

DATE:

29 August

2024

**DOVER DISTRICT COUNCIL**

and

**THE KENT COUNTY COUNCIL**

and



And

**GLADMAN DEVELOPMENTS LIMITED**

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**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 West side of Cross Road, Walmer,  
Deal**

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Application Ref: DOV/21/01822

//KEN002:001331

29<sup>th</sup> August

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) **THE KENT COUNTY COUNCIL** ("the **County Council**") of County Hall, Maidstone, Kent ME14 1XQ
- (3) [REDACTED] "the **Owner**") of [REDACTED]
- (4) **GLADMAN DEVELOPMENTS LIMITED** ("the **Promoter**") whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton CW12 1LB with Company number 03341567

#### **RECITALS**

- 1 The Owner is the freehold owner of the Land being land registered under the title number K767074 ("the Title").
- 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 the County Planning Authority and the Local Education Authority and is responsible for the provision of education, waste, libraries, integrated children's services, community learning, and social services for the area in which the Land is situated.
- 4 The Planning Application has been submitted by the Promoter to the District Council seeking permission to undertake the Development and 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.
- 5 The District Council resolved on 10 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.

**“Additional First Homes Contribution”**

in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 4.10, 4.12 or 6 of the First Schedule, 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.

**“Affordable Housing”**

housing for sale or rent to those whose needs are not met by the market (including housing that provides a subsidised route to home ownership). This includes Affordable Rented Housing, Shared Ownership Housing and First Homes.

**“Affordable Housing Contract”**

a contract between the Owner and a Registered Provider for the provision of Affordable Rented Housing or Shared Ownership Housing within the Development which includes the terms

**“Affordable Housing Marketing Plan”**

set out in paragraph 3.8 of the First Schedule of this Deed or such other terms as are agreed between the Owner and the Registered Provider.

a plan to market and Dispose of the Affordable Rented Housing, Social Rented Housing or Shared Ownership Housing to be submitted to and approved by the District Council pursuant to paragraph 3.8.43 of the First Schedule of this Deed.

**“Affordable Housing Scheme”**

means a scheme which specifies:

- (a) the number size tenure and mix of the Affordable Housing within the Development;
- (b) the location and distribution of the Affordable Housing;
- (c) details of how the proposed design of the Affordable Housing will ensure that the Affordable Housing is materially indistinguishable (in terms of outward design and appearance) from the Market Dwellings of similar size within the Development; and
- (d) the form of Shared Ownership Lease to be used for any Disposals of the Shared Ownership Housing (if applicable).

**“Affordable Housing Units”**

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

**“Affordable Rented Housing Units”**

the Affordable Housing Units to be occupied as Affordable Rented Housing in accordance with the terms of this Deed.

**“Affordable Rented Housing”**

Affordable Housing let by a local authority or private Registered Provider of social housing to households who are

eligible for Social Rented Housing where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and within local housing allowance (LHA) rates.

**“Air Quality Contribution”**

means the sum of £114,423 paid as a contribution towards measures to mitigate the impact of the Development on air quality in the district of Dover.

**“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.

**“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;  
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.

**“Commencement of the Development”**

means the carrying out of a material operation in the course of the Development on the Land 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) 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 Commencement shall be construed accordingly.

**“Community Learning Contribution”**

means the sum of £16.42 (sixteen pounds and forty two pence) per Dwelling paid as a contribution towards additional equipment and resources for adult education centres in the district of Dover serving the development including outreach provision.

**“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 4.4 of the First Schedule of this Deed applies, the Eligibility Criteria (Local).

**“the County Council Costs”**

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

<b>"County Council Index"</b>	means the General Building Costs Index from April 2020 @ 360.3 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.
<b>"County Monitoring Fee"</b>	means the sum of £300 (three hundred pounds) paid as a contribution towards the costs of the County Council monitoring the compliance of the Development with the terms of this Deed.
<b>"the Development"</b>	the development of the Land by the erection of up to 140 Dwellings for use in the manner as set out in the Planning Application.
<b>"Discount Market Price"</b>	a sum which is the Market Value discounted by 30%.
<b>"Disposal"</b>	<p>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:</p> <ul style="list-style-type: none"> <li>(a) a letting or subletting in accordance with paragraphs 5.2 and 5.3 of the First Schedule</li> <li>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for Occupation except where the transfer is to a First Homes Owner</li> <li>(c) an Exempt Disposal</li> </ul> <p>and "Disposed" and "Disposing" shall be construed accordingly.</p>
<b>"the Disputes Resolution Procedure"</b>	means the procedure referred to in clause 13 and set out in the Fifth Schedule hereto.
<b>"the District Council's Costs"</b>	means the sum of £880.00 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 Draft Conditions"**

means the draft conditions to be attached to the Planning Permission set out in Appendix 1 to 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.

**"Eligibility Criteria (Local)"**

criteria (if any) 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 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 District Council has not prescribed any Eligibility Criteria (Local) in respect of the disposal of a First Home.

**"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 (National).

**“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 Home.

**“First Highway Contribution”**

means the sum of £20,000 (twenty thousand pounds) paid as a contribution towards the costs of improvements around the junction of Station Road and Dover Road including the creation of a bus cage, alterations to a bus stop and on street parking spaces, waiting restrictions and the costs of securing all necessary traffic regulation orders in connection with such improvements.

**“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 “First Homes” 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 paragraphs 5.2 and 5.3 of the First Schedule.

**"First Time Buyer"**

as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.

**"Head of Planning and Development"**

means the officer of the District Council from time to time that is responsible for planning, regeneration and economic development.

**"Healthcare Contribution"**

means the sum calculated by applying the formula  $(A \times £504 \text{ (five hundred and four pounds)}) + (B \times £720 \text{ (seven hundred and twenty pounds)}) + (C \times £1,008 \text{ (one thousand and eight pounds)}) + (D \times £1,260 \text{ (one thousand two hundred and sixty pounds)}) + (E \times £1,728 \text{ (one thousand seven hundred and twenty eight pounds)})$ , where :

A is a Dwelling having 1 bedroom

B is a Dwelling having 2 bedrooms

C is a Dwelling having 3 bedrooms and

D is a Dwelling having 4 bedrooms

E is a Dwelling having 5 or more bedrooms

paid as a contribution towards the cost of refurbishment/and or extension of St Richards Road Surgery and/or Manor Road Surgery and/or Balmoral Surgery, and/or the Cedars Surgery and/or the provision of general practice premises to serve the Development.

**"Homes England"**

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.

**“Income Cap”**

means the sum of £80,000.00 (eighty thousand pounds) 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.

**“Income Cap (Local)”**

means such local income cap as may be published from time to time by the District Council and is in force at the time of the relevant disposal of the First Home (it being acknowledged that at the date of this Deed the District Council has not set an Income Cap (Local)).

**“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.

**“Interest”**

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

**“Integrated Children’s Service Contribution”**

means the sum of £65.50 (sixty five pounds and fifty pence) per Dwelling paid as a contribution towards additional equipment and resources for the Integrated Children’s Service in Dover District including outreach provision.

**“the Land”**

means the land known as land on the east and west sides of Cross Road, Walmer, Deal against which this Deed may be enforced as shown more particularly edged red on the attached Plan.

**"the Library Contribution"**

means the sum of £55.45 (fifty five pounds and forty five pence) per Dwelling paid as a contribution toward additional resources, equipment and book stock (including the reconfiguration of space) at local libraries serving the development including Deal Library and Sandwich Library.

**"Local Connection Criteria"**

means such local connection criteria as the District 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.

**"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.

**“Market Dwelling”**

means any Dwelling which is not Affordable Housing.

**“Market Value”**

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

**“Monitoring Fee”**

means the sum of £236 (two hundred and thirty six pounds) paid as a contribution towards the costs of the District Council monitoring the compliance of the Development with the terms of this Deed

**“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).

**“Nominations Agreement”**

an agreement between the District Council and the Registered Provider setting out the selection and prioritisation of tenants and Occupiers of the Shared Ownership Housing Units and the Affordable Rented Housing Units which shall include a mortgagee exclusion clause in the form set out in paragraph 6.2 of the First Schedule of this Deed or as is otherwise agreed with the Registered Provider.

**“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.

**"the Open Space"**

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

**"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.

**"Outdoor Sports Contribution"**

means the sum of £2,029.51 (two thousand and twenty nine pounds and fifty one pence) per Dwelling as a contribution towards the costs of upgrades and maintenance of Deal Football/3G pitches and Tides Leisure Centre.

**"Plan"**

means drawing number 7572-L-10 annexed to this Deed.

**"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/21/01822**.

**"the Planning Permission"**

means the planning permission to be granted by the District Council pursuant to the Planning Application subject to the Draft Conditions.

**"the Play Area"**

means a local equipped area for play for use by the general public to be provided on the Land in accordance with the Planning Permission.

**"Practical Completion"**

means the stage reached when the construction of a First Home is sufficiently complete that, where necessary a certificate



# NOTES

This drawing is the property of FPCR Environment and Design Ltd and is issued on the condition it is not reproduced, retained or disclosed to any unauthorised person, either wholly or in part without written consent of FPCR Environment and Design Ltd.

Ordnance Survey base mapping - supplied by client.

B-J Fuller



*[Signature]*

0 50 100 150m

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

Authorised Signatory

*[Signature]*

838-2024

17367

## LOCATION PLAN

Gladman Developments Ltd  
Cross Road  
Deal

1:2500 @ A3  
08th June 2021 JES / CEH  
7572-L-10

masterplanning  
environmental assessment  
landscape design  
urban design  
ecology  
architectural  
urban culture

FPCR Environment and Design Ltd  
Lockington Hall  
Lockington  
Dorset DT14 2RH

01508 472772  
mail@fpcr.co.uk  
www.fpcr.co.uk

of practical completion can be issued and it can be Occupied and the term "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 £250,000 (Two Hundred and Fifty Thousand Pounds) or such other amount as may be published from time to time by the Secretary of State.

**"the Promotion Agreement"**

means a promotion agreement dated 29 March 2021 in respect of the Land made between the Owner and the Promoter.

**"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.

**"Registered Provider"**

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 such approval not to be unreasonably withheld or delayed.

**“Regulator”**

means Homes England or the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions.

**“Reserved Matters Approval”**

means the approval of matters reserved for later determination (as specified in the Town and Country Planning (Development Management Procedure) (England) Order 2015 pursuant to the Planning Permission.

**“SAAM Contribution”**

means the sum calculated by applying the formula  $(A \times £112 \text{ (one hundred and twelve pounds)}) + (B \times £224 \text{ (two hundred and twenty four pounds)}) + (C \times £337 \text{ (three hundred and thirty seven pounds)}) + (D \times £449 \text{ (four hundred and forty nine pounds)})$ , where :

A is a Dwelling having 1 bedroom

B is a Dwelling having 2 bedrooms

C is a Dwelling having 3 bedrooms and

D is a Dwelling having 4 or more bedrooms

paid as a contribution towards measures to manage the impact of recreational activities by existing and new residents on the integrity of the Thanet Coast and Sandwich Bay Special Protection Area Mitigation Strategy.

**“Secondary Education Contribution”**

means the sum of:

- a. £1,135 (one thousand one hundred and thirty five pounds) per Applicable Flat; and
- b. £4,540 (four thousand five hundred and forty pounds) per Applicable House );

paid as a contribution towards the expansion

of secondary schools in the Deal and Sandwich non-selective and Dover District selective planning groups.

**“Second Highway Contribution”**

means the sum of £1,000 (one thousand pounds) per Dwelling paid towards the cost of improvements to the Whitfield Roundabout, Dover and the Duke of York Roundabout, Dover.

**“Secretary of State”**

the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and any successor in function.

**“Serviced Condition”**

the relevant property:

- (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 the public highway).

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

**“Shared Ownership Housing”**

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

**“Shared Ownership Lease”**

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”**

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 (one hundred and forty six pounds and eighty eight pence) per Dwelling paid as a contribution towards the provision of specialist care accommodation, assistive technology systems, adapting community facilities, sensory facilities and changing places within Dover District

**“Social Rented Housing”**

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

**“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 National Rent Regime and published from time to time by the Regulator (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 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.

**“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.

**“Waste Contribution”**

means the sum of £54.47 (fifty four pounds and forty seven pence) per Dwelling paid as a contribution towards improvements to Dover Household Waste & Recycling Centre.

**“Working Day”**

means any date from Monday to Friday (inclusive) which is not Christmas Day, Good Friday a statutory bank holiday or public holiday in England.

**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 Development

save for the provisions of clauses: 3, 4, 5.3.1, 5.4, 8.3, 8.7, 8.8, 12, 13, 15 and any obligations in this Deed expressly requiring compliance prior to the Commencement of 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.

5.2. The Owner covenants with the County Council to observe the restrictions and perform the obligations set out in the Second 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 after any Trigger Date to notify the District Council and the County 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 or the County Council to provide the District Council (or the County Council as the case may be) with such records and information as the District Council (or the County Council as the case may be) reasonably request to enable the District Council (or the County Council as the case may be) 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 together with officer fees of £720.00 (seven hundred and twenty pounds) on the completion of this Deed.

5.4.3. That the Promoter consents to the completion of this Deed but shall not be liable for any breach of the planning obligations in this Deed (other than in respect of the obligations contained in clauses 5.4.1 and 5.4.2) unless such breach occurs at a time when the

Promoter has taken ownership of all or any part of the Land.

**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 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 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 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 and Development quoting reference: DOV/21/01822; and
  - 8.4.2. in the case of the County Council marked for the attention of the Office of the General Counsel quoting reference: KEN002.001331 with electronic copy also served on [developer.contributions@kent.gov.uk](mailto: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.
- 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 or tenants of individual dwellings constructed pursuant to the Planning Permission nor against those deriving title from them, except in respect of the First Schedule paragraphs 2.8 (i) and 2.8 (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. 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.
- 8.16. The Owner covenants to pay on demand and on a full indemnity basis the costs and expenses of the District Council and County Council including any solicitors' or other professionals' costs and expenses in connection with, or in contemplation of, any of the following:
- 8.16.1.1. the enforcement of any planning obligations of this Deed;
  - 8.16.1.2. serving any notice or taking any proceedings in connection any breach of the obligations set out in 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**

- 10.1 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 paid.
- 10.2 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 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 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 PROVIDED THAT this obligation shall not be applicable to the disposal of individual Dwellings to individual purchasers.

#### **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.

#### **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 Application 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. 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**  
**The Owner's Covenants with the District Council**

The Owner covenants with the District Council as follows:

**1. Contributions**

- 1.1 To pay the SAAM Contribution to the District Council prior to the Commencement of Development.
- 1.2 Not to permit or allow the Commencement of Development unless and until the SAAM Contribution has been paid to the District Council.
- 1.3 To pay the Air Quality Contribution, the Healthcare Contribution and the Outdoor Sports Contribution to the District Council prior to the Occupation of more than 25% of the Market Dwellings.
- 1.4 Not to permit or allow the Occupation of more than 25% of the Market Dwellings unless and until the payments referred to at paragraph 1.3 above have been paid to the District Council.
- 1.5 To pay the Monitoring Fee to the District Council for each Trigger Event that occurs under this Deed upon the date that notification of any Trigger Event is given to the District Council in accordance with clause 5.3.2. PROVIDED THAT if on any Trigger Date more than one payment is payable to the District Council or more than one obligation comes into effect pursuant to this First Schedule, only one Monitoring Fee shall be payable to the District Council in respect of that Trigger Date.

**2. Open Space**

- 2.1 Prior to Commencement of the Development to submit to the District Council for approval the Open Space Works Specification and the Management Plan.
- 2.2 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.
- 2.3 Not to permit or allow the Occupation of more than 75% of the Dwellings until the Open Space has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.

- 2.4 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.
- 2.5 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.
- 2.6 To maintain the Open Space in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 2.7 below has been completed.
- 2.7 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 2 annexed to this Deed.
- 2.8 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 they will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 2.8(i) and 2.8(ii) of the First Schedule.
- 2.9 Not to amend the approved Management Plan without the District Council's written consent.
- 2.10 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.

### **3 Provision of Affordable Housing**

- 3.1 The Owner shall provide 30% (thirty percent) of the Dwellings as Affordable Housing, 55% (fifty five percent) of which shall be Affordable Rented Housing, 20% (twenty percent) of which shall be Shared Ownership Housing and 25% (twenty five percent) of which shall be First Homes.
- 3.2 The Owner shall submit the Affordable Housing Scheme to the District Council for approval alongside any application for Reserved Matters Approval.

- 3.3 The Owner shall not permit or allow the Commencement of Development until the Affordable Housing Scheme has been submitted to and approved by the District Council.
- 3.4 The Owner shall construct and Practically Complete the Affordable Housing in accordance with the approved Affordable Housing Scheme.
- 3.5 The land on which the Affordable Housing is to be built shall be put into a Serviced Condition in advance of any Disposal to a Registered Provider, a First Homes Owner or the District Council (as applicable).
- 3.6 Unless otherwise agreed with the District Council the Owner shall not Occupy or permit the Occupation of more than 50% (fifty percent) of the Market Housing Units until:
- 3.6.1 50% (fifty percent) 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; and
- 3.6.1.1 the Owner and the Registered Provider have entered into an Affordable Housing Contract in respect of those Affordable Housing Units and the Owner has transferred to the Registered Provider the freehold interest in or a minimum of a 125 year leasehold interest in those Affordable Housing Units on the terms set out in paragraph 3.8 below and the District Council has received evidence of this.
- 3.7 Unless otherwise agreed with the District Council the Owner shall not Occupy or permit the Occupation of more than 80% (eighty percent) of the Market Housing Units until:
- 3.7.1 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; and
- 3.7.1.1 the Owner and the Registered Provider have entered into an Affordable Housing Contract in respect of all of the Affordable Housing Units and the Owner has transferred to the Registered Provider the freehold interest in or a minimum of a 125 year leasehold interest in all of the Affordable Housing Units on the terms set out in paragraph 3.8 below and the District Council has received evidence of this.
- 3.8 The Affordable Housing Contract shall (unless otherwise agreed with the District Council) include as a minimum the following terms:
- 3.8.1 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 approved Affordable Housing Scheme;

- 3.8.2 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;
- 3.8.3 a requirement that not less than 6 months before the Occupation of the Affordable Housing Units, the Registered Provider shall use reasonable endeavours to enter into a Nominations Agreement with the District Council and shall submit to the District Council the Affordable Housing Marketing Plan;
- 3.8.4 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;
- 3.8.5 that rent to be charged by the Registered Provider for the Affordable Rented Housing Units when first let shall not exceed 80% of the local market rate (including any service charges) or, in the event that there is a change in national policy affecting the definition of Affordable Rented Housing, such alternative rent levels as may be agreed in writing between the Owner and the District Council having regard to the relevant change in national policy;
- 3.8.6 that the Shared Ownership Housing Units should be sold through the Registered Provider by way of Shared Ownership Lease;
- 3.8.7 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 3.8.7 shall not be binding or enforceable against:
  - 3.8.7.1 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 charges, or
  - 3.8.7.2 any mortgagee chargee or Receiver of a Registered Provider where paragraph 6.2 of this First Schedule applies, or
  - 3.8.7.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

#### **4 Delivery of First Homes**

- 4.1 The Owner for and on behalf of itself and its successors in title to the Site 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 Council as follows save that:
  - 4.1.1 paragraph 4.2 of the First Schedule shall not apply to a First Homes Owner;

- 4.1.2 paragraphs 4.3, 4.15 and 5 of the First Schedule 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.
- 4.2 The mix and distribution of the First Homes provided within the Site shall be in accordance with the approved Affordable Housing Scheme.
- 4.3 Subject to the provisions of paragraph 4.4 below, 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).
- 4.4 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) (if any), paragraph 4.3 (b) above shall cease to apply to that First Home.
- 4.5 Subject to paragraphs 4.8 to 4.13 below, 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.
- 4.6 No First Home shall be Disposed of (whether on a first or subsequent sale) unless and until:
- 4.6.1 the District Council has been provided with evidence that:
- 4.6.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.4 above applies the Eligibility Criteria (Local);
  - 4.6.1.2 the dwelling is being Disposed of as a First Home at the Discount Market Price; and
  - 4.6.1.3 the transfer of the First Home includes (i) a definition of "the District Council " as Dover District Council of Council Offices, White Cliffs Business Park, Whitfield, Dover CT16 3PJ, (ii) a definition of "First Homes Provisions" as "the provisions set out in the First Schedule of the section 106 agreement dated [ ] a copy of which is attached as the Annexure, (iii) a provision that the First Home 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;
- 4.6.2 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 paragraph 4.5 and 4.6.1 above have been met.

4.7 On the first Disposal of each and every First Home 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 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 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."

4.8 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:

4.8.1 the Dwelling has been actively marketed as a First Home for six months in accordance with paragraph 4.3 and paragraph 4.4 above (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 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 paragraph 4.5 and paragraph 4.6.1 above; or

4.8.2 requiring the First Homes Owner to undertake active marketing for the period specified in this paragraph 4.8 before being able to Dispose of the Dwelling other than as a First Home will be likely to cause the First Homes Owner undue hardship.

4.9 On receipt of an application served in accordance with paragraph 4.8 above, 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.

4.10 If the District Council is satisfied that either of the grounds in paragraph 4.8 above have been made out, it shall confirm in writing within 28 days of receipt of the written request made in accordance with paragraph 4.8 above that the relevant Dwelling may be Disposed of:

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

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

4.11 On the issue of that written confirmation outlined in paragraph 4.10 above, the obligations in this deed which apply to First Homes shall cease to bind and shall no longer affect any Dwelling apart from paragraph 4.13 below, 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.

- 4.12 If the District Council does not wish to acquire the relevant Dwelling itself, and is not satisfied that either of the grounds in paragraph 4.8 above have been made out, then it shall within 28 days of receipt of the written request made in accordance with paragraph 4.8 serve notice on the owner of the First Home 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 4.8 confirming that no such Disposal has taken place and the owner shall then be free to dispose of the relevant Dwelling as a Market Dwelling.
- 4.13 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.
- 4.14 On receipt of the Additional First Homes Contribution, the District Council shall:
- 4.14.1 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 4.7 above where that restriction has previously been registered against the relevant title; and
- 4.14.2 apply all monies received towards the provision of Affordable Housing.
- 4.15 Any person who purchases a First Home free of the restrictions in the First Schedule of this deed pursuant to the provisions of paragraph 4.12 and paragraph 4.13 above shall not be liable to pay the Additional First Homes Contribution to the District Council .

## **5 Use of First Homes**

- 5.1 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 5.2 and paragraph 5.4 below.
- 5.2 Notwithstanding the provisions of paragraph 5.1 above, a First Homes Owner may let or sublet their First Home 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 Home 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.
- 5.3 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:



- 5.3.1 the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or subletting for the purpose of employment;
- 5.3.2 the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or subletting;
- 5.3.3 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or subletting to escape a risk of harm;
- 5.3.4 the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or subletting as the result of a relationship breakdown;
- 5.3.5 the First Homes Owner reasonably requires to live elsewhere for the duration or the letting or subletting as a result of a redundancy; or
- 5.3.6 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.

5.4 A letting or subletting permitted pursuant to paragraph 5.2 or paragraph 5.3 above 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.

5.5 Nothing in this paragraph 5.1 above 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.

## **6 Mortgagee Exclusion**

6.1 In relation to First Homes the obligations 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:

- 6.1.1 such Mortgagee or Receiver shall first give written notice to the District Council of its intention to Dispose of the relevant First Home; and
- 6.1.2 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 6.1.3 of this Schedule.
- 6.1.3 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.

- 6.1.4 Following receipt of notification of the Disposal of the relevant First Home the District Council shall:
- 6.1.4.1 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 4.7 of this Schedule, and
- 6.1.4.2 apply all such monies received towards the provision of Affordable Housing.
- 6.2 In relation to the Affordable Housing Units the obligations in this Schedule shall not be binding on 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 or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- 6.2.1 such mortgagee or chargee or Receiver shall first give written notice to the District Council of its intention to dispose of the 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 Affordable Housing Units 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
- 6.2.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions of this Schedule which provisions shall determine absolutely.

**SECOND SCHEDULE**  
**The Owner's Covenants with the County Council**

The Owner covenants with the County Council as follows:

1. To pay 50% of the Community Learning Contribution, 50% of the Integrated Children's Service Contribution, 50% of the Library Contribution, 50% of the Secondary Education Contribution, 50% of the Social Care Contribution, and 50% of the Waste Contribution to the County Council prior to the first Occupation of the 1<sup>st</sup> Dwelling.
2. Not to permit or allow 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 50% of the Community Learning Contribution, 50% of the Integrated Children's Service Contribution, 50% of the Library Contribution, 50% of the Secondary Education Contribution, 50% of the Social Care Contribution, and 50% of the Waste Contribution to the County Council prior to the first Occupation of more than 25% of the Dwellings.
4. Not to permit or allow the Occupation of more than 25% of the Dwellings unless and until the payments referred to at paragraph 3. above have been paid to the County Council.
5. To pay the First Highway Contribution and the Second Highway Contribution to the County Council prior to the first Occupation of more than 50% of the Dwellings.
6. Not to permit or allow the Occupation of more than 50% of the Dwellings unless and until the payments referred to at paragraph 5. above have been paid to the County Council.
7. To pay the County Monitoring Fee for each Trigger Event that occurs under this Deed upon the date that notification of any Trigger Event is given to the County Council in accordance with clause 5.3.2 PROVIDED THAT if on any Trigger Date more than one payment is payable to the County Council or more than one obligation comes into effect pursuant to this Second Schedule, only one Monitoring Fee shall be payable to the County Council in respect of that Trigger Date.
8. IF the County Council Forward-funds any Project Facility Infrastructure or other Expenditure from its own Resources and enters into a Commitment to a third party to repay any similar Forward-funding provided by that ~~34~~

### THIRD SCHEDULE

#### The District Council's Covenants with the Owner

The District Council hereby covenants with the Owner:

1. To co-operate insofar as is reasonable with the Owner in the performance of its obligations under this Deed.
2. 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.

\* Third party (whether in cash and/or in kind) in anticipation of receipt of any relevant contribution or payment under the provisions of this Deed then on such receipt the County Council may credit such contribution or payment (including any indexation element and/or interest received thereon) to its own resources and/or repay such third party accordingly and in either case the receipt shall be treated as being immediately expended by the County Council for the purpose for which the forward-funding was expended.

#### **FOURTH SCHEDULE**

##### **The County Council's Covenants**

The County Council hereby covenants with the Owner:

1. To co-operate insofar as is reasonable with the Owner in the performance of its obligations under this Deed.
2. 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 payee's request to return any part of the sums aforesaid 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 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.

## **APPENDIX 2**

### **Provisions relating to the transfer of the Open Space**

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

- i. be a transfer of the entire freehold interest in 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:



121367

Authorised Signatory

Executed as a deed by affixing the  
Common seal of  
**THE KENT COUNTY COUNCIL**  
in the presence of:



838-2024

Authorised Signatory

Signed as a deed by

As Attorney for  
under a Power of Attorney dated

in the presence of:-

S  
P  
A  
C  
S  
C  
C

EXECUTED as a deed by

**GLADMAN DEVELOPMENTS LIMITED**

Acting by a director

Director


in the presence of:

Witness name:

Witness address:

Occupation:



- (1) DOVER DISTRICT  
COUNCIL
- (2) THE KENT COUNTY  
COUNCIL
- (3) 
- (4) GLADMAN DEVELOPMENTS  
LIMITED

**PLANNING OBLIGATION BY DEED  
OF AGREEMENT**

Pursuant to Section 106 of the Town and  
Country Planning Act 1990  
Relating to the development of land on the  
West side of Cross Road, Walmer, Deal