until the Public Rights of Way Contribution has been paid to the Borough Council
- 11.3 The Borough Council shall not transfer the Public Rights of Way Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt “apply” includes allocated or committed) the Public Rights of Way Contribution to the Public Rights of Way Improvements within 10 years of the date of receipt in full thereof
- 11.4 If the Borough Council are of the view that the Public Rights of Way Contribution will not be spent in accordance with Paragraph 11.3 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Public Rights of Way Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council’s administrative expenses

12 Secondary Education Contribution

- 12.1 The Owners covenant that they shall pay to the Borough Council the Secondary Education Contribution in the following instalments:
 - 12.1.1 50% on the first Occupation of 25% of the Dwellings
 - 12.1.2 the balance prior to the first Occupation of 50% of the Dwellings
- 12.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 25% of the Dwellings unless and until the payment referred to in paragraph 12.1.1 has been paid to the Borough Council
- 12.3 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 50% of the Dwellings unless and until the payment referred to in paragraph 12.1.2 has been paid to the Borough Council
- 12.4 The Borough Council shall not transfer the Secondary Education Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt “apply” includes allocated or committed) the Secondary Education Contribution to the Secondary Education Facilities within 10 years of the date of receipt in full thereof
- 12.5 If the Borough Council are of the view that the Secondary Education Contribution will not be spent in accordance with Paragraph 12.4 within or by 10 years of the date of

actual payment of the contribution in full the Borough Council shall repay such of the Secondary Education Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

13 Secondary Education Land Contribution

13.1 The Owners covenant that they shall pay to the Borough Council the Secondary Education Land Contribution in the following instalments:

13.1.1 50% on the first Occupation of 25% of the Dwellings

13.1.2 the balance prior to the first Occupation of 50% of the Dwellings

13.2 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 25% of the Dwellings unless and until the payment referred to in paragraph 13.1.1 has been paid to the Borough Council

13.3 The Owners covenant that they shall not first Occupy nor permit the first Occupation of more than 50% of the Dwellings unless and until the payment referred to in paragraph 13.1.2 has been paid to the Borough Council

13.4 The Borough Council shall not transfer the Secondary Education Land Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt "apply" includes allocated or committed) the Secondary Education Land Contribution to the Secondary Education Land within 10 years of the date of receipt in full thereof

13.5 If the Borough Council are of the view that the Secondary Education Land Contribution will not be spent in accordance with Paragraph 13.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Secondary Education Land Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

13.6 Where the County Council acquires the Secondary Education Land at nil cost or a lower than anticipated cost and some or all of the Secondary Education Land Contribution is not required or in the event that no land is acquired by the County Council the Owners shall be entitled to request a repayment of all or part (as the case may be) of the Secondary Education Land Contribution

14 Social Care Contribution

14.1 The Owners covenant that they shall pay to the Borough Council the Social Care Contribution in the following instalments:

14.1.1 50% on the first Occupation of 25% of the Dwellings

14.1.2 the balance prior to the first Occupation of 50% of the Dwellings

14.2 The Owners covenant that they shall not Occupy nor permit the first Occupation of 25% of the Dwellings unless and until the payment referred to in paragraph 14.1.1 has been paid to the Borough Council

14.3 The Owners covenant that they shall not Occupy nor permit the first Occupation of more than 50% of the Dwellings until the payment referred to in paragraph 14.1.2 above has been paid to the Borough Council

14.4 The Borough Council shall not transfer the Social Care Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt “apply” includes allocated or committed) the Social Care Contribution to the Social Care Facilities within 10 years of the date of receipt in full thereof

14.5 If the Borough Council are of the view that the Social Care Contribution will not be spent in accordance with Paragraph 14.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Social Care Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council’s administrative expenses

15 Waste Contribution

15.1 The Owners covenant that they shall pay to the Borough Council the Waste Contribution in the following instalments:

15.1.1 50% on the first Occupation of 25% of the Dwellings

15.1.2 the balance prior to the first Occupation of 50% of the Dwellings

15.2 The Owners covenant that they shall not Occupy nor permit the first Occupation of 25% of the Dwellings unless and until the payment referred to in paragraph 15.1.1 above has been paid to the Borough Council

- 15.3 The Owners covenant that they shall not Occupy nor permit the first Occupation of more than 50% of the Dwellings until the payment referred to in paragraph 15.1.2 above has been paid to the Borough Council
- 15.4 The Borough Council shall not transfer the Waste Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt "apply" includes allocated or committed) the Waste Contribution to the Waste Facilities within 10 years of the date of receipt in full thereof
- 15.5 If the Borough Council are of the view that the Waste Contribution will not be spent in accordance with Paragraph 15.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Waste Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

16 Wheelie Bin Contribution

- 16.1 The Owners covenant that they shall pay to the Borough Council the Wheelie Bin Contribution before Commencement of Development
- 16.2 The Owners covenant that they shall not Commence Development unless and until the Wheelie Bin Contribution has been paid to the Borough Council
- 16.3 The Borough Council covenants with the Owners that it shall apply the Wheelie Bin Contribution as a contribution towards the Wheelie Bin Provision or for such other purposes for the benefit of the Development as the Owners and the Borough Council may otherwise agree and not to use the Wheelie Bin 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 20 as if it were part of the principal sum paid by the Owners
- 16.4 In the event that all or any part of the Wheelie Bin 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 notified to the Borough Council by the Owners pursuant to Paragraph 2.10 to Schedule 2) and unless the Borough Council and the Owners agree otherwise the Borough Council covenants on request from the person that made such payment to repay such sum or amount (or such part thereof) 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

17 Youth Services Contribution

17.1 The Owners covenant that they shall pay to the Borough Council the Youth Services Contribution in the following instalments:

17.1.1 50% on the first Occupation of 25% of the Dwellings

17.1.2 the balance prior to the Occupation of 50% of the Dwellings

17.2 The Owners covenant that they shall not Occupy nor permit the first Occupation of 25% of the Dwellings unless and until the payment referred to in paragraph 17.1.1 above has been paid to the Borough Council

17.3 The Owners covenant that they shall not Occupy nor permit the first Occupation of more than 50% of the Dwellings until the payment referred to in paragraph 17.1.2 above has been paid to the Borough Council

17.4 The Borough Council shall not transfer the Youth Services Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will apply (and for the avoidance of doubt "apply" includes allocated or committed) the Youth Services Contribution to the Youth Services Facilities within 10 years of the date of receipt in full thereof

17.5 If the Borough Council are of the view that the Youth Services Contribution will not be spent in accordance with Paragraph 17.4 within or by 10 years of the date of actual payment of the contribution in full the Borough Council shall repay such of the Youth Services Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

SCHEDULE 4 SPECIAL PROTECTION AREA

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

“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

“SAMMS” means the ‘Thames, Medway & Swale Estuaries – Strategic Access Management and Monitoring Strategy’ produced by Footprint Ecology dated 22 July 2014 (or any modification or amendment thereto or replacement thereof as approved by the Borough Council)

“SPA Mitigation Contribution” means the sum of £275.88 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £275.88 = \text{£SPA Index Linked}$$

WHERE

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

£SPA Index Linked is the SPA Mitigation Contribution payable

“SPA Mitigation Measures” means the strategic mitigation measures employed pursuant to the SAMMS to avoid adverse effects on the Special Protection Area comprising (but not limited to)

some or all of the following elements

- provision of wardens
- visitor access management
- infrastructure works including site protection
- habitat improvements and/or management
- education
- enforcement
- codes of conduct
- interpretation and signage
- dog project – to include education and involvement of dog owners
- monitoring of birds and visitors and the effectiveness of mitigation measures
- provision of alternative natural greenspace sites

or such other mitigation measures as may be required by Natural England

“Special Protection Area”

means the protected habitat sites identified in the SAMMS (and the acronym “**SPA**” shall be construed accordingly)

2. SPA Mitigation Contribution

- 2.1. The Owners covenant that they shall pay to the Borough Council the SPA Mitigation Contribution before first Occupation of the Development
- 2.2. The Owners covenant that they shall not Occupy nor permit the first Occupation of the Development unless and until they have paid to the Borough Council the SPA Mitigation Contribution

2.3. Following Commencement of Development the Owners shall not seek repayment of the SPA Mitigation Contribution or any part thereof

2.4. The Borough Council agrees that it shall apply the SPA Mitigation Contribution towards the cost of SPA Mitigation Measures

SCHEDULE 5: AFFORDABLE HOUSING

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

"Affordable Dwellings " means 30% of the total number of Dwellings (rounded up to the nearest whole Dwelling) together with associated vehicle and cycle parking to be provided by the Owners on the Land of which

- 1) 75% (seventy five percent) (rounded to the nearest whole Dwelling) shall be Social Rented Units which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule

AND

- 2) 25% (twenty five percent) (rounded to the nearest whole Dwelling) shall be First Homes (as defined in Schedule 6 (First Homes)) which are to be provided and delivered in accordance with the provisions of Schedule 6 (First Homes)

PROVIDED ALWAYS THAT where the rounding up of the Social Rented Units and First Homes to the nearest whole Dwelling results in more Affordable Dwellings being secured than is required then the First Homes requirement shall be rounded down to the nearest whole Dwelling and Social Rent rounded up to the nearest whole Dwelling

"Affordable Housing" means the Affordable Dwellings to be provided within the Development which are available to persons in Housing Need and in respect of the Social Rented Units which are to be made permanently available to such persons

nominated by the Borough Council

“Affordable Housing Enablement Manager”

means the Borough Council's Affordable Housing Enablement Manager or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging their duties and functions

"Affordable Housing Land"

means those plots on the Land approved by the Borough Council pursuant to the Affordable Housing Scheme for the location of the Affordable Housing on which the Affordable Dwellings will be constructed and provided in accordance with the obligations set out in this Deed

“Affordable Housing Provisions”

means the obligations contained in Paragraphs 2.6 2.7 3.4 and 3.5 of this Schedule 5

“Affordable Housing Scheme”

means a scheme for the provision of the Affordable Dwellings to be provided by the Owners which scheme shall (as a minimum) provide

- a plan showing the location of the Affordable Dwellings on the Land appropriately distributed throughout the Development so as not to be segregated from the Open Market Dwellings and ensure inclusive and mixed communities
- details of the tenure and tenure split
- the type and size of Dwelling to be provided as the Affordable Dwelling
- identifying which (if any) of the Affordable Dwellings is to comprise fully wheelchair accessible Dwellings their location within the Development (as shown on the plan above) and the type and size of Affordable Dwelling to be provided as fully wheelchair accessible
- the timing of the construction of the Affordable Dwellings and its phasing in relation to the Occupancy of the Open Market Dwellings
- the arrangements in relation to the Social Rented

	<p>Units to be managed by a Registered Provider</p> <ul style="list-style-type: none"> • the arrangements for the transfer of the Social Rented Units to a Registered Provider including the timing of such transfer in respect of the Occupancy of the Open Market Dwellings • the arrangements to secure that such provision is affordable for both first and subsequent occupiers of the Affordable Dwellings
“Allocations Scheme”	means the Borough Council's published scheme of allocations presently contained in the Borough Council's document entitled “Swale Housing Allocations Policy 2020” or any amendment update or variation thereto or any subsequent replacement thereof
“Charge”	means a mortgage charge or other security or loan documentation granting a security interest in the Relevant Affordable Housing (or any number of them) in favour of the Chargee
“Chargee”	means any body or person holding a Charge (including a Receiver) or any persons or bodies deriving title through such person
“Choice Based Lettings System”	means the scheme operated by Kent Homechoice or any such successor scheme which enables eligible persons to express an interest in and secure a tenancy in available Social Rented Units
“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
“HE”	means the body known as the Homes England (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

“HE’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
“Housing Need”	means in relation to Social Rented Units the requirement by a person for social housing allocation in accordance with the Allocations Scheme
“Neighbouring Councils”	means Ashford Maidstone Medway and Canterbury Councils who share a common boundary with the Borough Council
“NPPF”	means the National Planning Policy Framework issued by the Department for Housing, Communities and Local Government and dated July 2021
“Part M4(2)”	means Part M4(2) Category 2: Accessible and adaptable dwellings of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Borough Council
“Part M4(3)”	means Part M4(3) Category 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 Borough Council
“Receiver”	means any receiver (including an administrative receiver) and manager appointed by the Chargee or any other person appointed under the Charge to enable the

Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator

“Relevant Affordable Housing” means the Affordable Housing that the Chargee intends to enforce its Charge against as identified pursuant to Paragraph 5.1 of this Schedule

“Registered Provider” Means a registered provider of social housing within the meaning of section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with HE or any other body who may lawfully provide or fund affordable housing from time to time

“RSH” means the body known as the Regulator of Social Housing (or any successor body to its functions) being the executive non-departmental public body that regulates registered providers of social housing

“Social Rent” means chargeable rent that is subject to the RSH’s Rent Standard (April 2020) and associated guidance (either as may be amended updated or replaced from time to time) and is required to be offered to eligible householders in housing need at the applicable chargeable rent set in accordance with the RSH’s guidance

“Social Rented Units” means ‘Affordable Housing for Rent’ as described in paragraph a) to the definition of Affordable Housing in Annex 2: Glossary to the NPPF and owned and managed by the Registered Provider and let to a person in Housing Need at a Social Rent in accordance with the (RSH’s) Tenancy Standard (April 2012) as may be amended updated or replaced from time to time

2. General Provisions

2.1. The Owners covenant that prior to Commencement of Development the Owners shall

submit to the Borough Council for its approval the Affordable Housing Scheme and the Owners shall not Commence Development unless and until the Borough Council has approved the Affordable Housing Scheme

2.2. The Owners covenant that they shall construct and deliver the Affordable Dwellings on the Affordable Housing Land in accordance with the approved Affordable Housing Scheme and the other provisions of this Schedule

2.3. The Owners covenant that

2.3.1. the Affordable Dwellings shall be constructed by the Owners in accordance with Part M4(2)

2.3.2. in the event that any of the Affordable Dwellings are required by the Borough Council pursuant to the Affordable Housing Scheme to be fully wheelchair accessible they shall be constructed and delivered by the Owners in accordance with Part M4(3)

2.4. The Owners covenant that no more than 50% of the Open Market Dwellings shall be Occupied until the Affordable Dwellings shall be Practically Completed

2.5. The Owners covenant that the Affordable Dwellings shall not be visually distinguishable from the Open Market Dwellings based upon their external appearance and the internal specification of the Affordable Dwellings shall not by reason of their being Affordable Dwellings be inferior to the internal specification of the equivalent Open Market Dwellings but subject to that requirement variations to the internal specifications of the Affordable Dwellings shall be permitted

2.6. The Owners covenant that the Affordable Dwellings shall not be Occupied or used for any other purpose other than as Affordable Housing unless otherwise agreed by the Borough Council

2.7. The Owners covenant that the Social Rented Units shall not be Occupied other than by persons who are in Housing Need

3. Transfer of the Affordable Dwellings

3.1. Prior to Occupation of more than 50% of the Open Market Dwellings the Owners shall ensure that

- 3.1.1. all of the Affordable Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule and Schedule 6 (First Homes) where relevant (a copy of the Certificate of Practical Completion shall be provided to the Affordable Housing Enablement Manager with a copy to the Section 106 Monitoring Officer) and
- 3.1.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Social Rented Units 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
- 3.1.3. the Owners have granted (or if the Owners are 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 Social Rented Units in accordance with the Borough Council's published Allocations Scheme and the provisions of this Deed and subject to Paragraph 4 on the terms set out in a Deed of Nomination Rights

AND the Owners covenant that no more than 50% of the Open Market Dwellings shall be Occupied unless and until the provisions of this Paragraph 3.1 have been complied with

- 3.2. The Owners covenant that they shall provide evidence of the transfer of the freehold or leasehold interest of the Social Rented Units referred to in Paragraph 3.1.2 of this Schedule to the Affordable Housing Enablement Manager within 5 (five) Working Days of completion of the transfer
- 3.3. The Owners covenant that they shall ensure that the price to be paid for the Social Rented Units by the Registered Provider (or the Borough Council as the case may be) shall be at a level that allows the Social Rented Units to be paid for through rents to be charged as Social Rent
- 3.4. Unless otherwise agreed by the Borough Council or directed by HE any proceeds derived from the right to buy or right to acquire a Social Rented Unit shall be used by the Registered Provider to re-invest in affordable housing within (in order of priority)
 - 3.4.1. the local authority district of Swale

- 3.4.2. then Neighbouring Councils
- 3.4.3. then the County of Kent and
- 3.4.4. then HE's East and South East Operating Area (but excluding the County of Kent)

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

4. Miscellaneous Provisions

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

5. Exclusions

The Affordable Housing Provisions in this Agreement shall not be binding on

- 5.1. the Chargee of the Registered Provider who is proposing to exercise its power of sale or otherwise dispose of the Relevant Affordable Housing **PROVIDED THAT**
 - 5.1.1 any power of sale available to any Chargee arising under their Charge over any of the Relevant Affordable Housing shall only be exercised in the event of there being a default of any obligation to such Chargee triggering the power of sale and
 - 5.1.2 such Chargee provides to the Section 106 Monitoring Officer the official copies of the title registers (and plan) for the Relevant Affordable Housing (or where the Relevant Affordable Housing has not yet been registered at the Land

Registry a copy of the relevant transfer deed of the Relevant Affordable Housing to the Registered Provider) and

5.1.3 such Chargee shall first give notice pursuant to Clause 11 to the Section 106 Monitoring Officer of its intention to enforce its Charge and dispose of the Relevant Affordable Housing pursuant to the Charge and shall have used reasonable endeavours over a period of three months (or such longer period as may be agreed by the Chargee) from the date of the notice to secure the disposal of the Relevant Affordable Housing to another Registered Provider (on the same terms as contained in this Deed) or to the Borough Council for a consideration not less than the amount due and outstanding to a Chargee pursuant to the terms of the Charge including all accrued principal monies interest and reasonable costs and expenses properly incurred pursuant to the Charge and

5.1.4 if such disposal has not been secured within the three month period (or such longer period as may be agreed by the Chargee) from the date of the notification in Paragraph 5.1.3 the Chargee shall be entitled to dispose of the Relevant Affordable Housing free of the Affordable Housing Provisions of this Schedule which provisions shall determine absolutely **BUT FOR THE AVOIDANCE OF DOUBT** all other obligations contained in this Deed shall continue to apply **PROVIDED THAT** any surplus on disposal of the Relevant Affordable Housing shall be paid over to the Borough Council for reinvestment in affordable housing with the Borough Council's borough

5.2 a tenant of a Social Rented Unit who has exercised a statutory right to acquire

5.3 a tenant of a Social Rented Unit who has exercised a statutory right to buy and

5.2. any successor in title of any persons detailed in Sub-Paragraphs 5.2 and 5.3 above or their mortgagee or chargee

SCHEDULE 6: FIRST HOMES

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

"Additional First Homes Contribution"

means in circumstances where a sale of a First Home other than as a First Home has taken place pursuant to Paragraphs 4.9 4.10 or 6 resulting in the First Home being lost to the open market the lower of the following two amounts

- a) the First Homes Discount percentage of the proceeds of sale or
- b) the proceeds of sale less the amount due and outstanding to any Mortgagee or their Receiver (as defined in Paragraph 6 (Mortgage Exclusion)) (as the case may be) of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee or their Receiver under the terms of any mortgage **BUT FOR THE AVOIDANCE OF DOUBT** shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

AND WHICH FOR THE AVOIDANCE OF DOUBT shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home

"Affordable Housing"

For the purposes of this Schedule 6 means housing to be provided off-site which is considered to be affordable housing pursuant to the Borough Council's local development plan documents (as may be reviewed or any subsequent replacement thereof) to be provided to eligible households

(determined with regard to local incomes and local house prices)
whose needs are not met by the open market

**“Active Armed
Services Member”**

means an active member of the Royal Navy the Royal Marines
the British Army or the Royal Air Force

**“Armed Services
Member”**

means

- a) an Active Armed Services Member or a former member who
was an Active Armed Services Member within the five (5)
years prior to the Disposal of the First Home or
- b) a divorced or separated spouse or civil partner of a member
or
- c) a spouse or civil partner of a deceased member or former
member whose death was caused wholly or partly by their
service

**“Compliance
Certificate”**

means the certificate issued by the Borough Council confirming
that a Dwelling is being Disposed of as a First Home to a
purchaser meeting the Eligibility Criteria (National) and (unless
Paragraph 4.3 applies) the Eligibility Criteria (Local) (as the case
may be)

**“Development
Standard”**

means a standard to fully comply with the following

- a) "Technical housing standards – nationally described space
standards" published by the Department for Communities
and Local Government in March 2015 (if the Borough
Council adopts such standard prior to the relevant Reserved
Matters Approval)
- b) all national construction standards and planning policy
relating to design which may be published by the Secretary
of State or by the Borough Council from time to time (as
exists at the time of the Reserved Matters Approval)
- c) Part 2 of Secured by Design standards published by Police
Crime Prevention Initiatives Limited (as may be determined
at the time of the Reserved Matters Approval)

- d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings) (as may be required pursuant to the Reserved Matters Approval) and
- e) local requirements as set out in the adopted local development plan documents or supplementary planning documents

or such other development standards as may exist at the time of the Reserved Matters Approval

“Discounted Market Price”

means a sum which is the Market Value of the Dwelling discounted by the First Homes Discount

“Disposal”

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home (whether on a first or any subsequent sale) other than

- a) a letting or sub-letting pursuant to Paragraph 5 (Use)
- b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for Occupation except where the transfer is to a First Homes Owner
- c) an Exempt Disposal

and **“Disposed”** and **“Disposing”** shall be construed accordingly

“Eligibility Criteria (National)”

means criteria which are met in respect of a purchase of a First Home (whether on a first or any subsequent disposal) if

- a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer) and
- b) the purchaser’s annual gross income (or in the case of a joint purchase the joint purchasers’ joint annual gross income) does not in the tax year immediately preceding the year of purchase exceed £80,000 (eighty thousand pounds) or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home and

- c) the purchaser (or in the case of a joint purchase the joint purchasers') must have a first mortgage or other home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% (fifty percent) of the Discounted Market Price

**“Eligibility Criteria
(Local)”**

means criteria (if any) published by the Borough Council at the date of the relevant Disposal of a First Home which are met in respect of a Disposal of a First Home (whether on a first or any subsequent disposal) if

- a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer) and
- b) the purchaser's annual gross income (or in the case of a joint purchase the joint purchasers' joint annual gross income) does not in the tax year immediately preceding the year of purchase exceed the local income cap as may be published from time to time by the Borough Council and is in force at the time of the relevant Disposal of the First Home (or any subsequent Disposal) **PROVIDED THAT** the local income cap shall not exceed the Price Cap and
- c) any or all of criteria (i) (ii) and (iii) below are met
 - (i) the purchaser meets the Local Connection Criteria (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connection Criteria) and/or
 - (ii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or
 - (iii) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) a “Key Worker” as may be designated and published by the Borough Council from time to time and which is in operation at the time of the relevant Disposal of the First Home **AND FOR THE AVOIDANCE OF DOUBT** any such criteria or replacement criteria as to what a “Key Worker” may be that is in operation at the time of the

relevant Disposal of the First Home shall be the “Key Worker” criteria which shall apply to that Disposal and

- d) the purchaser (or in the case of a joint purchase the joint purchasers') must have a first mortgage or other home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% (fifty percent) of the Discounted Market Price

it being acknowledged that at the date of this Deed the Borough Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home but may choose to do so before any Disposal and subsequent Disposal

“Exempt Disposal”

means the Disposal of a First Home in one of the following circumstances

- a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order divorce settlement or other legal agreement or order upon divorce annulment or dissolution of the marriage or civil partnership or the making of a nullity separation or presumption of death order
- d) Disposal to a trustee in bankruptcy prior to sale of the relevant First Home (**AND FOR THE AVOIDANCE OF DOUBT** Paragraph 6 (Mortgage Exclusion) shall apply to such sale)

PROVIDED THAT in each case other than (d) the person to whom the Disposal is made complies with the terms of Paragraph 5 (Use)

“First Home”

means a Dwelling to be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer

meeting the Eligibility Criteria (Local) or the Eligibility Criteria (National) at the Discounted Market Price and which on its first Disposal shall not exceed the Price Cap

“First Homes Discount”

means

- a) a minimum discount of 30% (thirty percent) below the Market Value of the First Home or
- b) such higher minimum discount of either 40% (forty percent) or 50% (fifty percent) below the Market Value as may be set by the Borough Council as part of its local development plan documents or
- c) such higher discount below the Market Value as the Owners may choose to offer **PROVIDED ALWAYS THAT** this discount shall not be lower than the minimum discounts offered in a) or (where applicable) b) above (as the case may be)

AND PROVIDED ALWAYS THAT whatever discount (as a percentage of Market Value) is given at the first Disposal shall be the same at each subsequent sale of the First Home in perpetuity

“First Homes Owner”

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than

- a) the Owners or
- b) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is Disposed of for Occupation as a First Home or
- c) the freehold a tenant or sub-tenant of a permitted letting under Paragraph 5 (Use)

“First Homes Requirement”

means the 25% (twenty five percent) Affordable Dwellings (as defined in Schedule 5 (Affordable Housing) to be identified reserved set aside and provided and delivered as First Homes by the Owners on the Land in accordance with the First Homes

Scheme together with such rights and easements over the Land to provide access to the Dwellings and such entrance way corridors parking areas and other ancillary areas as are necessary for the enjoyment of such a Dwelling including vehicle and cycle parking

“First Homes Scheme” means a scheme for the provision of the First Homes Requirement to be provided by the Owners on the Land as part of the Development which scheme shall (as a minimum) provide a plan showing

- (a) the location of the First Homes Requirement appropriately distributed throughout the Development so as not to be segregated from the Open Market Dwellings and ensure inclusive and mixed communities
- (b) the type and size of Dwelling to be provided as the First Home
- (c) (if required by the Borough Council) identifying (by way of size location and type) which of the First Homes are to be built to optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)

AND such other matters as the Borough Council may reasonably require

“First Time Buyer” means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

“Local Connection Criteria” means such local connection criteria as may be designated and published by the Borough Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home **AND FOR THE AVOIDANCE OF DOUBT** any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall

apply to that disposal it being acknowledged that at the date of this Deed the Borough Council has not designated any criteria as Local Connection Criteria

"Market Value"

means the open market value of the First Home assessed in accordance with the Royal Institution of Chartered Surveyors (RICS) 'Red Book' Valuation Standards (January 2014 or any such amendments variation or replacement guidance issued by RICS and current at the time of the sale of the First Home) by a Valuer **AND FOR THE AVOIDANCE OF DOUBT** the valuation shall not take into account the First Homes Discount

"Mortgagee"

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home

"Notification Heads"

means the

1. Head of Legal Partnership
2. Head of Planning Services
3. Head of Housing & Community Services
4. Head of Regeneration & Economic Development and
5. Section 106 Monitoring Officer

"Price Cap"

means the amount for which the First Home is sold after the application of the Discounted Market Price which on its first Disposal shall not exceed

- a) £250,000 (two hundred and fifty thousand pounds) or such other amount as may be published from time to time by the Secretary of State or
- b) such other amount as may be set by the Borough Council as part of its local development plan documents **PROVIDED THAT** such other amount does not exceed the amount in a) above or such other amount as may be published from time to time by the Secretary of State

"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Secretary of State"	means the Secretary of State for Levelling Up Housing and Communities from time to time appointed and includes any successor in function
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors (RICS) who is a RICS registered valuer appointed by the First Homes Owner and acting in an independent capacity

2. General Provisions

- 2.1. The Owners covenant that prior to Commencement of Development the Owners shall submit to the Borough Council for its approval the First Homes Scheme and the Owners shall not Commence Development unless and until the Borough Council has approved the First Homes Scheme **AND FOR THE AVOIDANCE OF DOUBT** the First Homes Scheme may be incorporated into the Affordable Housing Scheme as contemplated by Schedule 5 (Affordable Housing)
- 2.2. The Owners covenant that it shall construct and deliver the First Homes Requirement on the Land in accordance with the approved First Homes Scheme and the other provisions of this Schedule and the First Home Requirement shall subject to the terms of this Schedule be retained in perpetuity or the life of the Development if shorter
- 2.3. The covenants contained in Paragraphs 2 and 3 of this Schedule shall not apply to a First Homes Owner and Paragraphs 4 and 5 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner

3. Development Standard

- 3.1. The Owners covenant that the First Homes shall not be visually distinguishable from the Open Market Dwellings based upon their external appearance and the internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Dwellings but subject to that requirement variations to the internal specifications of the First Homes shall be permitted

- 3.2. The Owners covenant that all First Homes shall be constructed to
 - 3.2.1. the Development Standard current at the time of the relevant Reserved Matters Approval and
 - 3.2.2. no less than the standard applied to the Open Market Dwellings

4. **Delivery Mechanism**

- 4.1. The Owners covenant that subject to the terms of this Schedule the First Homes shall only be Disposed of to First Time Buyers and the price to be paid by the First Time Buyer shall

- 4.1.1. not exceed the Price Cap on the first Disposal of a First Home and
 - 4.1.2. not exceed the Discounted Market Price on subsequent Disposal

- 4.2. The Owners covenant that the First Homes shall be actively marketed for sale and shall only be sold as First Homes

- 4.2.1. to a person or person(s) who in the first instance meet the Eligibility Criteria (Local) and

- 4.2.2. then

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

- 4.2.2.2. where there are Eligibility Criteria (Local) and the requirements of Paragraph 4.3 have been complied with

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

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

- 4.4. The Owners covenant that no First Home shall be Disposed of unless and until

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

- 4.4.1.1. the intended purchaser meets the eligibility criteria in Paragraph 4.2

- 4.4.1.2. the Dwelling is being Disposed of as a First Home in accordance with the requirements of Paragraph 4.2 and the Borough Council

will be provided with the Valuer's Market Value valuation by the seller **AND FOR THE AVOIDANCE OF DOUBT** this market valuation shall be provided by the Owners to the Borough Council on first Disposal and by the First Homes Owner on each subsequent Disposal and

4.4.1.3. the transfer of the First Home includes

- a) a definition of the "Borough Council" which shall be Swale Borough Council
- b) a definition of "First Homes Provisions" in the following terms:
"means the provisions set out in Paragraphs 4 to 6 (both inclusive) to Schedule 6 (First Homes) of the 106 Agreement a copy of which is attached hereto as the Annexure"
- c) A definition of "S106 Agreement" in the following terms:
"means the deed of agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) dated _____ made between (1) the Borough Council and (2) Derek Epsley Catherine Mary Epsley and Graham Derek Epsley and (3) Gladman Developments Limited"
- d) a provision that the property comprising the First Home is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the property or any part of it other than in accordance with the First Homes Provisions
- e) a copy of the First Homes Provisions in an annexure

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

4.4.2.1. the purchaser (or in the case of a joint purchase the joint purchasers') have a first mortgage or other home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% (fifty percent) of the Discounted Market Price

4.4.2.2. the requirements of Paragraph 4.4.1 have been met

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

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Swale Borough Council of Swale House, East Street, Sittingbourne, Kent, ME10 3HT or their conveyancer that the provisions of clause • (the First Homes Provisions) of the Transfer dated • [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

Disposal without the First Homes Restrictions

- 4.6. The Owners may apply to the Borough Council (care of the Notification Heads) to Dispose of the First Home other than as a First Home if on first Disposal the Owners have unsuccessfully actively marketed the Dwelling as a First Home for six (6) months from a date when the First Home is first marketed and despite reasonable endeavours having been made to Dispose of the Dwelling as a First Home it has not been possible to Dispose of that Dwelling as a First Home
- 4.7. On subsequent Disposals the First Home Owner may apply to the Borough Council (care of the Notification Heads) to Dispose of the First Home other than as a First Home if despite using reasonable endeavours to Dispose of the Dwelling as a First Home it has not been possible to Dispose of that Dwelling as a First Home and the Borough Council is satisfied that requiring the First Homes Owner to undertake active marketing for six (6) months from the date when the First Home is first placed on the market before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship
- 4.8. Upon receipt of an application served pursuant to Paragraph 4.6 or 4.7 (as the case may be) the Borough Council shall have the right (but shall not be required) to direct that the relevant Dwelling shall be Disposed of to the Borough Council at the Discounted Market Price who shall use reasonable endeavours to Dispose of the Dwelling as a First Home and in the event that the Borough Council is unable to

Dispose of the Dwelling as a First Home then it shall be entitled to convert that Dwelling to an alternative tenure of affordable housing pursuant to the Borough Council's local development plan documents (as may be reviewed or any subsequent replacement thereof) to be provided to eligible households (determined with regard to local incomes and local house prices) whose needs are not met by the open market

- 4.9. Subject to Paragraph 4.10 if the Borough Council is satisfied that either of the grounds in Paragraph 4.6 or 4.7 (as the case may be) have been made out it shall confirm within 20 (twenty) Working Days of receipt of the request made pursuant to Paragraph 4.6 or 4.7 (as the case may be) (or such longer period of time as may be agreed between the Borough Council and the Owners or the First Homes Owners (as the case may be)) that the relevant Dwelling may be Disposed of
- 4.9.1. to the Borough Council at the Discounted Market Price or
- 4.9.2. (if the Borough Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home and on the issue of that confirmation the restrictions in this Schedule as they relate to First Homes shall cease to bind and shall no longer affect that Dwelling **SAVE FOR** Paragraph 4.11 which shall cease to apply on receipt of payment by the Borough Council of the Additional First Homes Contribution
- 4.10. If the Borough Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in Paragraph 4.6 or 4.7 (as the case may be) have been made out then it shall within 20 (twenty) Working Days of receipt of the request made pursuant to Paragraph 4.6 or 4.7 (as the case may be) serve notice on the Owners or the First Homes Owner (as the case may be) setting out the further steps it requires the Owners or the First Homes Owner (as the case may be) to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months from the date of the notice). If at the end of that period the Owners or the First Homes Owner (as the case may be) has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Borough Council pursuant to Paragraph 4.6 or 4.7 (as the case may be) following which the Borough Council shall within 20 (twenty) Working Days of receipt of this notice issue confirmation that the Dwelling may be Disposed of other than as a First Home and on the issue of that confirmation the restrictions in this Schedule as they relate to First Homes shall cease to bind and shall no longer affect that Dwelling **SAVE FOR** Paragraph 4.11 which shall

cease to apply on receipt of payment by the Borough Council of the Additional First Homes Contribution

4.11. Where a Dwelling is Disposed of other than

4.11.1. as a First Home or

4.11.2. to the Borough Council at the Discounted Market Price

pursuant to Paragraphs 4.9 or 4.10 (as the case may be) the Owners or the First Homes Owner (as the case may be) shall pay to the Borough Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

4.12. Upon receipt of the Additional First Homes Contribution the Borough Council shall

4.12.1. Within 14 Working Days of such receipt provide a completed application to enable the removal of the restriction on the title set out in Paragraph 4.5 where such restriction has previously been registered against the relevant title

4.12.2. apply all monies received towards the provision of Affordable Housing

4.13. Any person who purchases a First Home pursuant to either Paragraph 4.9 or 4.10 does so free of the restrictions in this Schedule as they relate to First Homes and shall not be liable to pay the Additional First Homes Contribution to the Borough Council **BUT FOR THE AVOIDANCE OF DOUBT** all other obligations contained in this Deed shall continue to apply

5. **Use**

5.1. Subject to Paragraph 5.2 and 5.3 the Owners covenant that the First Homes shall not be Occupied or used for any purpose other than as First Homes and shall be retained as First Homes in perpetuity **AND FOR THE AVOIDANCE OF DOUBT** the First Homes are to be used as the First Homes Owner's sole or primary residence and shall not be used for investment or commercial gain and shall not be let sub-let or otherwise Disposed of other than in accordance with the terms of this Schedule

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

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

- 5.2.2. the lease or sub-lease (as the case may be) is in writing and relate to the whole of the First Home which terms shall expressly prohibit any further sub-letting
- 5.2.3. a copy of the written lease or sub-lease (as the case may be) is provided to the Borough Council on request

AND the First Homes Owner may let or sub-let their First Home pursuant to this Paragraph 5.2 more than once during that First Homes Owner's period of ownership **PROVIDED THAT** the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years

- 5.3. A First Homes Owner may let or sub-let their First Home for any period **IF**
 - 5.3.1. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of a short employment posting or
 - 5.3.2. the First Homes Owner is an Active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting or
 - 5.3.3. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting
 - 5.3.3.1. to escape a risk of harm resulting from domestic abuse or otherwise or
 - 5.3.3.2. as a result of relationship breakdown or
 - 5.3.3.3. as a result of redundancy or
 - 5.3.3.4. to provide care or assistance to a family relative or friend

PROVIDED THAT

- 5.3.4. the First Homes Owner notifies the Borough Council and the Borough Council consents (which consent shall not to unreasonably withheld or delayed) to the proposed letting or sub-letting
 - 5.3.5. the lease or sub-lease (as the case may be) shall be in writing and relate to the whole of the First Home which terms shall expressly prohibit any further sub-letting
 - 5.3.6. a copy of the written lease or sub-lease (as the case may be) shall be provided to the Borough Council (if required) on written request
- 5.4. Nothing in this Paragraph 5 shall prevent a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation **PROVIDED THAT** the First Home remains at all times the First Home Owner's main residence

6. Mortgagee Exclusion

- 6.1. Subject to the terms of this Paragraph 6 the obligations contained in this Schedule as they relate to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a “**Receiver**”)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver

PROVIDED THAT

- 6.1.1. any power of sale available to any Mortgagee or Receiver (as the case may be) arising under their security documentation in respect of the First Home shall only be exercised in the event of there being a default of any obligation in such security documentation triggering the power of sale and
- 6.1.2. such Mortgagee or Receiver shall first give notice to the Borough Council (care of the Notification Heads) of its intention to Dispose of the relevant First Home to the open market and
- 6.1.3. once notice of intention to Dispose of the relevant First Home to the open market has been given by the Mortgagee or Receiver (as the case may be) to the Borough Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value **SUBJECT ONLY** to Paragraph 6.2 **BUT FOR THE AVOIDANCE OF DOUBT** all other obligations contained in this Deed shall continue to apply
- 6.2. Following the Disposal of the relevant First Home to the open market pursuant to the terms of this Paragraph 6 the Mortgagee or Receiver (as the case may be) shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies interest and reasonable costs and expenses properly incurred pursuant to the security documentation pay to the Borough Council the Additional First Homes Contribution **AND FOR THE AVOIDANCE OF DOUBT** if the remaining proceeds from the sale of the First Home to the open market pursuant to this Paragraph 6
- 6.2.1. is not sufficient to cover the full amount of the Additional First Homes Contribution then all the remaining proceeds from the sale shall be transferred to the Borough Council or

6.2.2. is sufficient to cover the full amount of the Additional First Homes Contribution
any remaining profits from the disposal of the First Home shall be returned to
the First Home Owner from whom the Mortgagee or Receiver took possession

6.3. Following receipt of notification of the Disposal of the relevant First Home to the open
market the Borough Council shall

6.3.1. as soon as is reasonably practicable issue a completed application to the
purchaser of that Dwelling to enable the removal of the restriction on the title
set out in Paragraph 4.4 and

6.3.2. apply the Additional First Homes Contribution towards the provision of
Affordable Housing

SCHEDULE 7: OPEN SPACE

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 meanings and (where applicable) be supplemented by Clause 1.1 and paragraph 1 of the other relevant schedules

“Date of Practical Completion”	means the date of issue of a certificate of practical completion by the Owners’ architect or such other competent person or, if the Development is constructed by a party other than the Owners, by that other party’s architect or such other competent person
“Management Company”	means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space
“Management Plan”	<p>means a scheme to be submitted to and approved in writing by the Borough Council, which identifies:</p> <ul style="list-style-type: none">(i) the future management and maintenance requirements of the Open Space(ii) (ii) the proposed ongoing maintenance operations for the Open Space, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space(iii) the proposed means of funding the ongoing maintenance and management of the Open Space in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company

- (iv) a mechanism for the periodic review with the Borough Council and where necessary amendment of the Management Plan

“Open Space”	means the informal open space and landscaping including the Play Area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
“Open Space Works Specification”	means a specification for the laying out of the Open Space to be agreed in writing between the Owners and the Borough Council before the Commencement of Development
“Phase of Development”	means a phase of development which shall be in accordance with the planning conditions to which the Planning Permission is subject
“Play Area”	means a local equipped area for play for use by the general public to be provided on the Site in accordance with the Planning Permission

2. Open Space transfer and works

- 2.1 Prior to Commencement of Development the Owners shall submit to the Borough Council for approval the Open Space Works Specification and the Management Plan
- 2.2 Prior to Commencement of Development the Owners shall submit to the Borough Council a certified copy of the certificate of incorporation and details of the directors and officers of the Management Company for the purpose of managing and maintaining the Open Space
- 2.3 The Owners shall not Occupy or permit or allow the Occupation of more than seventy-five percent (75%) of the Dwellings on any Phase of Development until any Open Space to be located on that Phase of Development has been provided and/or constructed (as appropriate) in complete accordance with the Open Space Works Specification
- 2.4 The Owners shall not Occupy or permit or allow the Occupation of more than ninety-five percent (95%) of the Dwellings that form part of the Development until the Open

Space has been transferred to the Management Company in accordance with the details approved by the Borough Council under the Management Plan and on the terms set out in Paragraph 3 below

- 2.5 The Owners shall procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring maintaining repairing and as necessary renewing the Open Space in accordance with the Management Plan; and
 - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 2.5 (i) and 2.5 (ii) of Schedule 7
- 2.6 The Owners shall not amend the Management Plan without the Borough Council's written consent
- 2.7 The Owners shall not wind up the Management Company or alter its constitution without the prior written consent of the Borough Council unless the whole of the Development shall have been demolished or unless the Borough Council have otherwise first agreed in writing

3. Provisions relating to the transfer of the Open Space

3.1 The transfer of the Open Space to the Management Company shall:

- 3.1.1 be a transfer of the entire freehold interest of the Open Space
- 3.1.2 be free from any pre-emption or option agreement
- 3.1.3 be free from any mortgage charge, lien or other such incumbrance
- 3.1.4 be free from any lease licence or any other third party interests
- 3.1.5 be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity
- 3.1.6 include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space
- 3.1.7 reserve in favour of the Owners any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space

- 3.1.8 reserve in favour of the Owners the right to lay and use new services subject to the prior written agreement of the Borough Council together with any rights of entry to inspect, repair renew cleanse and maintain the same
- 3.1.9 declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space
- 3.1.10 not require consideration in excess of one pound (£1)
- 3.1.11 contain a covenant for the benefit of the Borough Council that the Management Company will manage and maintain the Open Space in accordance with the approved Management Plan

APPENDIX 1: PLAN

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NOTES
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Ordnance Survey base mapping - supplied by client.



Site Boundary 5.9ha

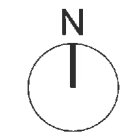
Sherrin

AD Epsley *D. Epsley*

XC Epsley *Ch Epsley* 16/8/23



XC Epsley
G Epsley
Paul



Gladman Developments Ltd
Swanstreet Avenue
Sittingbourne

LOCATION PLAN

6302 MPS / KMN 1:2500 @ A3
20 September 2021 S3 P01
06302-FPCR-ZZ-ZZ-DR-L-0003
Project Code - Originator - Zone - Level - Type - Role - Drawing Number



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