

DATE:

2024

DOVER DISTRICT COUNCIL

CLASSICUS ESTATES LTD

KENT COUNTY COUNCIL

PLANNING OBLIGATION BY DEED OF AGREEMENT
Pursuant to Section 106 of the Town and Country Planning Act
1990 (as amended)

Relating to the development of land
on the north-east side of New Street,
Ash, Canterbury CT3

Ref: DOV/22/01497

//KEN002:001356

THIS DEED is made the day of 2024

PARTIES

- (1) DOVER DISTRICT COUNCIL (“the District Council”) of White Cliffs Business Park, Dover, Kent, CT16 3PJ
- (2) KENT COUNTY COUNCIL (“the County Council”) of Sessions House, County Hall, Maidstone, Kent ME14 1XQ
- (3) CLASSICUS ESTATES LTD (“ the Owner”) (Company Registration No.09647830) whose registered office is Unit T Lakesview International Business Park, Hersden, Canterbury, England, CT3 4GP

RECITALS

- 1 The Owner is the freehold owner of the Land being the land registered under the title numbers TT142298 K58787 and K481554 (“the Title”)¹
- 2 The District Council is the Local Planning Authority for the purposes of the Act for the area in which the Land is situated.
- 3 The County Council is a Local Planning Authority for the purposes of the Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and is the statutory authority responsible for education, local highways, waste, libraries, integrated children’s services, community learning, and adult social care for the area within which the Land is situated and an appropriate statutory body to enforce this Deed and the covenants made to it for the purposes of Section 106 of the 1990 Act
- 4 The Planning Application has been submitted by the Owner to the District Council seeking permission to undertake the Development and the parties have agreed to enter this Deed in order to secure the planning obligations contained in this Deed the need for which would not be generated but for the Development.

- 5 The District Council resolved on 10th August 2023 to grant planning permission to carry out the Development subject to the prior completion of this Deed and the conditions to which the Planning Permission is expressed to be subject.

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS AND INTERPRETATION

In this Deed the following words and phrases shall have the following meanings:

| | |
|-------------------------------|---|
| “the Act” | means the Town and Country Planning Act 1990 (as amended) |
| “Affordable Housing” | means affordable housing as defined in Annex 2 to the National Planning Policy Framework or as permitted by subsequent legislation or national guidance brought in after the date of this agreement and to be provided in accordance with the provisions of the Second Schedule |
| “Affordable Housing Contract” | means a contract between the Owner and a Registered Provider for the provision of Affordable Housing, Affordable Rented Housing, Social Rented Housing or Shared Ownership Housing within the Development which includes the terms set out in paragraph 11 of the Second Schedule or such other terms as are agreed between the Owner and the Registered Provider |
| “Affordable Housing Land” | means the land comprising part or parts of the Land upon which the Affordable |

Housing Units are to be constructed (together with their curtilages and parking provision) and used for Affordable Housing

“Affordable Housing Marketing Plan”

means a plan to market and Dispose of the Affordable Housing to be submitted to and approved by the District Council pursuant to paragraph 11.1.3 of the Second Schedule

“Affordable Housing Plan”

means the plan to be submitted in accordance with paragraph 1.1 of the Second Schedule showing the location of the Affordable Housing Units (including First Homes, including their Car Parking Spaces, or such other plan as may be approved between the Parties in writing

“Affordable Housing Scheme”

means the scheme to be submitted in accordance with paragraph 1.1 of the Second Schedule setting out number, size, tenure, type and specification of the Affordable Housing Units to be constructed on the Land

"Affordable Housing Units"

means those Dwellings which are to be provided as either Affordable Rented Units, Social Rented Housing or Shared Ownership Housing Units.

"Affordable Rented Housing"

means affordable housing for rent as defined in Annex 2: glossary to the NPPF where:

(a) a rent is set in accordance with the Government's rent policy for affordable rent or is at least 20% below local market rents (including service charge where applicable); and

(b) The landlord is a Registered Provider

"Affordable Rented Units"

those units to be Occupied as Affordable Rented Housing and which is let in accordance with the Nominations Agreement

"Biodiversity Gain Plan"

means the plan to be submitted in accordance with condition 31 of the Planning Permission

"Car Parking Spaces"

means the spaces as shown on the Affordable Housing Plan to be approved in accordance with the Second Schedule

"Commencement of the Development"

means the Development on the Land by the carrying out of a material operation pursuant to the Planning Application within the meaning of section 56(4) of the Act save that for the purposes of this Deed and for no other purpose operations consisting of:

- (a) site clearance
- (b) demolition work
- (c) archaeological investigations
- (d) investigations for the purpose of assessing ground conditions

- (e) site survey work
- (f) remedial work in respect of any contamination or other adverse ground conditions
- (g) diversion and laying of services
- (h) erection of temporary means of enclosure
- (i) the temporary display of site notices or advertisements
- (j) temporary access construction works

shall not amount to commencement and all references to commencement shall be construed accordingly

“Community Learning and Skills Contribution”

means the sum of £16.42 (sixteen pounds and forty two pence) per Dwelling constructed pursuant to the Planning Permission towards additional equipment, resources, and classes to be delivered locally and at Adult Education Centres in the district of Dover

“Commutated Sum”

the sum to be paid by the Owner to the District Council pursuant to paragraph 12 to the Second Schedule in lieu of the provision of all or any of the Affordable Housing Units and to be calculated in accordance with the formula set out in section 3 of the Addendum to the Affordable Housing Supplementary Planning Document published by the

District Council in July 2011.

“Compensatory Habitat Scheme”

means a scheme to compensate for the loss of breeding bird habitat which shall include identification of the land upon which the compensatory habitat is to be provided which shall be the same physical size as the habitat to be lost and shall be:

(a) on the Land or if not on the Land:

- i. as near as practicable to the Land and within the district of Dover;
- ii. land capable of being subject to habitat creation and enhancements in order to serve the same function for breeding birds as the habitat to be lost;
- iii. land which has no existing ecological constraints, including protected species presence, to the success of the habitat creation and enhancements; and
- iv. land that will be safe from future development and managed for a period of at least 30 years following creation

“the County Council Costs”

means the County Council's proper and reasonable legal and administrative costs for the preparation and execution of this Deed

“the County Council's Monitoring Fee”

means the sum of £900 (nine hundred pounds) towards the County Council's

costs of monitoring the compliance of the Development with the terms of this Agreement

“County Council Index”

means the General Building Costs Index as prepared by the BCIS for the RICS or such other index as the County Council may reasonably nominate in the event that the General Building Costs Index shall no longer be published or its name or methodology be materially altered

“Credits”

means either biodiversity units sold directly by landowners in the local area (or via intermediaries acting on behalf of those landowners) which must be registered on a national register which will be administered by Natural England or in the event that biodiversity units are not available, statutory biodiversity credits sold by the Secretary of State

“Credit Certificate”

a written notification to the Owner of the completion of the purchase of Credits

“the Development”

means the erection of up to 53 dwellings with associated parking, open space, landscaping, drainage and associated infrastructure (with all matters reserved except access) (existing buildings to be demolished) as set out in the Planning Application

“the Disputes Resolution Procedure”

means the procedure referred to in clause 13 and set out in the Seventh Schedule hereto

| | |
|---|--|
| “the District” | means the administrative area of Dover District Council |
| “the District Council’s Costs” | means the sum of £1,210 (One thousand, two hundred and ten pounds) being the agreed contribution to the District Council’s proper and reasonable legal and administrative costs for the preparation, execution and registration of this Deed |
| “the District Council’s Monitoring Fee” | means the sum of £236 per Trigger Event towards the District Council’s costs of monitoring the compliance of the Development with the terms of this Agreement |
| “the Draft Conditions” | means the draft conditions to be attached to the Planning Permission set out in Appendix 1 to this Deed ² |
| “Dwelling” | means any dwelling (including a house, flat or maisonette) to be constructed as part of the Development pursuant to the Planning Permission and Dwellings shall be construed accordingly |
| “Eligible Persons” | means persons who are unable to afford suitable housing accommodation on the open market (whether renting or purchasing) within the District and who: (a) Are on those registers retained or referred to by the District Council from |

² DCC to circulate draft conditions

time to time in the discharge of its housing functions;

- (b) Otherwise certified by the District Council (at all times acting without delay and reasonably consistently with the discharge of its housing functions) as being eligible to reside in the Affordable Housing Units; or
- (c) For First Homes only, those applicants who meet the eligibility criteria set out in the Fifth Schedule

"Habitat Management and Monitoring Plan"

means a plan based on the Natural England Template 'Habitat Management and Monitoring Plan Template' which shall include, in accordance with the Biodiversity Gain Plan:

- the management of habitats to achieve biodiversity net gain; and
- the management of all other habitats, including the compensatory habitat created by the Compensatory Habitat Scheme, if separate from the biodiversity net gain habitats

The plan will also include the following:

- a) details of site baseline habitats;
- b) aims and objectives of management and monitoring plan;
- c) description and evaluation of features to be retained, enhanced and created;
- d) habitat and condition targets;

- e) habitat retention details, including a site plan showing protection of retained habitats;
- f) creation, enhancement and management targets and prescriptions, including a site plan of management compartments;
- g) habitat monitoring strategy, including monitoring methods and intervals to ensure targets are being met.
- h) provision for the submission of monitoring reports to the local planning authority in years 2, 5, 10, 15, 20, 25 and 30;
- i) details of the body or organisation(s) responsible for implementation of the plan;
- j) details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery; and
- k) where the results from monitoring show that conservation aims and objectives of the Habitat Management and Monitoring Plan, including biodiversity net gains, are not being met - how contingencies and/or remedial action will be identified, agreed, and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

"Homes England"

means Homes England or any bodies

undertaking the existing functions of Homes England within the meaning of Part 2 of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) or any successor organisation.

“the Index”

means the “all Items” index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the District Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered and Index-Linked shall be construed accordingly

“Integrated Children’s Service Contribution”

means the sum of £65.50 (sixty five pounds and fifty pence) per Dwelling constructed pursuant to the Planning Permission towards additional resources for the Integrated Children's Services to enable expansion of capacity within the hubs and provision of outreach work in the vicinity of the development

“Interest”

means Interest at 4 per cent above the base rate of the HSBC Bank Plc from time to time

“Intermediate Housing Units”

means a form of Affordable Housing, which are not Affordable Rented Units and which are available for sale and/or rent at a cost below Open Market Value or Open Market Rents, as set out in the National

Planning Policy Framework allocated to Eligible Persons

“the Land”

means the land known as 52 New Street, Ash, Canterbury CT3 2BN, 51-53 Sandwich Road, Ash, Canterbury CT3 2AH and land adjoining 51-53 Sandwich Road, Ash, Canterbury CT1 2AH against which this Deed may be enforced as shown more particularly edged red on the attached Plan

“LEAP”

means the locally equipped play area to be provided as part of the Development

“Library Service Contribution”

means the sum of £55.45 (fifty five pounds and forty five pence) per Dwelling constructed pursuant to the Planning Permission towards additional resources, equipment, and stock (including digital infrastructure and resources) to be made available at libraries in the district of Dover including Ash and Sandwich libraries.

“Management Company”

means a management company or equivalent body to be established by the Owner to manage and maintain the Open Space and the objects of which shall include responsibility for the maintenance and management of the Open Space in accordance with the Open Space Specification PROVIDED THAT the Management Company shall be entitled to recover the cost of doing so by way of an estate charge levied against the occupiers of the Dwellings.

| | |
|-------------------------------|---|
| “Mortgagee” | means a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units |
| “Natural England Template” | means the habitat management and monitoring plan template published by Natural England |
| “NHS Healthcare Contribution” | means £847.70 (eight hundred and forty seven pounds and seventy pence) per Dwelling to be prioritised towards refurbishment, reconfiguration and or extension to Ash Surgery and/or if it can be demonstrated at the time there is no requirement for the contribution to go towards Ash, other practices with a contractual boundary covering the development site, within the district of Dover |
| “Nominations Agreement” | means the nominations agreement to be entered into by the Registered Provider pursuant to paragraph 11 of the Second Schedule ³ |
| “NPPF” | means the National Planning Policy |

³ Standard form to be appended to S106?

Framework

“Occupation”

means occupation for any purpose permitted by the Planning Permission but does not include occupation by personnel engaged in the construction fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or long leasehold interest to a third party Occupation commences the date of legal completion of the sale rather than exchange of contracts and "Occupy" "Occupier" "Occupiers" and "Occupied" shall be construed accordingly

“Open Market Rent”

means the rent as determined by an independent professionally qualified valuer (whose fees shall be paid by the Owner) whose identity shall be first approved in writing with the District Council such approval not to be unreasonably withheld or delayed such valuation to be current at the date of Occupation of the Dwellings

“Open Market Units”

means the Dwellings to be constructed on the Land for private sale which are not Affordable Housing Units and Open Market Unit shall be construed accordingly

“Open Market Value”

means the best price at which the sale of interest in property would have been

completed unconditionally for cash consideration on the date of valuation assuming:

- (a) A willing buyer and a willing seller;
- (b) That, before the date of valuation, there had been a reasonable period (having regard to the nature of the property and the state of the market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the sale;
- (c) That the state of the market level of values and other circumstances were, on any earlier assumed dated or exchange of contracts, the same as on the date of valuation;
- (d) That the seller will provide the buyer with vacant possession upon the completion of the transaction;
- (e) That both parties to the transaction had acted knowledgeably, prudently and without compulsion; and
- (f) That no account is taken of any additional bid by a prospective purchaser with a special interest

“Open Space”

means the LEAP and amenity greenspace to be provided as part of the Development and to be approved pursuant to the Reserved Matters Application

“Open Space Method Statement”

means a statement setting out the timing for construction of the Open Space and detailing when the Open Space will be made available to the

public for access on foot but which may for the avoidance of doubt be amended as the construction of the Development progresses with the prior written approval of the District Council

“Open Space Specification”

means a detailed specification for the design, construction, materials and works to construct the Open Space including all furniture, lighting and drainage together with details of proposed future management and maintenance

“Part M4(3)(b)”

means Part M4(3)(b) 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 District Council

“the Plan”

means the plan attached to this Deed at Appendix 2

“the Planning Application”

means the application for outline planning permission to carry out the Development on the Land and given the District Council’s reference number DOV/22/01497

“Planning Permission”

means the outline planning permission to be granted by the District Council pursuant to the Planning Application

“Primary Education Contribution”

means the sum of £4,642.00 (four thousand, six hundred and forty two pounds) per applicable house, and £1,160.50 (one thousand, one hundred and sixty pounds and fifty pence) (excluding 1 bed units of less than 56m² gross internal area, and any sheltered accommodation) constructed pursuant to the Planning Permission towards the expansion of local primary schools in the Ash and Wingham planning group

“Protected Tenant”

means any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) pursuant to the Housing Act 1980 in respect of a particular Affordable Housing Unit;
- (c) has been granted a voluntary right to buy by the Registered Provider in respect of a particular Affordable Housing Unit; or
- (d) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so

that the tenant owns the entire
Affordable Housing Unit

“Registered Provider”

means any company or organisation whose aim or function includes the provision and management of Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) which is registered or eligible for registration under Chapter 3 of Part 2 of the Housing and Regeneration Act 2008 (or such other relevant previous or amended or replacement statutory provision) AND approved by the District Council that approval not to be unreasonably withheld or delayed.

“Reserved Matters Application”

means an application for approval of one or more “reserved matters” (as defined by the Town and Country Planning (Development Management Procedure)(England) Order 2015/595) submitted pursuant to a condition imposed or deemed to be imposed on the Development by the Planning Permission and the terms Reserved Matters shall be interpreted accordingly

“Secondary Education Contribution”

means the sum of £4,540.00 (four thousand, five hundred and forty pounds) per applicable house, and £1,135.00 (One thousand, one hundred and thirty pounds) per applicable flat (excluding 1 bed units of less than 56m² gross internal area, and any sheltered accommodation) constructed pursuant to the Planning Permission towards the expansion of secondary schools in the

Deal and Sandwich non-selective and the district of Dover selective planning groups

“Serviced Condition”

means that the relevant Dwelling:

(a) has proper connections to or within its boundary to connect it to surface water drainage facilities and to mains foul drainage, water, gas, electricity and telecommunications; and

(b) enjoys direct access to the public highway or a roadway constructed to adoptable standards (connecting to a public highway).

Each condition must be adequate for the purpose of its prospective use.

“Shared Ownership Housing”

means housing which is part sold, part let to eligible households in accordance with the terms of a Shared Ownership Lease

“Shared Ownership Housing Units”

means the Affordable Housing Units to be Occupied as Shared Ownership Housing under a Shared Ownership Lease in accordance with the terms of this Deed

“Shared Ownership Lease”

means a lease in the form of the Homes England's model shared ownership lease published by Homes England from time to time

“Social Care Contribution”

means the sum of £146.88 (one hundred and forty six pounds and eighty

eight pence) per Dwelling constructed pursuant to the Planning Permission towards specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting community facilities, sensory facilities, and Changing Places within the district of Dover

“Social Rented Housing”

means Affordable Housing let to eligible households for which the rent is no higher than Target Rent

“SPA Contribution”

means the sum of £16,156.00 (sixteen thousand, one hundred and fifty six pounds) paid as a contribution towards the Thanet Coast and Sandwich Bay Special Protection Area Mitigation Strategy calculated per Dwelling as follows:

1 bedroom: £112.00 (one hundred and twelve pounds)

2 bedroom: £224.00 (two hundred and twenty four pounds)

3 bedroom: £337.00 (three hundred and thirty seven pounds)

4 bedroom £449.00 (four hundred and forty nine pounds)

“Sports Contribution”

means a sum of £959.12 (nine hundred and fifty nine pounds and twelve pence) . per Dwelling towards natural grass pitches at Ash recreation ground, the strategic need for artificial grass pitches and swimming pools within the district of Dover

| | |
|------------------------------------|---|
| “Statutory Undertakers” | means statutory undertakers as defined in Article 2 of the Town and Country Planning (General Permitted Development) Order 2015. |
| “Target Rent” | means target rents for Social Rented Housing (or its equivalent) as determined through the rent standard and published from time to time by the regulator of social housing (or such other body as may replace the regulator, having responsibility for setting target rents for social housing). |
| “Trigger Date” | means each date upon which a Trigger Event occurs |
| “Trigger Event” | means any event which triggers the payment of a contribution by the Owner to the District Council or the County Council |
| “Visibility Splay Management Plan” | means the plans H-01 and H-02 attached to this Deed at Appendix 3. |
| “Waste Contribution” | means the sum of £54.47 (fifty four pounds and forty seven pence) per Dwelling constructed pursuant to the Planning Permission towards works at Dover Household Waste Recycling Centre to increase capacity |
| “Working Day” | means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales and Working Days shall be construed accordingly |

2. CONSTRUCTION OF THIS DEED

- 2.1 References 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 District Council and the County Council the successors to their respective statutory functions.
- 2.2 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment for the time being in force and shall include all statutory instruments directions orders regulations plans permissions or byelaws for the time being made issued or given under the statute or deriving validity from it.
- 2.3 Words importing the masculine gender shall include the feminine and neuter gender and vice versa.
- 2.4 Words importing persons include companies corporations and firms and vice versa.
- 2.5 Unless the context otherwise requires words importing the singular shall include the plural and vice versa.
- 2.6 Headings are for ease of reference only and shall not be construed as part of this Deed.
- 2.7 Reference to any recital clause schedule or paragraph (or any part of them) shall (unless the context otherwise requires) be reference to a recital clause schedule or paragraph (or any part of them) in this Deed.
- 2.8 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and/or against each individually unless there is an express provision otherwise.
- 2.9 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person.

3 STATUTORY PROVISIONS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 All the covenants, restrictions and requirements contained herein create planning obligations pursuant to Section 106 of the Act and are entered into by the Owners to the intent that it shall bind the Owner and their successors

in title to each and every part of the Land and their assigns and shall be enforceable by the District Council against the Owner.

4 CONDITIONALITY

This Deed is conditional on:

- (i) the grant of the Planning Permission; and
 - (ii) the Commencement of Development
- save for the provisions of clauses: [3, 4, 5.3.1, 5.3.4, 5.3.5, 8.3, 8.7, 8.8, 12,13, 15 and 16]⁴

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the District Council to observe the restrictions and perform the obligations set out in Part A of the First Schedule, in the Second Schedule and in the Fifth Schedule.
- 5.2 The Owner covenants with the County Council to observe the restrictions and perform the obligations set out in Part B of the First Schedule.
- 5.3 The Owner covenants with the District Council and separately with the County Council:
 - 5.3.1 to give notice to both the District Council and the County Council of the date of the Commencement of the Development not less than 14 (fourteen) days before such date occurs ("the Commencement Notice").
 - 5.3.2 Within 14 (fourteen) days after any Trigger Date to notify the District Council of the date and the event that occurred on the Trigger Date.
 - 5.3.3 To retain such records and information and within 14 (fourteen) days of a written request by the District Council to provide the District Council with such records and information as the District Council request to enable the District Council to satisfy itself that the Owner is complying with all their obligations under this Deed and the conditions to be attached to the Planning Permission.
 - 5.3.4 To pay the District Council's Costs on the completion of this Deed.
 - 5.3.5 To pay the County Council's Costs on the completion of this Deed.
 - 5.3.6 To pay to the District Council the District Council's Monitoring Fee per Trigger Event within twenty (20) Working Days of the respective Trigger Date.
 - 5.3.7 To pay the County Council the County Council's Monitoring Fee prior to Commencement of Development.

⁴ To be checked/confirmed once the agreement is finalised

- 5.3.8 To notify the County Council of each Trigger Event to developer.contributions@kent.gov.uk
- 5.4 The Owner covenants to pay on demand and on a full indemnity basis the costs and expenses of the District Council and the County Council including any solicitors' or other professionals' costs and expenses in connection with, or in contemplation of, any of the following:
- 5.4.1 the enforcement of any planning obligations of this Deed;
- 5.4.2 serving any notice or taking any proceedings in connection with this Deed.

6 THE DISTRICT COUNCIL'S COVENANTS

The District Council covenants with the Owner to perform the obligations set out in the Third Schedule.

7 THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner to perform the obligations set out in the Fourth Schedule.

8 MISCELLANEOUS

- 8.1 No person shall be liable for a breach of any of the planning obligations or other provisions of this Deed after they have irrevocably parted with all their interest in the Land or in the part of the Land in respect of which such breach occurs pursuant to a disposal at open market value to an unconnected third party but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.2 This Deed shall determine and cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is quashed, revoked or modified other than at the request of the Owner by the District Council pursuant to the Act without the written consent of the Owner or if the Planning Permission expires or is otherwise withdrawn prior to the Commencement of Development.
- 8.3 If the District Council agrees pursuant to an application by the Owner under Section 73 or 73A of the Planning Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal by the Owner under Section 78 of the Planning Act this Agreement shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to Section 73 or 73A or 78 of the Planning Act and the covenants or provisions in this

Agreement shall be deemed to be accordingly modified to correspond to any such varied permission

- 8.4 Any notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in this Deed or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on:
- 8.4.1 the District Council it should be addressed to the Head of Planning, Regeneration and Development quoting reference: DOV/ 22/01497
- 8.4.2 and in the case of the County Council marked for the attention of the Office of the General Counsel quoting reference: KEN002.001356 with electronic copies sent to: developer.contributions@kent.gov.uk
- 8.5 Where any approval consent directions action or authority is required to be given by any of the parties hereto such approval consent directions action or authority shall (unless otherwise stated) not be unreasonably delayed or withheld and shall only be effective if given in writing signed by or on behalf of the relevant party and given for the purposes of this Deed.
- 8.6 If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired.
- 8.7 This Deed is a Local Land Charge and shall be registered as such by the District Council within ten Working Days of the completion of this Deed.
- 8.8 Nothing contained or implied in this Deed shall fetter prejudice or affect the rights discretions powers duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 8.9 No variation or modification of this Deed shall be valid unless made by Deed and executed by all the parties or their respective successors.
- 8.10 This Deed does not nor is intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 8.11 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.
- 8.12 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 8.13 Save for the First Homes provisions found in Schedule Five, this Deed shall not be enforceable against owner-occupiers or tenants of individual dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 8.14 This Deed shall not be enforceable against Statutory Undertakers holding

land for their operational purposes.

- 8.15 This Deed shall not be enforceable against a Registered Provider.
- 8.16 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 including any new permission granted pursuant to an application by the Owner under Section 73 or 73A of the Act) granted (whether or not on appeal) after the date of this Deed.

9 WAIVER

No waiver (whether express or implied) by the District Council or the County Council or the Owner of any breach or default by another party in performing or observing any of the covenants and terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council or the Owner from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party.

10 INDEXATION

Any sum which become payable under this Deed other than the District Council's Costs and the County Council's Costs shall be increased by an amount equivalent to:

- 10.1 in relation to the sums payable to the District Council the increase in the Index from the date hereof until the date on which such sum is payable; and
- 10.2 in relation to the sums payable to the County Council the increase in the County Council Index from April (360.3) until the date on which such sum is paid.

11 OVERDUE PAYMENT

In the event of any delay in making payment required under this Deed Interest shall be payable on the amount payable from the date that the relevant payment falls due to the date of actual payment.

12 CHANGE IN OWNERSHIP

The Owner agrees with the District Council to give the District Council immediate written notice of any 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 details of the transferee's full name and registered office (if a company or usual address if not) together with the area

of the Land or unit of occupation purchased by reference to a scale plan.

13 DISPUTE RESOLUTION

- 13.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Dispute Resolution Procedure set out in the Seventh Schedule.
- 13.2 The decision of an expert appointed under the Dispute Resolution Procedure shall be final and binding on all of the parties to the dispute.

14 RIGHT OF INSPECTION

The Owner shall upon reasonable notice (without prejudice to the District Council's and the County Council's statutory rights of entry) permit any person duly authorised by the District Council or the County Council to enter that part of the Land that is being or has been developed pursuant to the Planning Permission to ascertain whether there is or has been any breach of the obligations hereunder and any such person authorised by the District Council or the County Council shall observe all reasonable site security access and health and safety arrangements PROVIDED THAT in the event of the District Council or the County Council being concerned with regard to a possible breach it shall use its reasonable endeavours to notify the Owner as soon as reasonably practicable in order that the matter may be discussed with the Owner and any remedial action agreed if appropriate but FURTHER PROVIDED THAT nothing within this clause 14 shall prevent the District Council or the County Council from exercising any statutory right of entry or inspection or from taking legal proceedings to enforce the obligations set out herein.

15 REASONABLENESS

Any approval, consent, direction, authority, agreement or action to be given by the District Council or County Council under this deed shall not be unreasonably withheld or delayed.

16 CANCELLATION OF ENTRIES

- 16.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the District Council's and the County Council's reasonable and proper costs), the District Council or the County Council (as relevant) shall issue a written confirmation of that performance or discharge.

16.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to Clause 8.2 (and subject to the payment of the District Council's and the County Council's reasonable and proper costs and charges), the District Council shall on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

17 **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England.

IN WITNESS whereof this Agreement has been duly executed as a Deed by the parties the day and year first before written

FIRST SCHEDULE

OWNER'S COVENANTS

PART A: DISTRICT COUNCIL

The Owner covenants with the District Council as follows:

1. To pay 50% of the NHS Healthcare Contribution to the County Council prior to Occupation of any Dwelling and the remaining 50% prior to Occupation of the 27th Dwelling.
2. Not to permit Occupation of any Dwelling unless and until the 50% of the NHS Healthcare Contribution has been paid to the County Council and not to permit Occupation of the 27th Dwelling until the remaining 50% of the NHS Healthcare Contribution has been paid to the County Council.
3. To pay 50% of the Sports Contribution to the County Council prior to Occupation of any Dwelling and the remaining 50% prior to Occupation of the 27th Dwelling
4. Not to permit Occupation of any Dwelling unless and until the 50% of the Sports Contribution has been paid to the County Council and not to permit Occupation of the 27th Dwelling until the remaining 50% of the Sports has been paid to the County Council.
5. To pay the SPA Contribution to the District Council. Payment to be made prior to the Occupation of any Dwelling.
6. Not to permit the Occupation of any Dwelling unless and until the SPA Contribution has been paid to the District Council.
7. Not to Commence Development unless and until the Compensatory Habitat Scheme has been submitted to and approved by the District Council.
8. To provide the compensatory habitat identified in the approved Compensatory Habitat Scheme and thereafter
9. Not to make any Reserved Matters Application unless and until the Habitat Management and Monitoring Plan has been submitted and approved by the

District Council SAVE FOR WHERE Biodiversity Units are to be purchased in lieu of the required biodiversity net gain provision either on the Land or off-site and in such circumstances the provisions of paragraphs 25 to [] of this Schedule shall apply in lieu of paragraphs 23 and 24 of this Schedule

10. To implement the Habitat Management and Monitoring Plan and thereafter comply with the provisions thereof
11. If the Owner has been able to reasonably demonstrate to the District Council that it is not able to provide the required biodiversity net gain provision either on the Land or off-site then the Owner shall prior to Occupation of 75% of the Open Market Units:
 - 11.1 confirm such in writing to the District Council;
 - 11.2 obtain the District Council's approval in writing as to the number and type of Credits to be purchased in lieu of the biodiversity net gain provision with the number and type of Credits to be calculated according to the statutory (official) biodiversity metric published by Department for Environment, Food & Rural Affairs (DEFRA);
 - 11.3 purchase the number and type of Credits that are agreed in accordance with paragraph 25.2 above; and
 - 11.5 provide a copy of the relevant Credit Certificate to the District Council
12. Prior to the Occupation of any Dwelling to provide and thereafter maintain on the Land the visibility splays shown dashed blue on the Visibility Splay Management Plan ("the Visibility Splays") free from any obstruction and by regular cutting and trimming of any vegetation that is growing on or onto the Visibility Splays or any part thereof

PART B: COUNTY COUNCIL

The Owner covenants with the County Council as follows:

1. To pay 33% of the Primary Education Contribution to the County Council prior to Commencement of Development; a second 33% of the Primary Education Contribution to the County Council prior to the Occupation of more than 25% of the Dwellings, and the remaining 34% of the Primary Education Contribution to the County Council prior to the Occupation of more than 50% of the Dwellings.
2. Not to Commence Development unless and until the first 33% of the Primary

Education Contribution has been paid to the County Council and not to permit Occupation of more than 25% of the Dwellings until the second 33% of the Primary Education Contribution has been paid to the County Council and not to permit Occupation of more than 50% of the Dwellings until the final 34% of the Primary Education Contribution has been paid to the County Council.

3. To pay 33% of the Secondary Education Contribution to the County Council prior to Commencement of Development; a second 33% of the Secondary Education Contribution to the County Council prior to the Occupation of more than 25% of the Dwellings, and the remaining 34% of the Secondary Education Contribution to the County Council prior to the Occupation of more than 50% of the Dwellings.
4. Not to Commence Development unless and until the first 33% of the Secondary Education Contribution has been paid to the County Council and not to permit Occupation of more than 25% of the Dwellings until the second 33% of the Secondary Education Contribution has been paid to the County Council and not to permit Occupation of more than 50% of the Dwellings until the final 34% of the Secondary Education Contribution has been paid to the County Council.
5. To pay the Community Learning and Skills Contribution to the County Council prior to Commencement of Development.
6. Not to Commence Development unless and until the Community Learning and Skills Contribution has been paid to the County Council.
7. To pay the Integrated Children's Service Contribution to the County Council prior to Commencement of Development.
8. Not to Commence Development unless and until the Integrated Children's Service Contribution has been paid to the County Council.
9. To pay the Library Service Contribution to the County Council prior to Commencement of Development.
10. Not to Commence Development unless and until the Library Service Contribution has been paid to the County Council.

11. To pay the Social Care Contribution to the County Council prior to Commencement of Development.
12. Not to Commence Development unless and until the Social Care Contribution has been paid to the County Council.
13. To pay the Waste Contribution to the County Council prior to Commencement of Development.
14. Not to Commence Development unless and until the Waste Contribution has been paid to the County Council.

SECOND SCHEDULE
AFFORDABLE HOUSING

The Owner covenants with and undertakes to the District Council as follows:

1. PROVISION OF AFFORDABLE HOUSING

1.1 The Owner shall submit the Affordable Housing Scheme and the Affordable Housing Plan to the District Council for approval prior to the Commencement of Development.

1.2 The Owner shall not Commence the Development until the Affordable Housing Scheme and the Affordable Housing Plan for the Development has been submitted and approved by the District Council.

1.3 The Owner shall implement the Development in accordance with the approved Affordable Housing Scheme and the approved Affordable Housing Plan and the Owner shall construct and Practically Complete the Affordable Housing in accordance with the approved Affordable Housing Scheme and the approved Affordable Housing Plan.

2. AMOUNT

2.1. No less than 30% of the Dwellings will be Affordable Housing Units (including First Homes).

3. MIX AND TENURE

3.1. The Owner covenants to the District Council that 3 of the Affordable Housing Units are to be identified in the Affordable Housing Scheme as wheelchair user dwellings and shall be constructed and delivered by the Owner in accordance with Part M4(3) (b), unless otherwise agreed by the District Council.⁵

4. DELIVERY

4.1. Not to Commence the Development until:

4.1.1. the Owner and a Registered Provider have entered into a binding legal agreement for the transfer of the Affordable Housing Land into the ownership of the Registered Provider; and

4.1.2. the Owner and the Registered Provider have entered into a binding contract for the construction and provision of the Affordable Housing Units

4.2. Not to Commence the Development until the legal interest in the Affordable Housing Land has been transferred into the ownership of a Registered Provider and the Owner and the Registered Provider have entered into a binding contract for the construction and provision of the Affordable Housing Units

4.3. No more than 50% of the Open Market Units shall be Occupied until the Affordable Housing Units have been constructed in accordance with the Planning Permission and the Registered Provider confirms said Affordable

⁵ To be confirmed

Housing Units are ready for residential occupation; and

- 4.4. No more than 50% (fifty per cent) of the Open Market Units shall be Occupied until the First Homes have been constructed and are ready for residential occupation in accordance with the Fifth Schedule

5. TRANSFER

5.1. Form of Transfer

The Owner will use reasonable endeavours to transfer the Affordable Housing Land with full title guarantee to a Registered Provider by way of:

- 5.1.1. A freehold transfer; or
- 5.1.2. The grant of a lease for a minimum of 125 (one hundred and twenty five) years at a nominal ground rent with service charge provisions as set out in this Agreement

WITH the benefit of full and free rights of access both pedestrian and vehicular over any relevant access road from the boundary of each of the relevant Affordable Housing Unit to any relevant adopted highway (and vice versa) and full and free unrestricted rights for all services and conducting media and drains or sewers to be laid and constructed to each relevant Affordable Housing Unit to a standard capable of adoption by the respective service providers and upon such further terms as may be agreed with the Registered Provider.

6. NOMINATIONS

- 6.1. The Owner will not transfer the Affordable Housing Land to a Registered Provider without first procuring an agreement with the Registered Provider that it will comply with the following provisions in perpetuity and uses best endeavours to secure said Registered Provider enters into a Nominations Agreement with the District Council:

- 6.1.1. Not to permit the occupation of any of the Affordable Housing Units otherwise than pursuant to an allocation through the District Council's choice based lettings scheme known as Kent Home Choice

7. RESTRICTION ON USE

- 7.1. The Affordable Housing Units will not be used or Occupied for any purpose other than for Affordable Housing in perpetuity, in accordance with the designated form of Affordable Housing as set out in the approved Affordable Housing Scheme and the approved Affordable Housing Plan, except for where those cases set out in Paragraph 6.12 of the Fifth Schedule shall apply
- 7.2. The Car Parking Spaces shall not be used or Occupied except for car parking by occupiers of the Affordable Housing Units and they shall be provided to such occupants free of any extra rent charge or fee (but providing that the occupants may be required to pay any reasonable service charge)

8. INFORMATION TO THE DISTRICT COUNCIL

- 8.1. The Owners agree to keep the District Council reasonably informed of the progress of any negotiations to dispose of the Affordable Housing Units pursuant

to this Second Schedule

9. PARTIES NOT BOUND BY THIS SCHEDULE

Unless otherwise expressly provided in this Deed, the provisions of this Schedule shall not be enforceable by or against:

- 9.1. subject to paragraph 10 of this Schedule below, against any Mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such Mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each "a Receiver") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such Mortgagee, chargee or Receiver;
- 9.2. a mortgagee of an occupant or lessee of an Affordable Housing Unit if such a mortgagee disposes of an Affordable Housing Unit pursuant to its powers to do so following a default of the terms of the mortgage;
- 9.3. any purchase of an Open Market Unit and his successors in title and his mortgagees;
- 9.4. any Undertaker occupying the Land or any part of the Land for the purposes of their undertaking; or
- 9.5. a Protected Tenant or any person deriving title from a Protected Tenant

10. Conditions for Compliance by Mortgagees of a Registered Provider

- 10.1. The Mortgagee will have given to the District Council notice of its intention to dispose of the Affordable Housing Units or any of them.
- 10.2. The Mortgagee will have used its reasonable endeavours to dispose of the Affordable Housing Units or any of them to a Registered Provider or to the District Council for a consideration which is not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses
- 10.3. If a disposal pursuant to paragraph 10.2 has not completed within a period of 12 (twelve) weeks from the date of service of the notice upon the District Council pursuant to paragraph 10.1, the Mortgagee shall be entitled to dispose of the Affordable Housing Units (or any of them) free from the provisions of this Deed relating to the Affordable Housing Units which provisions shall determine absolutely
- 10.4. If any Mortgagee has followed the procedures in this paragraph 10 and no sale has been achieved not only will the provisions of this Deed not affect the Mortgagee but they will also cease to apply to the Affordable Housing Units or any of them sold by such Mortgagee to the intent that it will not bind any successors in title.

11. Affordable Housing Contract

- 11.1. The Owner shall use reasonable and commercially prudent endeavours to enter into

an Affordable Housing Contract with the Registered Provider before Commencement of the Development on such terms as may be agreed between the Owner and the Registered Provider. The Affordable Housing Contract shall (unless otherwise agreed with the District Council) include as a minimum the following terms:

- 11.1.1. the design, construction and completion by the Owner of the Affordable Housing Units to a Serviced Condition, in accordance with the Planning Permission and the Affordable Housing Scheme;
- 11.1.2. the sale or grant of a lease or leases to the Registered Provider of not less than 125 years over the Affordable Housing Units together with car parking spaces as applicable or with a right to park;
- 11.1.3. a requirement that not less than 6 months before the Occupation of the Affordable Housing Units, the Registered Provider shall use reasonable and commercially prudent endeavours to enter into a Nominations Agreement with the District Council and shall submit to the District Council the Affordable Housing Marketing Plan;
- 11.1.4. the sale or grant of a lease by the Registered Provider to tenants and Occupiers in respect of the Affordable Housing Units in accordance with the Nominations Agreement and the Affordable Housing Marketing Plan;
- 11.1.5. that the Shared Ownership Housing Units should be sold through the Registered Provider by way of Shared Ownership Lease;

Provided that the provisions of sub-clauses 11.1.1 – 11.1.5 shall be subject to a mortgagee exclusion clause as detailed in paragraph 11.1.6 (3) below

11.1.6. that the transfer of the Affordable Housing Units to the Registered Provider shall include a restrictive covenant that the Affordable Housing Units shall not be Occupied other than as Affordable Housing and the restrictions and the obligations in this paragraph 11.1.6 shall not be binding or enforceable against:

1. any person who shall at any time acquire any legal interest in any Affordable Housing Unit pursuant to any statutory right of acquisition from time to time in force and any successors or other persons deriving title from them;
2. any person who has acquired any Affordable Housing Units as grantee or assignee of a Shared Ownership Lease and who has purchased a 100% share in the value of that Shared Ownership Housing Unit and any successors or other persons deriving title from them; and
3. a mortgagee or chargee or a receiver (including an administrative receiver) appointed by a mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) or any persons or

bodies deriving title through such mortgagee or chargee or Receiver.

12. FAILURE TO CONTRACT

12.1. If, having used reasonable and commercially prudent endeavours to enter into an Affordable Housing Contract with the approved Registered Provider in accordance with paragraph 11.1 of this schedule the Owner has failed to secure an Affordable Housing Contract containing the minimum terms set out in paragraph 11.1.1 to paragraph 11.1.5 (or such other terms agreed with the District Council) in respect of all or any of the Affordable Housing Units, then the Owner and the District Council shall work together to agree an alternative solution for the delivery of the Affordable Housing (or part thereof). The options may include the following:

12.1.1. the Owner may seek the approval of the District Council to enter into an Affordable Housing Contract with a different Registered Provider in respect of all or any part of the Affordable Housing Units and, within 6 months of obtaining that approval from the District Council, shall use reasonable and commercially prudent endeavours to enter into an Affordable Housing Contract with that Registered Provider for the provision of the Affordable Housing Units (or part thereof) in accordance with the terms of paragraph 11 or on such other terms as are agreed with the Council. **AND/OR**

12.1.2. the Owner shall serve written notice on the District Council together with evidence as reasonably required by the District Council of its attempts to contract with a Registered Provider in respect of all or that part of the Affordable Housing Units identified in the notice and shall offer to transfer to the Council such Affordable Housing Units on such terms as are agreed with the District Council. **AND/OR**

12.1.3. the Owner shall serve written notice on the District Council together with evidence as reasonably required by the District Council of its attempts to contract with a Registered Provider for the delivery of the Affordable Housing Units in respect of all or that part of the Affordable Housing Units identified in the notice. The District Council may then serve a counternotice on the Owner requiring payment of a Commuted Sum (the quantum of which shall be set out in the notice) instead of the Affordable Housing Units (or part thereof) as shall be specified in the notice (**Commuted Sum Notice**).

12.2. Following the payment of the Commuted Sum specified in the Commuted Sum Notice:

12.2.1. the Owner shall be entitled to develop Open Market Units in place of those Affordable Housing Units as are specified in the Commuted Sum Notice;

12.2.2. the Owner's obligations shall cease in relation to those Affordable Housing Units as are specified in the Commuted Sum Notice; and

12.2.3. the number of Affordable Housing Units required to be built pursuant to paragraphs 1 & 2 of this Schedule shall be adjusted accordingly.

- 12.3. Following the payment of the Commuted Sum specified in the Commuted Sum Notice and the completion and transfer of any Affordable Housing Units that remain to be constructed and transferred pursuant to the terms of this deed, the restriction on Occupation contained in paragraph 13 of this Schedule shall no longer apply.
- 12.4. The District Council shall apply any Commuted Sum received from the Owner solely for the purpose of the provision of Affordable Housing in the district of Dover.
- 12.5. In the event that any Commuted Sum paid to the District Council in accordance with this paragraph 12 of this Schedule remains unspent on the expiry of 10 years from the date of receipt by the Council of that sum, then the District Council shall repay that sum together with interest earned thereon (payable at the default interest rate) to the Owner within 21 Working Days of the end of the period of 10 years.

13. Restriction on Occupation of Open Market Units

- 13.1. Unless otherwise agreed with the District Council the Owner shall not Occupy or permit the Occupation of more than 75% of the Open Market Units until:
- 13.1.1. all of the Affordable Housing Units and First Homes have been Practically Completed and made ready for Occupation as Affordable Housing Units to a Serviced Condition, in accordance with the Planning Permission, and the approved Affordable Housing Scheme and the District Council has received written notification of this;
- 13.1.2. the Owner and the Registered Provider have entered into an Affordable Housing Contract in respect of the Affordable Housing Units and the Owner has transferred to the Registered Provider the freehold interest or a minimum of 125 year leasehold interest in the Affordable Housing Units on the terms set out in paragraph 11 of this Schedule and either:
1. the District Council has received evidence of this;
 2. the Owner has transferred to the District Council the Affordable Housing Units (or any part thereof) in accordance with paragraph 12 of this Schedule; or
 3. the Commuted Payment Sum has been paid to the Council further to service of the Commuted Sum Notice under paragraph 12.1.3 of this Schedule.2

THIRD SCHEDULE
The District Council's Covenants

1. To co-operate insofar as is reasonable with the Owner in the performance of its obligations under this Deed
2. The District Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the District Council shall agree
3. At the payee's request to return any part of the sums aforesaid which shall not have been used for the purposes set out above within a period of 10 (ten) years from the date of the payment of the last contribution provided that the District Council shall not be obliged to return any part of any contribution which has been spent or contractually committed prior to the date of the request
4. At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when the District Council is satisfied that such obligations have been performed

**FOURTH
SCHEDULE**

The County Council's Covenants

1. To co-operate insofar as is reasonable with the Owner in the performance of its obligations under this Deed
2. The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree
3. At the payee's request to return any part of the sums aforesaid which shall not have been used for the purposes set out above within a period of 10 (ten) years from the date of the Occupation of the last Dwelling to be so Occupied within the Development provided that the County Council shall not be obliged to return any part of any contribution which has been spent or contractually committed prior to the date of the request.

FIFTH SCHEDULE

FIRST HOMES

INTERPRETATION

Words and expressions in the Schedule shall have the same meaning as in the main Agreement unless otherwise stated. Within this Schedule the following words and expressions below shall mean as follows:-

| | |
|---------------------------------------|--|
| “Additional First Homes Contribution” | means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 6.8, 6.9 or 8 of this Schedule, the lower of the following two amounts: (a) 50% of the proceeds of sale; and (b) the proceeds of sale less the amount due and outstanding to any Mortgagee 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 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. |
| “Armed Services Member” | means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service |
| “Cluster” | shall mean a group of Affordable Housing Units which does not have contiguous boundaries with another group of Affordable Housing Units |
| “Compliance Certificate” | means the certificate issued by the District Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 6.2 applies the Eligibility Criteria (Local) |
| “Discount Market Price” | means a sum which is the Market Value discounted by at least 30% |
| “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 other than: a letting or sub-letting in accordance with paragraph 7 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 | means criteria which are met in respect of a purchase of a First |

| | |
|--------------------------------|---|
| “(National)” | Home if: the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National). |
| “Eligibility Criteria (Local)” | means criteria published by the District Council at the date of the relevant disposal of a First Home which are met in respect of a disposal of a First Home if: (a) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (Local) (if any); and (b) 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 Local Essential Worker |
| “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 Dwelling (and for the avoidance of doubt paragraph 8 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 7 |
| “First Home” | means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap |
| “First Homes Owner” | means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than: (a) the Owner; or (b) another 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 7 |
| “First Time Buyer” | means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003 |

| | |
|-----------------------------|--|
| "Income Cap (Local)" | means such local income cap as may be published from time to time by the Council and is in force at the time of the relevant disposal of the First Home |
| "Income Cap (National)" | means: eighty thousand pounds (£80,000) 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 |
| "Local Connection Criteria" | means: as set out in the [relevant local policy document(s)] or those who have Close Family living in the a District for a period of at least 3 years continuous at date of application. |
| ["Local Essential Worker"] | means a person who satisfies the definition of [Local Essential Worker] as set out in [relevant local policy documents] or such other categories of employment as may be published by the District Council from time to time as the ["Local Essential Worker criteria"] and is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such replacement criteria in operation at the time of the relevant disposal of the First Home shall be the "Essential Worker" criteria which shall apply to that disposal. |
| "Market Dwelling" | means any Dwelling which is not an Affordable Housing unit (including a First Home) |
| "Market Value" | means the open market value as assessed by a Valuer of Dwelling as confirmed to the District Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the 30% discount in the valuation |
| "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 |
| "Practical Completion" | means the stage reached when the construction of a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied |
| "Price Cap" | means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed £250,000.00 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 being a Registered Valuer appointed by the First Homes Owner and acting in an independent capacity |

1. OBLIGATIONS

Unless otherwise agreed in writing by the District Council, the Owner for and on behalf of itself and its successors in title to the Land with the intention that the following provisions shall bind the Site and every part of it into whosoever's hands it may come covenants with the District Council as below save that

- 1.1 paragraphs 2, 3, 4 and 5 shall not apply to a First Homes Owner;
- 1.2 paragraphs 6 and 7 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; and
- 1.3 Paragraph 8 applies as set out therein.

2. QUANTUM OF FIRST HOMES

2.1 25% the total number of the Dwellings on the Land (rounded up or down to the nearest whole Dwelling)] shall be identified reserved and set aside as First Homes in accordance with the approved Affordable Housing Plan and approved Affordable Housing Scheme and shall be provided and retained as First Homes in perpetuity subject to the terms of this Schedule.

3. CLUSTERING

3.1 The First Homes shall not be visually distinguishable from the Open Market Dwellings based upon their external appearance.

3.2 The size of Clusters shall be agreed in writing with the District Council as part of the Affordable Housing Plan.

4. TYPE AND DISTRIBUTION

The mix of First Homes provided within the Site shall be in accordance with

- 4.1 the Affordable Housing Scheme; and
- 4.2 the distribution in the Affordable Housing Plan

5. DEVELOPMENT STANDARD

5.1 All First Homes shall be constructed to no less than the standard applied to the Open Market Dwellings.

6. DELIVERY MECHANISM

6.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

- 6.1.1 the Eligibility Criteria (National); and
- 6.1.2 the Eligibility Criteria (Local)

6.2 If after a First Home has been actively marketed for at least 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) (and with the commencement and form of such marketing to be agreed in writing with the District Council prior to its commencement) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 6.1.2 shall cease to apply.

6.3 Subject to paragraphs 6.6 to 6.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

6.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

6.4.1 The District Council has been provided with evidence that:

6.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 6.2 applies meets the Eligibility Criteria (Local)

6.4.1.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and

6.4.1.3 the transfer of the First Home includes:

1. a definition of the "District Council" which shall be Dover District Council

2. a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clause[s] 6.1 to 6.9 of the [Supplemental] S106 Agreement a copy of which is attached hereto as the Annexure."

3. a definition of "[Supplemental] S106 Agreement" means the [supplemental] agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between (1) the District Council [and] (2) [and (3)]

4. a provision that the Dwelling 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 Dwelling or any part of it other than in accordance with the First Homes Provisions

5. a copy of the First Homes Provisions in an Annexure

6.4.2 The District Council has issued the Compliance Certificate and the District Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 6.3 and 6.4.1 have been met

6.5 On the first Disposal of each and every First Home to 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 Dover District Council of White Cliffs Business Park, Dover, Kent, CT16 3PJ or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the *disposition*"

6.6 The owner of a First Home (which for the purposes of this clause shall include the Developer and any First Homes Owner) may apply to the District Council to Dispose of it other than as a First Home on the grounds that either:

6.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 6.1 and 6.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 6.3 and 6.4.1; or

6.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 6.6.1 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

6.7 Upon receipt of an application served in accordance with paragraph 6.6 the District Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

6.8 If the District Council is satisfied that either of the grounds in paragraph 6.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 that the relevant Dwelling may be Disposed of:

6.8.1 to the District Council at the Discount Market Price; or

6.8.2 (if the District Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 6.10 which shall cease to apply on receipt by the District Council of payment where the relevant Dwelling is disposed of other than as a First Home

6.9 If the District Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 6.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 6.6 serve notice on the owner setting out the further steps it requires the owner 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). If at the end of that period the Owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the District Council in accordance with paragraph 6.6 following which the District Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

6.10 Where a Dwelling is Disposed of other than as a First Home or to the District Council at the Discount Market Price in accordance with paragraphs 6.8 or 6.9 above the Owner of the First Home shall pay to the District Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

6.11 Upon receipt of the Additional First Homes Contribution the District Council shall:

6.11.1 within 20 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 6.5 where such restriction has previously been registered against the relevant title

apply all monies received towards the provision of Affordable Housing

6.12 Any person who purchases a First Home free of the restrictions in the Fifth Schedule of this Deed pursuant to the provisions in paragraphs 6.9 and 6.10 shall not be liable to

pay the Additional First Homes Contribution to the District Council.

7. USE

Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 7.1 – 7.4 below.

7.1 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 the First Homes Owner notifies the District Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

7.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the District Council and the District Council consents in writing to the proposed letting or sub-letting. The District Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

(a) 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 employment;

(b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;

(c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;

(d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;

(e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and

(f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

(g) A letting or sub-letting permitted pursuant to paragraph 7.1 or 7.2 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

Nothing in this paragraph 7 prevents 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.

8. MORTGAGEE EXCLUSION

The obligations in paragraphs 1-7 of this Deed in relation 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:

8.1 such Mortgagee or Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and

8.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 8.3

8.3 following the Disposal of the relevant First Home the Mortgagee or Receiver 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 pay to the District Council the Additional First Homes Contribution.

8.4 following receipt of notification of the Disposal of the relevant First Home the District Council shall:

8.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and

8.4.2 apply all such monies received towards the provision of Affordable Housing

SIXTH SCHEDULE

OPEN SPACE

1 The Owner covenants with the District Council as follows:

1.1 To provide and retain the Open Space in accordance with this paragraph for the life of the Development.

1.2. Submit to the District Council for approval the Open Space Specification and Open Space Method Statement prior to Commencement of Development and shall not Commence the Development until the Open Space Specification and the Open Space Method Statement have been approved;

1.3 Construct the Open Space in accordance with the approved Open Space Specification and the approved Open Space Method Statement (as the same may have been varied from time to time with the prior written approval of the District Council)

1.4 Not allow Occupation of the Development until the Open Space has been completed to the reasonable satisfaction of the District Council.

1.5 cleanse, maintain and keep in repair and working order the surface of and the lighting and drainage to the Open Space together with any furniture (as approved by the District Council) and hard and soft landscaping (as approved by the District Council);

1.6 maintain and keep in repair and working order any furniture and structures which have been approved by the District Council;

1.7 maintain and keep in repair and working order the hard and soft landscaping which have been approved by the District Council;

1.8 to dispose of the Open Space to the Management Company and on the following terms:

a) for nil consideration;

b) with vacant possession on completion;

c) for an estate in fee simple absolute in possession;

d) subject to the matters specified in the title to the Open Space (other than entries securing monies);

e) subject to a covenant in favour of the transferor not to manage and maintain the Open Space otherwise than in accordance with the Open Space Specification

f) subject to a further covenant in favour of the transferor to manage and maintain the Open Space in accordance with the Open Space Specification

SEVENTH SCHEDULE
Dispute Resolution Procedure

- 1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to paragraph 1 of this Schedule or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error 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 in equal shares.
- 3 Any expert howsoever appointed shall be subject to the express requirement that a decision was 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 twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within 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 ten Working Days.
- 5 The provisions of this clause shall not affect the ability of the District Council or County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum,

damages, any other means of enforcing this Deed and consequential and interim orders and relief.

APPENDIX 1
Draft Conditions

APPENDIX 2
The Plan

APPENDIX 3
The Visibility Splay Management Plan

Executed as a deed by affixing the)
Common seal of **DOVER DISTRICT**)
COUNCIL in the presence of:)

Authorised Signatory

The Common seal of **THE KENT COUNTY**)
COUNCIL was affixed in the presence of:)

Authorised Signatory

Executed as a deed by)
CLASSICUS ESTATES LTD)

Signed by a Director:

.....

In the witness of:

.....

Address:

.....

Occupation: