

DATE:

1 June

2023

DOVER DISTRICT COUNCIL

and

THE KENT COUNTY COUNCIL

and

[REDACTED]

and

GRANGE FARMS

LIMITED

and

THE RICHBOROUGH ESTATES

PARTNERSHIP LLP

and

BDW TRADING LIMITED

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

Relating to the development
(known as Phase 2) of land
south west of Sandwich Road,
Sholden, Deal

Planning Application
Reference: 22/00652

Planning Appeal Reference:
APP/X2220/W/23/3315262

- 5 The County Council is the County Planning Authority and the Local Education Authority and is responsible for the provision of education, library, social, youth and waste services for the area in which the Land is situated.
- 6 The Planning Application was submitted by the Promoter to the District Council seeking permission to undertake the Development and the Promoter submitted the Appeal against non-determination of the Planning Application.
- 7 The parties have agreed to enter into 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.

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
- “the Affordable Housing Land” means the land within the Land upon which the Affordable Housing Units are to be constructed
- “Affordable Housing Scheme” means the scheme for the provision of Affordable Housing which shall include details of:
- (i) the numbers, type, tenure and location on the Land of the Affordable Housing;

- (ii) the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the market housing
- (iii) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced;
- (iv) the arrangements for the transfer of the Affordable Housing to a Registered Provider or the management of the Affordable Housing if no Registered Provider is involved; and
- (v) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing
- (vi) details of the provision of Wheelchair Accessible Units, provided that the total number of Wheelchair Accessible Units shall not be required to be more than 1 (one)

“Affordable Housing Units”

means that part of the Development comprising 30% of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable

Housing Scheme, 55% of which shall be Affordable Rented Housing 25% of which shall be First Homes and 20% of which shall be Shared Ownership Housing Units and “an Affordable Housing Unit” shall be construed accordingly

“Affordable Rented Housing”

means Affordable Housing for rent as described in paragraph a) to the definition of “Affordable Housing” in Annex 2: Glossary to the NPPF where the 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 charges where applicable)

“Appeal”

means the planning appeal lodged with the Planning Inspectorate against non-determination of the Planning Application (given reference number APP/X2220/W/23/3315262) and to be determined by the Secretary of State or an Inspector appointed by the Secretary of State for the purpose

“Applicable Flat”

means a flat constructed pursuant to the Planning Permission excluding any such flat which has only one room which may by design be used as a bedroom and has a gross internal area of less than 56 square metres or is used as Sheltered Accommodation

“Applicable House”

means a house constructed pursuant to the Planning Permission excluding any such house which has only one room which may by design be used as a bedroom and has a gross internal area of less than 56 square metres or is used as Sheltered Accommodation

“Commencement of the Development”

means the Development on the Land by the carrying out of a material operation pursuant to the Planning Permission 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 and ecological investigations and mitigation works
- (d) investigations for the purpose of assessing ground conditions
- (e) remedial work in respect of any contamination or other adverse ground conditions
- (f) diversion and laying of services
- (g) erection of temporary means of enclosure
- (h) the temporary display of site notices or advertisements

shall not amount to Commencement of the Development and all references to Commence Development and Commencement shall be construed accordingly

“Community Learning Contribution”

means the sum of £16.42 per Dwelling paid as a contribution towards additional resources, equipment (including IT equipment) and classes for new learners at Deal Adult Education Centre

“the County Council Costs”

means the agreed contribution to the County Council’s proper and reasonable legal and administrative costs for the preparation and execution of this Deed

“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

“Cycleway Contribution”

means a financial contribution in the sum of £120,000 towards the provision of and improvements to pedestrian and cycle connections in the vicinity of the Development to create safe cycle access to Deal town centre and surrounding leisure facilities which may include but not

be limited to:

- 1) upgrade, alterations and improvements (including any signing/lining and widening required) to existing Public Footpath EE392A between The Street and Hyton Drive to enable its use by cyclists in addition to pedestrians; and/or
- 2) upgrade, alterations and improvements (including any signing/lining, kerb alterations and widening required) to Public Footpath EE391 (between Vicarage Lane and London Road) and Public Footpath ED56 (between London Road and Church Lane); and

for the avoidance of doubt, the contribution shall also be applied (at the County Council's discretion) to compensate the County Council for all work done to secure such improvements and any upgrade necessary including without limitation associated legal costs and the processing and obtaining of all requisite consents, orders, agreements, permissions to implement the scheme

"DDA Compliant"

means compliant with the wheelchair accessibility requirements of the Equalities Act 2010 and Building Regulations approved document Part M4(2): Accessible and Adaptable Dwellings

"Decision Letter"

means the decision letter issued by the Inspector or the Secretary of State confirming whether or not the Appeal is allowed

"the Development"	the development of the Land by the erection of up to 155 Dwellings for use in the manner as set out in the Planning Application
"the Disputes Resolution Procedure"	means the procedure referred to in clause 13 and set out in the Fifth Schedule hereto
"the District Council's Costs"	means the sum of £880 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
"Dwelling"	means a residential unit (whether an Applicable Flat/Applicable House or otherwise) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
"Head of Planning, Regeneration and Development"	means the officer of the District Council from time to time that is responsible for planning, regeneration and economic development
"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

“Inspector”

means the planning inspector appointed by the Planning Inspectorate/Secretary of State in determination of the Appeal

“Interest”

interest at 4 per cent above the base rate of the Bank of England from time to time

“the Land”

means the land registered at the Land Registry under title numbers TT13461 and K195165 and known as land on the south west side of Sandwich Road, Sholden, Deal against which this Deed may be enforced as shown more particularly edged red on the attached Plan 1

“the Library Contribution”

means the sum of £55.45 per Dwelling paid as a contribution toward the provision of additional resources, equipment and book stock (including digital infrastructure and resources) at Deal Library

“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”

means a scheme to be submitted to and approved in writing by the District Council, which identifies:

- (i) the future management and maintenance requirements of the Open Space
- (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 the Management Company
- (iv) a mechanism for the periodic review with the District Council and where necessary amendment of the Management Plan
- (v) in relation to the Strategic Landscaping details of the management and maintenance of the planting for a 15 year period and measures so that any planting that fails along the outer boundaries of the Land will be replaced during the period of 15 years from the first planting

“Monitoring Fee”

means the sum of £239 paid as a contribution towards the costs of

monitoring the compliance of the Development with the terms of this Deed

“NHS Contribution”

means the sum of £864.00 per Dwelling paid as a contribution towards the cost of works to create additional capacity in general practice premises serving the Development

“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 in a Dwelling to a third party Occupation commences on 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 Dwellings”

means residential units constructed on the Land pursuant to the Planning Permission that are not Affordable Housing Units

“the Open Space”

means the informal open space and landscaping including the Play Area and the Strategic Landscaping for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification

such Open Space to be in the general location as shown coloured green on Plan 1 with the precise boundaries and areas to be determined by the reserved matters approvals

“the Open Space Works Specification”

means a specification for the laying out of the Open Space to be agreed in writing between the Owner and the District Council before the Commencement of the Development and which shall include (i) specification and arrangement of tree planting and establishment of other vegetation and (ii) measures of site preparation to ensure successful establishment of the landscape planting

“Outdoor Sports Contribution”

means the financial contribution to be calculated in accordance with the following:

- (i) 1 bedroom Dwelling - £208.43
- (ii) 2 bedroom Dwelling - £353.01
- (iii) 3 bedroom Dwelling - £438.08
- (iv) 4+ bedroom Dwelling - £542.38

as a contribution towards the costs of improvements to sports pitches in the Deal area and serving the proposed residents of the Development

“Owner”

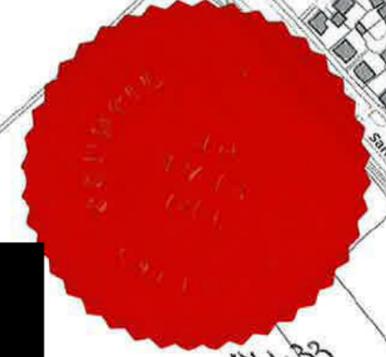
means the First Owner and the Second Owner including their respective successors in title and any person deriving title from each of them

“Plan 1”

means drawing number 359-SK08 entitled “Green Space Provision” and annexed to this Deed

THE COMMON SEAL OF THE KENT COUNTY COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF:-

Authorised Signatory

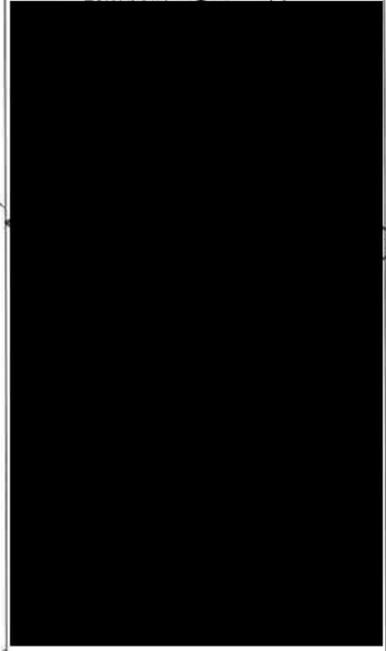


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PLANNING

- S106 Site boundary
- Residential development area
- Green space - amenity open space
- Strategic landscaping (0.66ha)
- SuDS features (0.17ha)
- Proposed play space (400m² LEAP, 20m buffer to buildings)



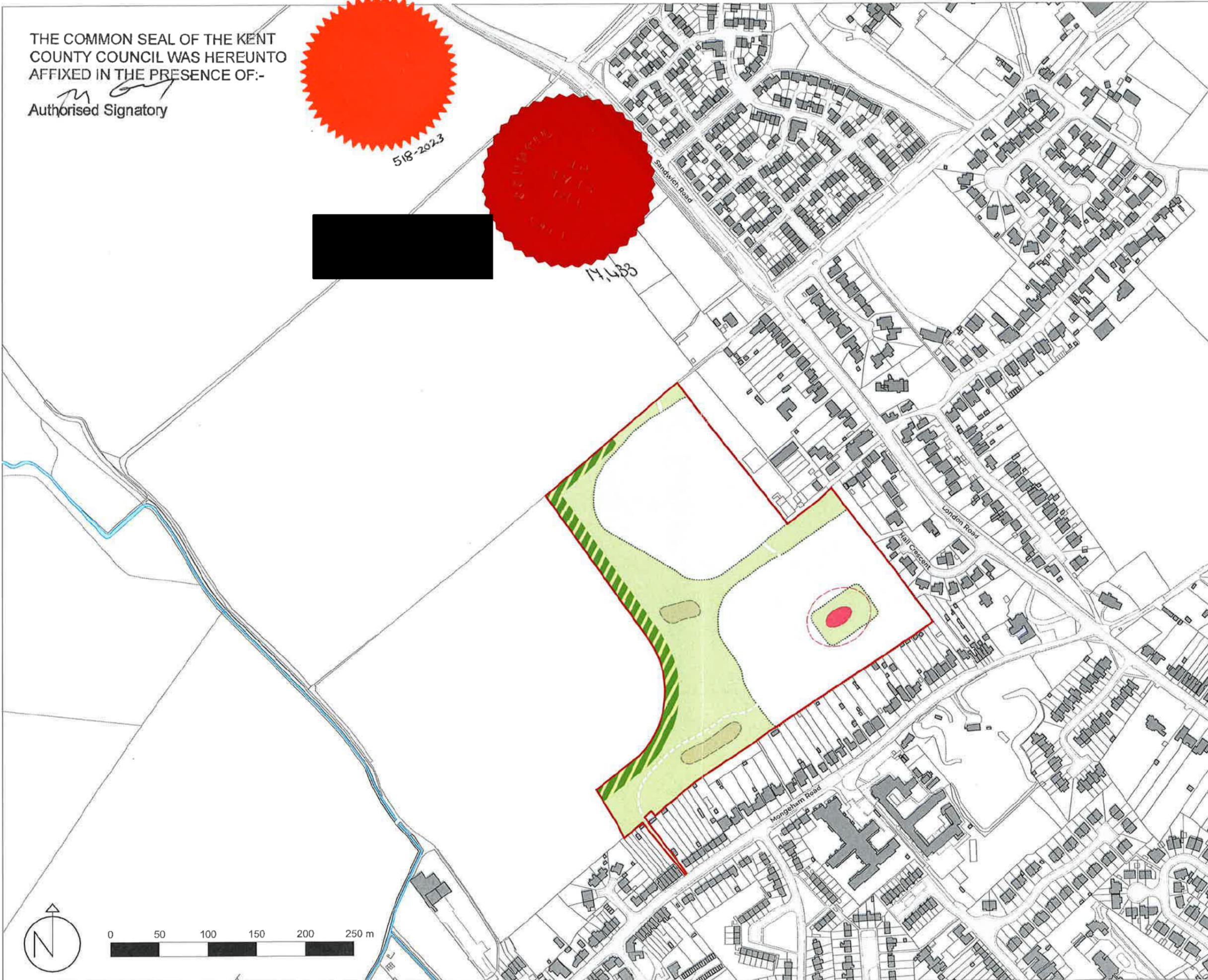
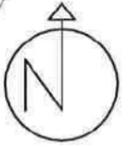
Rev.	Date	Description
		PHASE 2: Land south west of Sandwich Road, SHOLDEN
Green Space Provision		
Job ref:	Drawing number:	Revision:
359	SK08	-
Scale:		Date:
1:2,500 @ A2		March 2023



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 7 Buttermarket
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“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 **22/00652**

“the Planning Permission”

means the planning permission which may be granted by the Secretary of State or its Inspector pursuant to the Appeal in respect of the Planning Application

“the Play Area”

means a local equipped area for play for use by the general public to be located as shown on Plan 1 and to be provided on the Site in accordance with the Planning Permission

“the Promotion Agreement”

means a promotion agreement dated 27 September 2019 in respect of the Land made between the Owner and the Promoter

“a 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 an Affordable Housing Unit, or
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit), or
- (c) was granted a shared ownership lease (or similar arrangement where a share

of an Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of an Affordable Housing Unit and has subsequently purchased all the remaining shares from the Registered Provider so that the tenant owns the entire Affordable Housing Unit

“PROW Contribution”

means a financial contribution in the sum of £23,710 towards improvements to footpaths EE390, ED39 and ED389 in the vicinity of the Development

“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 Homes England or any other body including the District Council who may provide or fund affordable housing from time to time;

“RP Affordable Housing Units”

means those Dwellings which are to be provided through a Registered Provider as either Affordable Rented Housing Units or Shared Ownership Housing Units.

“Secondary Education Contribution”

means the sum of £1,135.00 per Applicable Flat and £4,540.00 per Applicable House paid as a contribution towards the expansion of secondary schools in the Deal and Sandwich non-selective planning group

“Secretary of State”

means the Secretary of State for Levelling Up, Housing and Communities or such other Minister of His Majesty's Government for the time being having or discharging the functions of the Secretary of State for the purposes of the Act

“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 Lease”

means a lease in the form of the Homes England's model shared ownership lease and on terms that permit part purchase of the market value of the equity in a unit in multiples of 5% up to a maximum of 100% together with rent payable for the open market rack rental value of the unpurchased percentage of the equity in the unit up to a value which does not exceed the rent set by Homes England from time to time (or such other rent or form of lease approved in writing by the District Council).

“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.

“Sheltered Accommodation”

means a Dwelling that is specifically designed for and legally restricted to occupation by people aged 55 and above to allow them to live independently.

“Social Care Contribution”

means the sum of £146.88 per Dwelling

paid as a contribution towards the provision of specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting community facilities, sensory and changing places within Dover District

“SPA Contribution”

means the financial contribution to be calculated in accordance with the following:

- (i) 1 bedroom Dwelling - £268
- (ii) 2 bedroom Dwelling - £537
- (iii) 3 bedroom Dwelling - £805
- (iv) 4+ bedroom Dwelling - £1,074

as a contribution towards the Thanet Coast and Sandwich Bay Special Protection Area Mitigation Strategy

“Statutory Undertakers”

means statutory undertakers as defined in Article 2 of the Town and Country Planning (General Permitted Development) Order 2015.

“Strategic Landscaping”

means that part of the Open Space to be laid out as landscaping on the north west and south west boundaries of the Land in the location as shown on Plan 1 with the precise boundaries to be determined by the reserved matters approvals

“Travel Plan”

means the travel plan to be submitted to and approved by the County Council pursuant to the relevant condition attached to the Planning Permission

“Travel Plan Monitoring Fee”

means the sum of £948.00 to be used by

the County Council towards the monitoring of the Travel Plan

“Trigger Date”

means each date upon which a Trigger Event occurred

“Trigger Event”

an event that triggers a payment of any sum by the Owner and/or the coming into effect of any other obligation under this Deed

“Waste Contribution”

means the sum of £54.47 per Dwelling paid as a contribution towards the provision of additional resources and improvements to the Dover Household Waste Recycling Centre facility in order to increase capacity.

“Wheelchair Accessible Units”

means the DDA Compliant Affordable Housing Units which are wheelchair accessible units in accordance with Building Regulations Part M4(2): Accessible and Adaptable Dwellings (or such replacement standard in force at the time of construction of the units) to meet the housing needs of those identified with mobility needs

“Youth Services Contribution”

means the sum of £65.50 per Dwelling paid as a contribution towards the provision of additional resources and services for the Dover Youth Service, to be delivered locally through outreach provision, and at the District Youth/Family Hub in Deal

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, Section 1 of the Localism Act 2011 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 Owner 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 and the County Council against the Owner.

4 **CONDITIONALITY**

This Deed is conditional on:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of the Development

save for the provisions of clauses: 1, 2, 3, 4, 5.3.1, 5.4, 8 to 16 and any obligations in this Deed expressly requiring compliance prior to the Commencement of the Development which shall come into effect immediately upon completion of this Deed.

5 **THE OWNER'S AND PROMOTER'S COVENANTS**

5.1 The Owner covenants with the District Council to observe the restrictions and perform the obligations set out in the First Schedule and the Second Schedule.

5.2 The Owner covenants with the County Council to observe the restrictions and perform the obligations set out in 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 not later than 14 (fourteen) days of any Trigger Date to notify the District Council and the County Council as applicable 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 or the County Council to provide the District Council or the County Council with such records and information as the District Council or the County Council reasonably request to enable the District Council or the County 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

5.4 The Promoter covenants with the District Council and separately with the County Council:

5.4.1 to pay the District Council's Costs on the completion of this Deed.

5.4.2 to pay the County Council's Costs on the completion of 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 and the obligations on its part included in the Second 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 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 otherwise withdrawn or, without the consent of the Owner it is modified by any statutory procedure or if the Planning Permission expires prior to the Commencement of the 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 then unless agreed otherwise in writing between the District Council and the Owner this Deed 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 Deed 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 the District Council it should be addressed to the Head of Planning, Regeneration and

Development quoting reference: DOV/22/00652 and in the case of the County Council marked for the attention of the Office of the General Counsel quoting reference: KEN001:200572.

- 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.
- 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 This Deed shall not be enforceable against owner-occupiers (nor any mortgagee of an owner-occupier) or tenants of individual dwellings constructed pursuant to the Planning Permission nor against those deriving title from them, except in respect of the Second Schedule paragraph 6 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this Deed and the First Schedule paragraphs 12.9 (i) and (ii) which shall remain enforceable against the owner of a Dwelling in so far as there is a breach of that provision in relation to the Dwelling in which such person has an interest.
- 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.
- 8.17 If in determining the Appeal the Secretary of State or the Inspector expressly states in the Decision Letter that any planning obligation contained in this Deed:
- 8.17.1 is not a material planning consideration; or
 - 8.17.2 can be given no weight in determining the Appeal; or
 - 8.17.3 does not constitute a reason for granting the Planning Permission in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

then such planning obligation 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

- 8.18 BDW consents to the giving of the obligations by the Owner in relation to the Land and acknowledges that the Land is bound by the restrictions and obligations contained in this Deed and that this Deed will be binding on successors in title to the Owner PROVIDED THAT BDW shall have no liability under this Deed unless or until it becomes a successor in title to the Owner in relation to the Land

- 8.19 The Promoter consents to the giving of the obligations by the Owner in relation to the Land and acknowledges that the Land is bound by the restrictions and obligations contained in this Deed and that this Deed will be binding on successors in title to the Owner PROVIDED THAT the Promoter shall have no liability under this Deed (save for clause 5.4) unless or until it becomes a successor in title to the Owner in relation to the Land

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 sums which become payable to the District Council under this Deed (other than the District Council's Costs) shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable. Any sums which become payable to the County Council under this Deed (other than the County Council's Costs) shall be increased by an amount equivalent to the increase in the County Council Index from April 2020 @ 360.3 until the date on which the sum is paid save for the Cycleway Contribution, the PROW Contribution and the Travel Plan Monitoring Fee which shall be increased by an amount equivalent to the increase in the County Council Index from the date of this Deed until the date on which the 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 and the County Council to give the District Council and the County Council immediate written notice of any change in ownership of any of its interests in the Land (SAVE FOR the transfer of a completed Dwelling) 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 Fifth 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 save in the case of manifest error.

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 MORTGAGEE PROTECTION

15.1 For the avoidance of doubt, this clause 15 applies only to the mortgagee or chargee or Receiver of a Registered Provider.

15.2 The provisions of paragraph 6 of the Second Schedule shall not be binding on a mortgagee or chargee (or any receiver or manager (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 RP Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

15.2.1 such mortgagee, chargee or Receiver shall first have given written notice to Head of Planning, Regeneration and Development at the District Council of its intention to dispose of the RP Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the RP Affordable Housing Units(s) to another Registered Provider or to the District Council for a consideration 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; and

15.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee and Receiver shall be entitled to dispose of the RP Affordable Housing Unit(s) free from the provisions of paragraph 6 of the Second Schedule which provisions shall determine absolutely.

16. JURISDICTION

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

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

FIRST SCHEDULE

The Owner covenants with the District Council and the County Council as follows:

1. To pay 50% of the Secondary Education Contribution, 100% of the PROW Contribution, 50% of the Cycleway Contribution, 50% of the Community Learning Contribution, 50% of the Social Care Contribution, 50% of the Library Contribution, 50% of the Waste Contribution and 50% of the Youth Services Contribution to the County Council prior to the first Occupation of the 1st Dwelling to be Occupied.
2. Not to permit the Occupation of any Dwelling unless and until the payments referred to at paragraph 1 above have been paid to the County Council.
3. To pay the remaining 50% of the Secondary Education Contribution, the remaining 50% of the Cycleway Contribution, the remaining 50% of the Community Learning Contribution, the remaining 50% of the Social Care Contribution, the remaining 50% of the Library Contribution, the remaining 50% of the Waste Contribution and the remaining 50% of the Youth Services Contribution to the County Council prior to the first Occupation of 50% of the Dwellings.
4. Not to permit the Occupation of more than 50% of the Dwellings unless and until the payments referred to at paragraph 3 above have been paid to the County Council.
5. To pay 50% of the NHS Contribution and 50% of the Outdoor Sports Contribution to the District Council prior to the Occupation of 25% of the Dwellings.
6. Not to permit the Occupation of more than 25% of the Dwellings until 50% of the NHS Contribution and 50% of the Outdoor Sports Contribution has been paid to the District Council.
7. To pay the remaining 50% of the NHS Contribution and the remaining 50% of the Outdoor Sports Contribution to the District Council prior to the Occupation of 50% of the Dwellings.

8. Not to permit the Occupation of more than 50% of the Dwellings unless and until the payments referred to at paragraph 7 above have been paid to the District Council.
9. To pay the SPA Contribution to the District Council prior to the Commencement of Development.
10. Not to permit the Commencement of Development unless and until the SPA Contribution has been paid to the District Council.
11. To pay the Monitoring Fee to the District Council for each Trigger Event that occurs under this Deed. Payment to be made when notification of any Trigger Event is given to the District Council in accordance with clause 5.3.2.
- 12.1 Prior to Commencement of the Development to submit to the District Council for approval the Open Space Works Specification and the Management Plan.
- 12.2 Prior to Commencement of the Development to submit to the District Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space.
- 12.3 The Strategic Landscaping shall be laid out and planted in the first planting season after the Commencement of Development in complete accordance with the approved Open Space Works Specification.
- 12.4 Not to permit or allow the Occupation of more than 75% of the Dwellings until the remainder of the Open Space (other than the Strategic Landscaping) has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.
- 12.5 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the District Council of completion and to request that the District Council inspects the Open Space within thirty Working Days of such notification.

- 12.6 If upon inspection of the Open Space the District Council identifies any works which are necessary to bring the Open Space up to the standard required by the approved Open Space Works Specification to complete such works as soon as reasonably practicable.
- 12.7 To maintain the Open Space in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 12.8 below has been completed.
- 12.8 Not to permit the Occupation of more than 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 District Council under the approved Management Plan and on the terms set out in Appendix 1.
- 12.9 To 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 and maintaining repairing and as necessary renewing the Open Space in accordance with the approved 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 12.9(i) and 12.9(ii) of the First Schedule.
- 12.10 Not to amend the approved Management Plan without the District Council's written consent.
- 12.11 Not to wind up the Management Company or alter its constitution without the prior written consent of the District Council unless the whole of the Development shall have been demolished or unless the District Council have otherwise first agreed.
13. To pay the Travel Plan Monitoring fee to the County Council prior to Commencement of the Development.
14. Not to Commence Development unless and until the Travel Plan Monitoring Fee has been paid to the County Council.

SECOND SCHEDULE

Affordable Housing

1. In this Schedule, the following expressions shall have the following meanings:

Additional First Homes Contribution: the sum to be paid by the Owner to the District Council pursuant to paragraph 7.11 of this Schedule in lieu of the provision of all or any of the First Homes as specified by the District Council and which shall be the lower of the following two amounts:

- (a) 30% 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:

- a) a member of the Royal Navy, the Royal Marines, the British Army or the Royal Air Force;
- b) a former member of the above within the five years before the purchase of the First Home Unit;
- c) a divorced or separated spouse or civil partner of a member or former member of the above; or
- d) a spouse or civil partner of a deceased member or former member of the above whose death was caused wholly or partly by their service.

Compliance Certificate: the certificate issued by the District Council confirming that a First Home is being Disposed of to a purchaser meeting the Eligibility Criteria (National) and, unless paragraph 7.2 applies, the Eligibility Criteria (Local).

Discount Market Price: a sum which is the Market Value discounted by 30%.

Disposal: a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Homes other than:

- (a) a letting or subletting in accordance with paragraph 8.3
- (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): criteria which are met in respect of a purchase of a First Home 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 exceed the Income Cap.

Eligibility Criteria (Local): criteria (if any) published by the District Council at the date of the relevant Disposal of a First Homes Unit 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; and
- (b) any or all of the following criteria 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);

- (ii) the purchaser is (or, in the case of a joint purchase, at least one of the joint purchasers is) an Armed Services Member

it being acknowledged that at the date of this agreement the Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home

Exempt Disposal: the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner on 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) a 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 on divorce, annulment or dissolution of the marriage or civil partnership, or the making of a nullity separation or presumption of death order; and
- (d) a Disposal to a trustee in bankruptcy before sale of the First Homes (and for the avoidance of doubt paragraph 9 shall apply to such sale).

First Home: 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 and the term "First Homes Unit" shall be construed accordingly

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

- (a) the Owner;
- (b) another owner or other entity to which the freehold interest or leasehold interest in a First Home, or 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; and
- (c) the tenant or subtenant of a permitted letting under paragraph 8.3.

First Time Buyer: as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.

Income Cap: eighty thousand pounds (£80,000.00) or such income cap as the Secretary of State may publish from time to time and is in force at the time of the relevant Disposal of the First Home.

Local Connection Criteria: means such local connection criteria as the Council may publish 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. Any such replacement criteria in operation at the term of the relevant Disposal of the First Home shall be the "Local Connection Criteria" which shall apply to that Disposal.

Market Value: the open market value as assessed by a Valuer of a Open Market Dwelling as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standard (January 2014 or any replacement guidance).

Mortgagee: 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 Sharia-compliant finance).

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. Practically Complete and Practically Completed shall be construed accordingly.

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 Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State.

SDLT: Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect

Valuer: 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.

2. Affordable Housing Scheme

- 2.1 The Owner shall submit the Affordable Housing Scheme to the District Council for approval prior to the Commencement of Development and to

thereafter provide the Affordable Housing in accordance with the approved scheme

- 2.2 The Owner shall not permit the Commencement of Development unless and until the Affordable Housing Scheme has been approved by the District Council.
3. No more than 50% of the Open Market Dwellings shall be Occupied until written notice has been given to the District Council that 50% of the Affordable Housing Units have:
 - 3.1 been constructed in accordance with the Planning Permission;
 - 3.2 been made ready for residential occupation;
 - 3.3 been transferred to the Registered Provider in the case of the RP Affordable Housing Units
4. No more than 80% of the Open Market Dwellings shall be Occupied until written notice has been given to the District Council that all of the Affordable Housing Units have:
 - 4.1 been constructed in accordance with the Planning Permission;
 - 4.2 been made ready for residential occupation;
 - 4.3 been transferred to the Registered Provider in the case of the RP Affordable Housing Units
5. The transfer of the RP Affordable Housing Units referred to at paragraphs 3.3 and 4.3 above shall include the following:
 - 5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
 - 5.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the

adjoining land up to and abutting the boundary to the Affordable Housing Land, all such services to be connected to the mains; and

5.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.

6. From the Date of Practical Completion of the RP Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the approved Affordable Housing Scheme, save that this obligation shall not be binding on:

6.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or

6.2 a mortgagee chargee or Receiver of a Registered Provider where clause 15.2.2 of this Deed applies, or

6.3 purchaser from a mortgagee of an individual RP Affordable Housing Unit pursuant to any default by the individual mortgagor.

7. **Delivery of First Homes**

7.1 Subject to the provisions of Paragraph 7.2, 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 persons meeting

(a) the Eligibility Criteria (National); and

(b) the Eligibility Criteria (Local) (if any);

7.2 If after any First Home has been actively marketed for three months (that period to expire no earlier than three months before Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 7.1 (b) shall cease to apply to that First Home.

7.3 Subject to paragraph 7.6 to paragraph 7.11, no First Home shall be Disposed of (whether on the 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.

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

- (a) the District Council has been provided with evidence that:
- (i) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 7.2 applies meets the Eligibility Criteria (Local) (if any);
 - (ii) the dwelling is being Disposed of as a First Home at the Discount Market Price; and
 - (iii) the transfer of the First Home includes a definition of "the Council" as Dover District Council of Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ, a definition of "First Homes Provisions" as "the provisions set out in the Second Schedule of the section 106 agreement dated, a copy of which is attached as the Annexure, and a provision that the First Homes is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not Dispose of the property or any part thereof other than in accordance with the First Homes Provisions;
- (b) 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 7.3 and 7.4(a) have been met.

7.5 On the first Disposal of each and every First Homes Unit to apply to the Chief Land Registrar pursuant to Rule 91 of Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Homes Unit 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 the District Council or their conveyancer that the provisions of clause [NUMBER] (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."

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

- (a) the Dwelling has been actively marketed as a First Homes for six months in accordance with paragraph 7.1 and paragraph 7.2 (and in the case of a first Disposal, the six months shall be calculated from a date no earlier than six months before Practical Completion) and reasonable and commercially prudent endeavours have been made to Dispose of the Dwelling as a First Homes but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraph 7.3 and paragraph 7.4(a); or
- (b) requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 7.6(a) before being able to Dispose of the Dwelling other than as a First Homes Unit will be likely to cause the First Homes Owner undue hardship.

7.7 On receipt of an application served in accordance with paragraph 7.6, the District Council has the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.

7.8 If the Council is satisfied that either of the grounds in paragraph 7.6 have been made out, it shall confirm in writing within 28 days of receipt of the written request made in accordance with paragraph 7.6 that the relevant Dwelling may be Disposed of:

- (a) to the Council at the Discount Market Price; or
- (b) (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home.

7.9 On the issue of that written confirmation outlined in paragraph 7.8, the obligations in this Deed which applied to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 7.11 which shall cease to apply on receipt of payment to the District Council where the relevant Dwelling is Disposed of other than as a First Home.

7.10 If the Council does not wish to acquire the relevant Dwelling itself, and is not satisfied that either of the grounds in paragraph 7.6 have been made out, then it shall within 28 days of receipt of the written request made in accordance with paragraph 7.6 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 months). If at the end of that period the Owner has been unable to Dispose of the

Dwelling as a First Home, they may serve notice on the District Council in accordance with paragraph 7.6 confirming that no such Disposal has taken place and the Owner shall then be free to dispose of the relevant Dwelling as an Open Market Dwelling..

- 7.11 Where a Dwelling is Disposed of other than as a First Home the Owner of the First Home shall pay to the District Council immediately on receipt of the proceeds of sale the Additional First Homes Contribution.
- 7.12 On receipt of the Additional First Homes Contribution, the District Council shall:
- (a) within 5 Working Days of that receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 7.5 where that restriction has previously been registered against the relevant title; and
 - (b) apply all monies received towards the provision of Affordable Housing.
- 7.13 Any person who purchases a First Home free of the restrictions in the Second Schedule of this Deed pursuant to the provisions of paragraph 7.10 and paragraph 7.11 shall not be liable to pay the Additional First Homes Contribution to the District Council.

8. Use of First Homes

- 8.1 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sublet or otherwise Disposed of other than in accordance with the terms of this Deed provided that letting or subletting shall be permitted in accordance with paragraph 8.2 to paragraph 8.5 below.
- 8.2 Notwithstanding the provisions of Paragraph 8.3 a First Homes Owner may let or sublet their First Homes Unit for a fixed term of no more than two years provided that the First Homes Owner notifies the District Council in writing before the First Home is Occupied by the prospective tenant or subtenant. A First Homes Owner may let or sublet their First Homes pursuant to this paragraph more than once during the First Homes Owner's period of ownership but the aggregate of such lettings or sublettings during the First Homes Owner's period of ownership may not exceed two years.

8.3 A First Homes Owner may let or sublet their First Home for any period provided that a First Homes Owner notifies the District Council and the District Council consents in writing to the proposed letting or subletting. The District Council covenants not to unreasonably withhold or delay giving that consent and not to withhold that consent in any of the following circumstances:

- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or subletting for the purpose of employment;
- (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or subletting;
- (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or subletting to escape a risk of harm;
- (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or subletting as the result of a relationship breakdown;
- (e) the First Homes Owner reasonably requires to live elsewhere for the duration or the letting or subletting as a result of a redundancy; or
- (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or subletting in to provide care or assistance to any person.

8.4 A letting or subletting permitted pursuant to paragraph 8.2 or paragraph 8.3 must be by way of a written lease or sublease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further subletting.

8.5 Nothing in this paragraph 8 prevents the 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 Homes Owner's main residence.

9. Mortgagee Exclusion

9.1 In relation to First Homes the obligations of paragraphs 7 and 8 of this Schedule 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:

- 9.1.1 such Mortgagee or Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and
- 9.1.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the District Council the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 9.1.3 of this Schedule.
- 9.1.3 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.
- 9.1.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - (a) 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 7.5; and
 - (b) apply all such monies received towards the provision of Affordable Housing.

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
3. At the payer's request to return any part of the sums paid to the District Council pursuant to this Deed which shall not have been used for the purposes set out in this Deed after a period of 10 years from the date of the payment of the last installment of the relevant contribution together with any interest accrued and calculated from the date of receipt of the relevant sum by the District Council as evidenced by the District Council's official receipt 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 (save in respect of the Cycleway Contribution for which the period referred to below shall be extended to 15 years) aforesaid which shall not have been used for the purposes set out above within a period of 10 years from the date of the Occupation of the last Dwelling to be so Occupied within the Development together with interest accrued and calculated from the date of receipt of the relevant sum by the County Council as evidenced by the County Council's official receipt provided that the County Council shall not be obliged to return any part of any contribution which has been spent or committed prior to the date of the request

FIFTH SCHEDULE

Dispute Resolution Procedure

- 1 In the event of any dispute (other than as to the quantum of contributions) 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 party 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

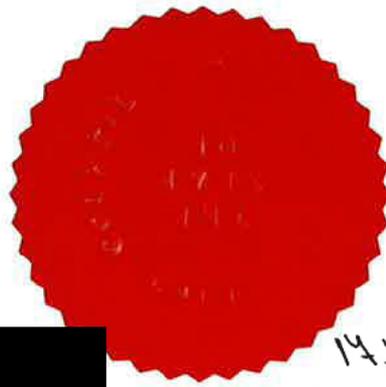
APPENDIX 1

Provisions relating to the transfer of the Open Space

The transfer of the Open Space to the Management Company shall (unless otherwise agreed in writing between the Owner and the District Council):

- i. be a transfer of the entire freehold interest of the Open Space
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity subject to the right of the Management Company to construct any buildings or other structures ancillary to such use
- vi. include all usual and necessary rights and easements for the benefit of the Open Space
- vii. reserve in favour of the Owner 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
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Management Company together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant for the benefit of the District Council to manage and maintain the Open Space in accordance with the approved Management Plan

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



14, 1988



Authorised Signatory

The COMMON SEAL of)
THE KENT COUNTY COUNCIL)
was hereunto affixed in the)
presence of: 



5-18-2023

Authorised Signatory

EXECUTED as a deed by

THE RICHBOROUGH ESTATES PARTNERSHIP LLP

acting by a Member: 

*duly authorised by
Richborough Estates
limited to sign on its
behalf as a member*



*Signature of person authorised
to sign on behalf Member
of a*

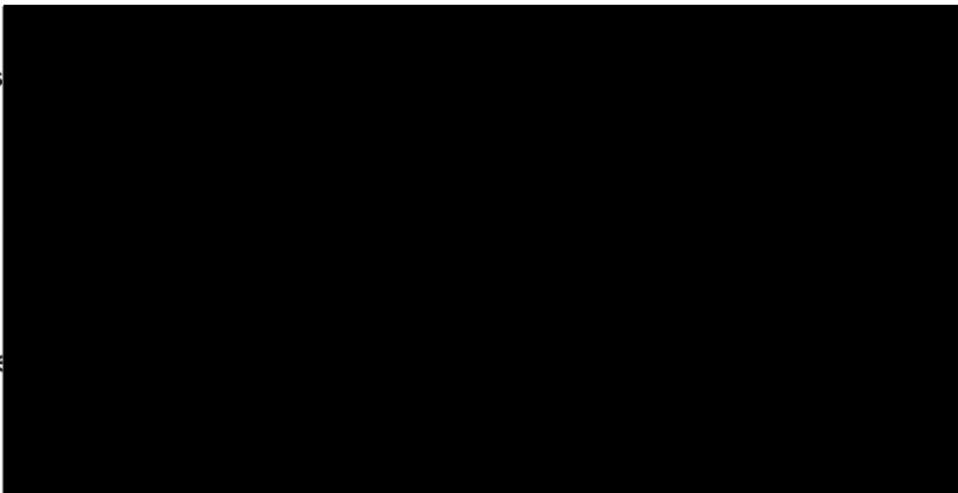
in the presence of:

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness



Signed as a deed by
IAN GEOFFREY STEED

in the presence of:-

Signed as a deed by

EXECUTED as a deed by

GRANGE FARMS LIMITED

acting by a Director:

in the pr

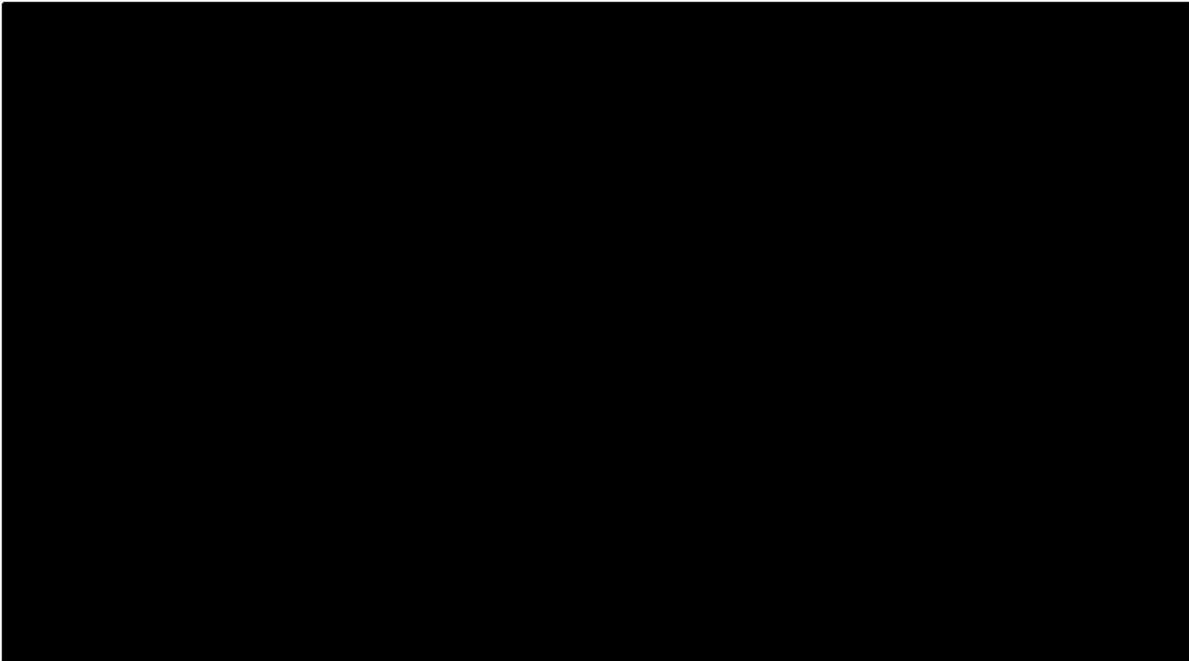
Signature

Name of

Address

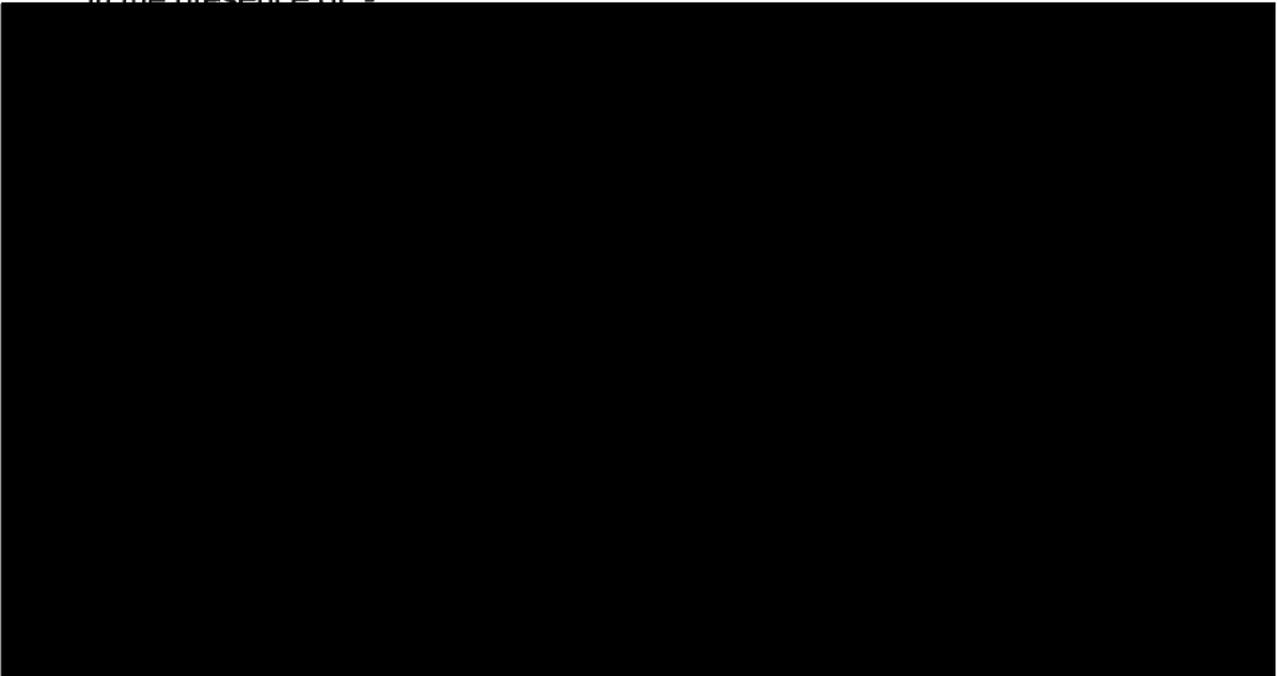
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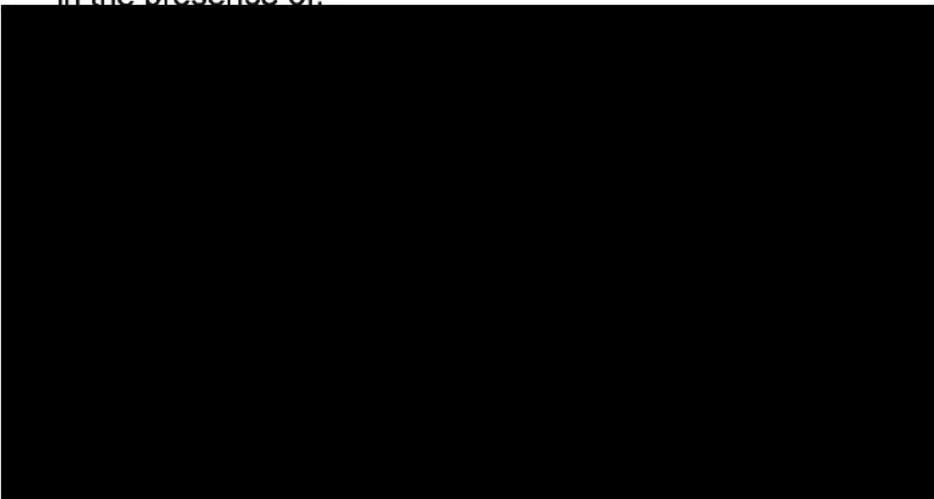
Attorney

in the presence of: -



Attorney

in the presence of: -



Date 1 June 2023

- (1) **DOVER DISTRICT
COUNCIL**
- (2) **THE KENT COUNTY
COUNCIL**
- (3) 
- (4) **GRANGE FARMS
LIMITED**
- (5) **THE RICBOROUGH
ESTATES PARTNERSHIP
LLP**
- (6) **BDW TRADING LIMITED**

**PLANNING OBLIGATION BY DEED
OF AGREEMENT**

Pursuant to Section 106 of the Town and
Country Planning Act 1990

Relating to the development (known as
Phase 2) of land south west of Sandwich
Road, Sholden, Deal