

DATED

202[]

TONBRIDGE AND MALLING BOROUGH COUNCIL (1)

AND

[] (2)

AND

[] (3)

AND

[] (4)

PLANNING OBLIGATION

BY WAY OF AGREEMENT

pursuant to Section 106 of the
Town and Country Planning Act 1990 (as amended)
relating to land at []

Head of Legal & Democratic Services
Tonbridge and Malling Borough Council
Gibson Building, Gibson Drive
Kings Hill, West Malling
Kent ME19 4LZ

PLANNING REF:

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THIS DEED is dated the _____ day of _____ 20[]

BETWEEN

- (1) **TONBRIDGE AND MALLING BOROUGH COUNCIL** of Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ (**“the Council”**)
- (2) [] of [] [incorporated and registered in England and Wales with company number [] whose registered office is at [] (**“the Owner”**)
- (3) [] of [] [incorporated and registered in England and Wales with company number [] whose registered office is at [] (**“the Mortgagee”**)
- (4) [] of [] [incorporated and registered in England and Wales with company number [] whose registered office is at [] (**“the Developer”**)

BACKGROUND

- (A) The Owner is the freehold owner of the Land with title absolute.
- (B) The Land is [subject to a legal mortgage dated [] in favour of [the Mortgagee] and subject to an agreement dated [] between the Owner and the Developer].
- (C) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated.
- (D) The County Council is a local planning authority for the purposes of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and is the statutory authority responsible for the [education] [local highways] [libraries] [Integrated Children’s services] [community learning] [adult social care] and [waste services] for the area in which the Land is situated.
- (E) The Application has been made by the Owner to the Council pursuant to the Act for planning permission to carry out the Development.
- (F) [The Council refused to grant planning permission for the Development on [] and the [Owner] has submitted the Appeal.]
- (G) [The Council having regard to all material considerations, resolved at its meeting of the [] on [] that Planning Permission should be granted for the Development subject to the prior completion of this Deed] **OR** [In the event of the Council resolving to grant Planning Permission for the Development, having regard to all material considerations, it will be subject to the completion of this Deed and to the conditions to which the Planning Permission is

expressed to be subject] **OR** [The Appeal has been submitted in respect of the Council's refusal of the Application].

(H) The Owner [the Mortgagee and the Developer] [has / have] agreed to enter into this Deed to give the following obligations in the manner hereinafter appearing and agree that the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) are met

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. INTERPRETATION AND DEFINITIONS

1.1. In this Deed the following expressions shall unless the context otherwise requires have the following meanings:

Act means the Town and Country Planning Act 1990 as amended;
Adult Social Care Contribution means the sum of £[] ([]) payable towards [];

Affordable Housing means housing to include Affordable Rented Units, Social Rented Units and Shared Ownership Units provided to eligible households whose needs are not met by the market where eligibility is determined with regard to local incomes and local house prices and in accordance with the Allocation Scheme and which:

- a) remains at an affordable price for future eligible householders subject to the provisions of this Deed or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision subject to any such recycling of the subsidy being in accordance with the requirements of Homes England remains at an affordable price for future eligible householders; and
- b) comprises 40% of the total number of Dwellings constructed pursuant to the Planning Permission which shall comprise the Affordable Housing Tenure Mix;

Affordable Housing Land means that part of the Land shaded in [] on the Tenure/Affordable Housing Plan upon which the Affordable

Housing Units are to be constructed including their garden areas (if any) and parking spaces (if any) and any ancillary and associated land.

Affordable Housing Plan means the plan attached at Appendix [3] and bearing reference xxxx;

Affordable Housing Scheme means the scheme submitted in accordance with the Planning Permission which shall include details of:

- a) the numbers, type, tenure and location on the Land of the Affordable Housing which shall include the Affordable Housing Tenure Mix;
- b) the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Open Market Dwellings;
- c) in relation to the Affordable Rented Housing and/or the Social Rented Housing and/or the Shared Ownership and any Affordable Housing Units that are to be managed by a Registered Provider the arrangements for the transfer of the Affordable Housing to a Registered Provider;
- d) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing including compliance with the requirements set out in the Third Schedule in respect of occupation pursuant to a Nominations Agreement and any applicable Local Lettings Plan;
- e) details for the provision of Wheelchair Accessible Units in the Development shall not be required to be more than 10% of the Affordable Rented Housing; and
- f) the occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced;

Affordable Housing Tenure Mix	means the mix of Affordable Housing Units comprising [] Affordable Rented Units, [] Social Rented Units and [] Shared Ownership Units [including [] (x) Wheelchair Accessible Unit as detailed in part two of the THIRD Schedule;
Affordable Housing Units	means the x (x) Dwellings which are to be provided as Affordable Housing comprising x (x) Affordable Rented Housing, x (x) Social Rented Units and x (x) Shared Ownership Units as shown on the Affordable Housing Plan and comprising 40% of the number of the total number of Dwellings and ' Affordable Housing Units ';
Affordable Rented Unit	means an Affordable Housing Unit which is rented housing let by registered providers of social housing to households who are eligible for social rented housing and shall be subject to rent controls that require a rent of no more than eighty per cent (80%) of the local market rent (including service charges and a Rentcharge where applicable and where local market rents are calculated using the Royal Institution of Chartered Surveyors approved valuation methods) AND the rent levels shall not at any time (unless otherwise agreed in writing by the Responsible Officer for Housing) exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Affordable Housing Unit and which is Occupied pursuant to a Tenancy and Affordable Rented shall be construed accordingly;
Allocation Scheme	means the scheme adopted by the Council from time to time for determining priorities and the procedure to be followed in allocating housing accommodation in accordance with Part VI of the Housing Act 1996 as amended;
All Requisite Consents	means all requisite consents orders agreements authorisations licences and permissions required to implement a scheme/the Scheme;
[Appeal]	means a planning appeal submitted by [] in respect of the Council's refusal of planning permission for the Development

	which has been given the reference: [] by The Planning Inspectorate;
Application	means the application for [full/outline] planning permission for the Development which was validated by the Council on [] and allocated reference [];
Charge	a mortgage, charge or other security or loan documentation granting a security interest in the relevant Affordable Housing Unit (or any one or more of them) in favour of the Chargee
Chargee	means any mortgagee or chargee of the Registered Provider of the Affordable Housing Units 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;
Chargee's Duty	means the tasks set out in paragraph 8 of Part One of the Third Schedule;
Commencement of the Development	means the carrying out of a material operation pursuant to the Application as defined in section 56(4) of the Act and all references to Commence , Commenced and Commencement shall be construed accordingly;
Commencement Notice	means the written notice confirming the Commencement of Development referred to in clauses 4.1 and served in accordance with clause 17;
Community Learning and Skills Contribution	means the sum £[] ([]) towards [];
County Council	means the Kent County Council of Sessions House County Hall, Maidstone, Kent, ME14 1XQ;
County Council Contributions	means the Secondary Education Contribution, the Secondary Education Land Contribution, the Special Education Needs & Disabilities Contribution, the Community Learning and Skills Contribution, the Integrated Children's Services Contribution, the Library Services Contribution, the Adult Social Care Contribution and the Waste Contribution;

Deed	means this agreement;
Default Interest Rate	means 4% per annum above the Base Rate of the Bank of England and Interest shall be construed accordingly;
Development	means the development of the Land by [] as set out in the Application and authorised by the Planning Permission;
Council Contributions	means the NHS Contribution and the Public Open Spaces Contribution;
Dwelling	means a dwelling (including a house, flat or maisonette) to be constructed pursuant to the Planning Permission or a Section 73 or section 73A Permission comprised in the Development and “ Dwellings ” shall be construed accordingly;
Evidence	means the evidence to be provided to the Council including: <ul style="list-style-type: none">a) a copy of the Chargeb) where a receiver is appointed a copy of the document confirming the appointment of the receiver; andc) evidence that the Registered Provider has defaulted on the Charge;
[First Occupation Date]	means the date on which the Occupation of any Dwelling begins;
[First Occupation Notice]	means the written notice confirming the First Occupation Date referred to in clause 4.1 and served in accordance with [clause 17];
Head of Planning	means the Head of Planning appointed by the Council;
Homes England:	means the executive non-departmental public body known as Homes England or its statutory successors or agent or its successor statutory body for the relevant function
Index Linked	means that the Council Contributions and County Council Contributions payable under this Deed shall be increased in accordance with the provisions of clause 20;

Land	means the land against which this Deed may be enforced known as [] which is registered at HM Land Registry under title number [] and is shown for identification purposes only edged red on the Plan;
Lease	means a shared ownership lease drawn in accordance with the guidelines and requirements of Homes England and substantially in the form of the Model Lease;
Library Services Contribution	means the sum of £[] ([]) payable towards [] at [];
Local Housing Allowance	means the flat rate rental allowance providing financial assistance towards the housing costs of low-income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department for Work and Pensions or such similar framework that may replace it;
Local Lettings Plan	means the plan to be agreed between the Registered Provider and the Council detailing the criteria to be taken into account when shortlisting applications deemed to be suitable to be offered the Affordable Housing Units and giving priority to households with a local connection to [];
Model Lease	means the appropriate form of model lease for a Shared Ownership flat or house published by Homes England (as may be amended from time to time);
NDSS	means the technical housing standards – nationally described space standard published by the Department of Communities and Local Government in March 2015 and includes any amendment or replacement thereof and if withdrawn without replacement refers to such space standards as the Council may itself adopt and apply for the purposes hereof;
NHS Contribution	means the sum of £[] ([]) towards [];
Nomination Agreement	means an agreement between the Council and the Registered Provider under which the Council exercises its right to nominate prospective occupiers for the Affordable Housing Units in accordance with Part VI of the Housing Act 1996 section 159

and which agreement shall provide for the Council to have the right to nominate 100% of the prospective occupiers of the Affordable Housing Units and shall include the right to nominate on the grant of each and every Shared Ownership lease and any assignments and the right to nominate on the first letting of a tenancy and any re-letting;

Nominee

means a person who is selected by the Council and whose name is taken from the Council’s Housing Register originally established under section 162 of the Housing Act 1996 or such other procedure as may be implemented by the Council;

[Occupancy Requirement

No of bedrooms per Affordable Housing Unit	Occupancy (No. of persons)	Minimum Floor Area 1 storey	Minimum Floor Area 2 Storey	Minimum Floor Area 3 Storey
1	2	50m ²	58m ²	
2	4	70m ²	79m ²	
3	5	86m ²	93m ²	99m ²
3	6	95m ²	102m ²	108m ²
4	6	99m ²	106m ²	112m ²
4	7	108m ²	115m ²	121m ²
4	8	117m ²	124m ²	130m ²
5	7	112m ²	119m ²	125m ²
5	8	121m ²	128m ²	134m ²
6	8	125m ²	132m ²	138m ²

]

Occupation)

means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **Occupied** and **Occupy** shall be construed accordingly;]

Open Market Dwellings

means all of the Dwellings for sale on the open market and which are not Affordable Housing Units;

Other Eligible Person	means a person selected by a Registered Provider in accordance with the Nomination Agreement and who is in need of Affordable Housing;
Payment Notice	means a payment notice in the form attached at [Appendix 4]
Plan	means the plan with drawing number xxxxx dated xxxx and annexed to this Deed at [Appendix 2]
Planning Inspectorate	means the executive agency sponsored by the Secretary of State dealing with planning appeals, national infrastructure planning applications, examinations of local plans and other planning-related and specialist casework in England;
Planning Permission	means the planning permission granted by the Council pursuant to the Application [substantially in the draft form annexed at [Appendix 1] [or the planning permission if granted on Appeal by or on behalf of the Secretary of State pursuant to the Application] and shall include any planning permission granted or obtained in respect of the Planning Permission pursuant to an application relating to the Planning Permission under sections 73 or 73A of the 1990 Act in accordance with clause 6 of this Deed;
Practical Completion	means the issue of a certificate of practical completion by the Owner or their architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party or their architects;
Protected Occupier	means a person who is Occupying an Affordable Housing Unit and is a Nominee and who: (a) has exercised the right to acquire (where legally permissible) pursuant to section 180 of the Housing and Regeneration Act 2008 and governed by the Housing Act 1985 and modified by the Housing (Right to Acquire) Regulations 1997 or any equivalent statutory provision for the time being in force in respect of a particular Affordable Housing Unit; (b) has exercised any statutory right to buy or statutory preserved right to buy pursuant to the Housing Act 1985 or

any equivalent statutory provision for the time being in force in respect of a particular Affordable Housing Unit; or

- (c) has been granted a lease of a Shared Ownership Unit by a Registered Provider and has subsequently purchased from the Registered Provider 100% of the equity from the Registered Provider and owns the entire Shared Ownership Unit;

Public Open Spaces Contribution means the sum of £x (x) payable in the following proportions for the purposes set out below:

- a) Parks & Gardens - £x (x) towards []
- b) Amenity Green Spaces - £x (x) towards []
- c) Outdoor Sports Facilities - £x (x) towards []
- d) (Children's and Young People's Play Areas - £x (x) towards []
- e) Natural and Semi Natural Green Spaces - £x (x) towards []

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;

Regulator of Social Housing means the Regulator of Social Housing established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any successor body with equivalent regulatory functions;

Rentcharge means an annual charge imposed on each freehold or leasehold interest (as the case may be) in respect of a Dwelling for the purposes of the maintenance and management of any retained open space and roads and otherwise on terms to be approved by the Council and **Rentcharges** shall be construed accordingly;

RPI Index means the Retail Prices (All Items) Index as published by the Office for National Statistics or (if such index is at the relevant time no longer published) such other comparable index or basis

	for indexation as the Council may specify and RPI Indexed shall be construed accordingly;
Secondary Education Contribution	means the sum of £x ([]) towards;
[Secondary Education Land]	means land to be acquired by the County Council for either a new secondary school as identified at [] or an alternative new secondary school [in either the Malling non-selective and Maidstone and Malling selective, or Tunbridge and Tunbridge Wells non-selective education planning groups];
Secondary Education Land Contribution	means the sum of £x ([]) towards the acquisition costs of the Secondary Education Land;
[Secretary of State]	means the Secretary of State for Housing, Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Housing, Communities and Local Government by the Act;
Shared Ownership Units	means an Affordable Housing Unit together with ancillary land, parking spaces and private amenity space which is occupied pursuant to a Lease granted by the Registered Provider where the occupier purchases an initial share of the equity in accordance with existing government guidelines (which currently allows the purchase of a share between 10% and 75% of the home's full market value) and Shared Ownership shall be construed accordingly;
Social Care Contribution	means the financial contribution in the sum of £x ([]) towards [];
Social Rented Unit	means an Affordable Housing Unit which is rented housing owned and managed by local authorities and Registered Providers, for which guideline target rents (including service charges and Rentcharges where applicable) are determined through national rent regime including the Government's rent

policy for social rent (as such standard and/or guidance may be amended updated or replaced from time to time) and is required to be offered to eligible persons in housing need at the applicable chargeable rent set in accordance with the Regulator of Social Housing's guidance and which shall not at any time (unless otherwise agreed in writing by the Council's housing team) exceed the maximum amount of Local Housing Allowance applicable for the size of the relevant Affordable Housing Unit and which is Occupied pursuant to a Tenancy;

Special Education Needs & Disabilities Contribution means the sum of £x ([]) towards [the provision of additional of Special Educational Needs and Disabilities ("SEND") places within new or existing facilities to serve the needs of the Development];

Spend means for the purposes of the [] Schedule including facilitating the delivery of or applying or spending or allocating or committing or using for the purpose for which the relevant contribution was paid;

Tenancy means an assured tenancy or assured shorthold tenancy drawn in accordance with the guidelines and requirements of Homes England or such other form of tenancy as may be authorised by Homes England from time to time for use by the Registered Provider;

Transfer means the legal transfer of a freehold interest or the grant of a lease of not less than one hundred and twenty-five (125) years in the relevant part of the Site and **Transferred** shall be construed accordingly;

Valuation Office Agency means the executive agency of HM Revenue & Customs that provides valuations and property advice to support taxation and benefits to the government and local authorities in England and Wales;

Waste Contribution means the sum of £x ([]) towards [];

Wheelchair Accessible Unit means a [] Affordable Rented Unit/Social Rented Unit/Shared Ownership Unit which must meet the requirements contained in Part M4(3) (1)(a) and (b) and Part M4(3)(2)(b) for wheelchair accessible dwellings as contained in Category 3 – wheelchair user dwellings of Schedule 1 of the Buildings Regulations 2010;

Working Day means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2. Clause and schedule headings shall not affect the interpretation of this Deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, whether and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8. References to clauses and Schedules are the clauses and Schedules of this Deed.
- 1.9. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 1.10. References to the Council, [the Mortgagee, the Developer] and the Owner shall include the successors in title and assigns of each party including any local authority successor.
- 1.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to section 106 of the Act, section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2. The obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act and are entered into by the Owner [and the Mortgagee/and the Developer]

with the intention that they bind the interests held by those persons in the Land and their respective successors and assigns.

- 2.3. The obligations contained in this Deed are enforceable by the Council in accordance with section 106 of the Act.
- 2.4. Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the 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.

3. CONDITIONALITY

This Deed shall come into effect immediately upon completion of this Deed save for the provisions of clauses [4 *[Covenants to the Council]* and 5 *[Covenants by the Council]* which are conditional upon the grant of Planning Permission.

4. COVENANTS TO THE COUNCIL

The Owner covenants with the Council:

- 4.1. to give the Commencement Notice to the Council not less than 10 Working Days before the Commencement of Development;
- 4.2. [to give the First Occupation Notice to the Council not less than 10 Working Days before the First Occupation Date;] and
- 4.3. to observe and perform the covenants, restrictions and obligations contained in this Deed including the Schedule[s] hereto.

5. COVENANTS BY THE COUNCIL

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in the Second Schedule.

6. SECTIONS 73 AND 73A PERMISSIONS

In the event that an application is made by the Owner to the Council under Section 73 or Section 73A of the Act and consent has been granted for any variation or release of any condition contained in the Planning Permission (or a subsequent permission to which this clause relates) or if any such condition is varied or released (or a subsequent permission to which this clause relates) following an appeal by the Owner under Section 78 of the 1990 Act this Deed (including the Schedule(s) hereto) shall also apply to any development carried out pursuant to such varied planning permission granted pursuant to Section 73 section 73A or

78 of the 1990 Act and the covenants or provisions in this Deed shall be deemed to be accordingly modified to correspond to any such varied permission unless the Council [in consultation with the County Council] considers that a separate deed pursuant to section 106 and/or s106A of the 1990 Act is required to secure the relevant planning obligations in relation to the new permission.

7. [MORTGAGEE'S CONSENT

7.1. The Mortgagee consents to the completion of this Deed and declares that from the date of this Deed its interest in the Land shall be bound by the terms of this Deed as if it had been executed and registered as a land charge before the creation of the Mortgagee's interest in the Land.

7.2. The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner].

8. [DEVELOPER'S CONSENT

The Developer consents to the completion of this Deed and declares that its interest in the Land shall be bound by the terms of this Deed].

9. RELEASE

No person shall be liable for any breach of any of this Deed after parting with all of its interest in the Land, except in respect of any breach subsisting prior to parting with such interest.

10. LOCAL LAND CHARGE

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

11. COSTS

11.1. The Owner shall pay to the Council on or before the date of this Deed the Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed [and the sum of £[]] as a contribution towards the Council's costs of monitoring the implementation of this Deed]

11.2. The Owner shall pay to the County Council on or before the date of this Deed the County Council's reasonable legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this Deed.

- 11.3. For the avoidance of any doubt the costs referred to in this [clause 11] do not constitute or purport to constitute planning obligations for the purposes of Section 106 of the Act and are payable pursuant to the other statutory provisions referred to in clause 2.

12. INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

13. OWNERSHIP

- 13.1. The Owner warrants that no person other than the Owner [the Mortgagee and the Developer] has any legal or equitable interest in the Land.
- 13.2. The Owner agrees to give the 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 plan.

14. NO FETTER OF DISCRETION

Nothing (contained or implied) in this Deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

15. WAIVER

No failure or delay by the Council to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. AGREEMENTS AND DECLARATIONS

The parties agree that:

- 16.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission;
- 16.2. insofar as any clause or clauses of this Deed are held (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 16.3. this Deed shall cease to have effect (insofar only as it has not already been complied with) if:

- 16.3.1. [the Appeal is dismissed by the Secretary of State or his/her appointed inspector;
- 16.3.2. the Secretary of State or his/her appointed inspector makes a finding and expressly states within the Appeal decision notice that this Deed is an immaterial planning consideration or that no weight can be attached to this Deed in determining the Appeal;]
- 16.3.3. the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of the Development PROVIDED THAT in circumstances where a planning permission has been granted under Sections 73 and/or 73A of the Act in respect of the Development and that new planning permission has not been revoked or modified pursuant to s.97 of the Act or quashed or otherwise withdrawn (without the consent of the Owner) or expired prior to its implementation then this Deed shall continue to have legal effect in relation to such new planning permission subject to the provisions in clause 6;
- 16.4. [in the event that the Secretary of State or his/her appointed inspector makes a finding and expressly states within the Appeal decision notice that any of the individual planning obligations in this Deed (or part of said planning obligations) are not in accordance with the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) then such obligation(s) (or part of such obligation) herein as is so identified by the Secretary of State or his/her appointed inspector shall not be enforceable and shall cease to have effect notwithstanding the remaining provisions of this Deed which (for the avoidance of doubt) shall take effect and remain in effect and enforceable;]
- 16.5. 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;
- 16.6. if the Owner fails to give the notice required by [clauses 4.1 and [4.2] above then the Council shall be entitled in its absolute discretion to determine the date of Commencement of Development [and the First Occupation Date] and shall give notice to the Owner of the Council's determination;
- 16.7. All financial contributions due under the terms of this Deed shall be accompanied by a fully completed Payment Notice.
- 16.8. The obligations contained in this Deed shall not be binding on any statutory undertaker which has acquired part of the Land for purposes connected to their statutory functions necessary

for the Development provided always that such statutory undertaker shall not themselves carry out any part of the Development.

- 16.9. [Except for the obligation[s] restricting Occupation of Dwellings at [paragraphs [] of the [] Schedule and paragraphs [] of the [] Schedule],] *(to be used where payment of contribution or trigger is on occupation rather than commencement)* The obligations in this Deed shall not be binding upon any person whose interest in the Land is restricted to being an individual purchaser occupier or tenant of any individual Dwelling and their successors in title or their mortgagee provided always that such individual purchaser, including their successors in title or their mortgagee, shall not themselves carry out any part of the Development.

17. NOTICES

- 17.1. Any notice required by this Deed shall be in writing and shall be served on the relevant party at the address set out at the head of this Deed and in the case of the Council shall be marked for the attention of the Head of Planning and quoting the Application reference ([]) or such other address for service as shall have been previously notified in writing.
- 17.2. Any notice may be given by one of the following means and shall be deemed to be served as described unless the actual time of receipt is proved:
- (a) by recorded delivery, at the time delivery was signed for;
 - (b) by hand deemed served on signature of a delivery receipt provided that if delivery occurs before 9.00am on a Working Day, the notice will be deemed to have been received at 9.00am on that day, and if delivery occurs after 5.00pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00am on the next Working Day;
 - (c) For the avoidance of doubt, where proceedings have been issued in an English Court the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

18. THIRD PARTY RIGHTS

It is agreed that nothing in this Deed shall be construed as expressly providing a right for any third party within the meaning of the Contract (Rights of Third Parties) Act 1999 and nothing in this Deed is intended to confer on any third party (whether referred to herein by name class description or otherwise) any benefit or any right to enforce any provision of this Deed.

19. FORWARD FUNDING

If the County Council forward-funds any project facility infrastructure or other expenditure for which a County Council Contribution is payable pursuant to this Agreement from its own resources and/or enters into a commitment to a third party to repay any similar forward-funding provided by that third party (whether in cash and/or in kind) in anticipation of receipt

of a County Council Contribution then on receipt of such County Council Contribution 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.

20. INDEXATION

- 20.1. The Council Contributions payable under this Deed shall be increased in accordance with: the following formula:

Amount Payable = Relevant Amount x (A/B)

Where:

Relevant Amount = the payment to be RPI Indexed

A = the figure for the RPI Index which applied when the RPI Index was last published prior to the date that the Relevant Amount is paid under this Deed

B = the figure for the RPI Index which applied when the RPI Index was last published prior to the date hereof

- 20.2. The County Council Contributions payable under this Deed shall be increased in the same proportion as the percentage increase in the [All in Tender Price Index] between the quarterly index for quarter [] of [] and the quarterly index figure for the date of actual payment

21. DISPUTES

- 21.1. If in connection with this Deed there shall arise a claim or dispute or difference (including unreasonable delay in providing approval, authority, consent or direction or some other decision or payment required by this Deed) the relevant parties shall first attempt to negotiate a solution.

- 21.2. If matters remain unsolved (as evidenced by the service of a written notice by one party on the other(s)) the parties shall refer the matter as follows:

21.2.1. where the difference or dispute relates to the construction or interpretation of this Deed, be referred to the determination (as an expert and not as an arbitrator) of an independent leading conveyancing/planning counsel agreed upon by the parties in dispute but in default of such agreement appointed by the President of the Law Society of England and Wales on the application of any of the parties in dispute;

- 21.2.2. where the difference or dispute relates to the carrying out of works or construction be referred to the determination (as expert and not as an arbitrator) of an independent Chartered Surveyor or Civil Engineer as appropriate being a partner or director practising in a leading firm of surveyors or civil engineers based in the South East of England or London and experienced in the matter in dispute agreed upon by the parties in dispute but in default of that agreement appointed by the President of the Royal Institution of Chartered Surveyors or the Institution of Civil Engineers as appropriate on the application of any of the parties in dispute PROVIDED that where a contract for the relevant works has been let and provides that the dispute or difference under it shall be referred to arbitration or the court any such dispute or difference which may arise between the parties in connection with those works shall be determined likewise.
- 21.3. If the parties in dispute shall fail to agree on the nature of the difference or dispute between them then any of them may apply to the President of the Law Society to appoint an independent solicitor being a partner in a leading firm of solicitors practising in the South East of England or London to decide (as expert and not as arbitrator) in relation to any such matter which of clauses 21.2.1 or 21.2.2 hereto is applicable.
- 21.4. Except as aforesaid any expert appointed pursuant to clauses 21.2.1 or 21.2.2 or any other person shall:
- (a) on their appointment serve written notice thereof on the parties in dispute;
 - (b) consider any written representations by or on behalf of those parties which are received by them within twenty working days of such service and immediately forward a copy of the written representation of one party to the other party;
 - (c) allow both parties to the dispute an opportunity of commenting in writing on the other party's representations within twenty working days of receipt by the other party thereof;
 - (d) have an unfettered discretion to determine the reference to them;
 - (e) serve notice of their determination as soon as they have made it;
 - (f) give full and clear reasons for their decision;
 - (g) be paid their proper fee and expenses in connection with such reference by the parties in dispute in equal shares or in such shares as they may determine and their determination shall be final and binding on the parties in dispute (save in the case of manifest error) PROVIDED THAT if any such expert shall die become insolvent or of

unsound mind or if either of the parties in dispute shall serve on them written notice in their opinion they have unreasonably delayed making their determination they shall be ipso facto discharged and be entitled only to their reasonable expenses prior to such discharge and another person shall be appointed in their place as such expert.

21.5. The provisions of this clause shall not affect the ability of the 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.

22. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

23. GOVERNING LAW

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

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

**FIRST SCHEDULE
COVENANTS BY THE OWNER**

The Owner covenants with the Council as follows:

1. Contributions to the Council

- 1.1. To pay to the Council [prior to the Commencement of Development/on or before Occupation of []% ([] per cent) of the Dwellings] the Council Contributions and such sums shall be Index Linked.
- 1.2. Not to Commence the Development/cause or permit the Occupation of more than []% ([] per cent) of Dwellings unless and until the Council Contributions have each been paid to the Council.
- 1.3. If the Council Contributions are not paid to the Council on or before the relevant payment date, to pay to the Council in addition Interest from the relevant payment date until the actual date of payment pursuant to clause [12] and any such interest shall be treated as part of the Council Contributions.

2. Contributions to the County Council

- 2.1. To pay to the Council [prior to the Commencement of Development/on or before the Occupation of []% ([] per cent) of the Dwellings] the County Council Contributions and such sums shall be Index Linked.
- 2.2. Not to Commence the Development/cause or permit the Occupation of more than []% ([] per cent) of Dwellings unless and until the County Council Contributions have each been paid to the Council.
- 2.3. If the County Council Contributions are not paid to the Council on or before the relevant payment date, to pay to the Council in addition Interest from the relevant payment date until the actual date of payment pursuant to clause [12] and any such interest shall be treated as part of the County Council Contributions.

**SECOND SCHEDULE
COVENANTS BY THE COUNCIL**

1. Covenants by the Council regarding the Council Contributions

The Council covenants with the Owner as follows:

- 1.1. To use each of the Council Contributions for their stated purpose and for no other purpose.
- 1.2. In the event that the Council Contributions (or any part of it) has not been spent or committed for expenditure by the Council within 5 (five) years of the date of payment of the Council Contributions, the Council shall upon written request by the person who paid the Council Contributions return such part of the Council Contributions which has not been spent or committed for expenditure to the person who paid the contribution, together with any interest accrued thereon.

2. Covenants by the Council regarding the County Council Contributions

The Council covenants with the Owner as follows:

- 2.1. To use each of the County Council Contributions for their stated purpose and for no other purpose.
- 2.2. To transfer the County Council Contributions (or any part thereof) to the County Council if the Council is satisfied that the County Council will Spend the County Contributions on the purposes stated in this Deed or for such other purposes for the benefit of the Development as the Owner and the Council in consultation with the County Council may otherwise agree and the Council further covenants with the Owner (hereinafter in this paragraph deemed to refer to the person who made the relevant payment) to upon written request return to the Owner any part of the County Council Contributions which have not been so transferred to the County Council within ten (10) years from the date of payment.

THIRD SCHEDULE
PART ONE: AFFORDABLE HOUSING

The Owner covenants with the Council as follows:

1. General Provisions

- 1.1. To provide the Affordable Housing Units within the Development on the Affordable Housing Land in accordance with the provisions of this Schedule and in accordance with the Affordable Housing Tenure Mix and the Affordable Housing Plan.
- 1.2. To notify the housing team at the Council of the identity of the Registered Provider with responsibility for the delivery Affordable Housing and to keep the housing team at the Council informed of the progress of the Development.
- 1.3. Not to cause or allow the Commencement of the Development to occur unless and until the following has occurred:
 - 1.3.1. the Owner has entered into an unconditional and binding contract to Transfer the Affordable Housing Land and the Affordable Housing Units to the Registered Provider;
and
 - 1.3.2. the Owner has provided the Responsible Officer for Housing with a certified copy of the contract referred to in paragraph 1.3.1.

2. Restrictions on occupation

- 2.1. None of the Affordable Housing Units shall be Occupied until the Owner (being a Registered Provider) has agreed a Local Lettings Plan with the Council.
- 2.2. No more than 50% (fifty percent) of the Open Market Dwellings shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notice of such has been received by the Responsible Officer for Housing.
- 2.3. No more than 50% (fifty percent) of the Market Housing Units shall be Occupied until the Affordable Housing Land and the Affordable Housing Units thereon have been Transferred to a Registered Provider.

3. Provision of Information

To keep the Council's housing team informed of progress of any negotiations to dispose of the Affordable Housing Units and to promptly provide the Council's housing team with such information and supporting evidence as they may reasonably request.

4. Provisions relating to the standards of the Affordable Housing

4.1. That the Affordable Housing Units [shall comply with the Occupancy Requirement and] shall be constructed to a standard required to meet: -

4.1.1. any mandatory standards in relation to design, construction and accessibility required by the Regulator of Social Housing; and

4.1.2. the NDSS

4.1.3. [insert reference to any specific requirements for wheelchair accessibility/ adaptability] which are current at the date of the Planning Permission.

5. Provisions relating to Affordable Housing to be transferred to a Registered Provider

5.1. That the Transfer of the Affordable Housing Land and Affordable Housing Units to a Registered Provider shall be at a price reflecting the provision of serviced land at nil value and an assumption of nil public subsidy.

5.2. The Owner covenants with the Council that the Transfer of the Affordable Housing Land and Affordable Housing Units pursuant to paragraph 5.1 shall be free from financial encumbrances and shall contain the following:

5.2.1. the grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Land and the Affordable Housing Units thereon;

5.2.2. a reservation of all rights of access and passage of services and rights of entry and rights of support reasonably necessary for the purpose of the Development (including its construction);

5.2.3. such other terms as the Owner agrees with the Registered Provider.

6. Nomination Rights

That none of the Affordable Housing Units shall be Occupied until the Owner (being a Registered Provider) has entered into a Nomination Agreement with the Council and until such time as the Nomination Agreement is entered into, not to Occupy or allow the Occupation of the Affordable Housing Units other than in accordance with the Nomination Agreement.

7. Use of Affordable Housing Units

7.1. Subject to paragraphs 7.2, 8 and 9 that from the date of Practical Completion of the Affordable Housing Units they shall not be used or Occupied for any purpose other than as Affordable

Housing in accordance with the Local Lettings Plan, the Affordable Housing Scheme and the Nomination Agreement.

7.2. The covenant set out in paragraph 7.1 shall not be binding on or enforceable against:

7.2.1. any Protected Occupier or any mortgagee or chargee of the Protected Occupier or any person deriving title from the Protected Occupier or any successor in title thereto and their respective mortgagees and chargees; or

7.2.2. any Chargee and any successors in title thereto provided that the Chargee shall have first complied with the Chargee's Duty

PROVIDED THAT if any successor in title to the Protected Occupier (as referred to in paragraph 7.2.1) or the Chargee (as referred to in paragraph 7.2.2) is a Registered Provider the provisions of [paragraph 7.1] shall thereupon become enforceable against the said Registered Provider or other provider of affordable housing and their successors in title subject as provided herein.

7.3. The Owner shall not on the first sale of fifty per cent (50%) of any newly constructed and previously unoccupied Shared Ownership Unit offer such Shared Ownership Unit for sale at more than a thirty five per cent (35%) share of the equity in that Shared Ownership Unit PROVIDED ALWAYS this shall not prevent a buyer from acquiring a greater share in a Shared Ownership Unit where this can be afforded by the buyer taking into account their individual financial circumstances and in all cases should be in accordance with the requirements of Homes England.

8. Chargee Clause

8.1. Prior to seeking to dispose of the Affordable Housing Units (or any one or more of them) and the Affordable Housing Land (or any part thereof) pursuant to any default under the terms of its mortgage or charge ("the Charged Property") the Chargee shall give prior written notice including Evidence and written confirmation of the default (the "Chargee's Notice") to the Council of its intention to dispose and:

8.1.1. the Chargee shall use reasonable endeavours over a period of three (3) months from the date of service of the Chargee's Notice on the Council to complete a disposal of the Charged Property in such a way so as to safeguard it as Affordable Housing in line with paragraph 8.2 for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation relating to the Charged Property including all accrued principal monies and interest due and reasonable costs relating to the said security documentation; and

8.1.2. if such disposal has not completed within the three (3) month period referred to in 8.1.1 above the Chargee shall, subject to the proviso set out in paragraph 7.2 of this Part One of the Third Schedule, be entitled to dispose of the Charged Property free from the affordable housing provisions contained in the Third Schedule to this Deed which provisions shall determine absolutely; and

8.2. In the event of a default under any security referred to in paragraph 8.1 or in other circumstances warranting the intervention of Homes England nothing in this Deed shall prevent the transfer of the Affordable Housing Units or any one or more of them (as the case may be) to another Registered Provider or alternative affordable housing provider (in either case approved in writing by the Council's housing team) or to the Council subject to the Affordable Housing Land and the Affordable Housing Units remaining bound by the provisions of this Deed.

9. Notices

Without prejudice to the provisions of paragraphs 1 to 8 the Owner and any Chargee shall comply with any statutory requirements as contained in Part 2 of the Housing and Regeneration Act 2008 and must notify the Council immediately in writing in the event of service of any notice order or direction served made or given under Part 2 of the Housing and Regeneration Act 2008.

THIRD SCHEDULE
PART TWO: AFFORDABLE HOUSING SCHEME

NUMBER OF DWELLINGS	DWELLING TYPES	TENURE OF DWELLINGS (Affordable Rented / Social Rented / Shared Ownership)	PLOT NUMBERS

APPENDIX 1
DRAFT PLANNING PERMISSION

APPENDIX 2
THE PLAN

APPENDIX 3
AFFORDABLE HOUSING PLAN

**APPENDIX 4
PAYMENT NOTICE**

Payment of monies due under a Section 106 Planning Obligation

Payment to be made by/on behalf of:

Development at:
.....

Agreement dated:

Planning application reference number:

Obligation in Agreement(Please continue on a separate sheet if necessary):

(a) Description of Contribution(s) and clause no(s):	
(b) Amount of Contribution(s) due:	
(c) Amount of interest due on Contribution(s) :	
(d) If applicable, the amount of interest due on Contribution(s):	
(e) Date upon which the Contribution(s) became due:	
(f) Method of Payment:	

THE COMMON SEAL of
TONBRIDGE AND MALLING BOROUGH COUNCIL

was affixed to this Deed

in the presence of:-

Authorised Officer

[Executed as a Deed by

[NAME]

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation

[Executed as a Deed by

[COMPANY NAME/SOCIETY/LLP]

acting by [NAME], [a director/member/member of its Committee] and

[NAME], [a director/its secretary/member/member of its Committee]

Director

Director/Secretary

[Executed as a Deed by

[COMPANY NAME/LLP]

acting by [NAME],

a [director/member] [Director/Member]

in the presence of:-

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation
.....]

[Executed as a Deed by
affixing the Common Seal of [COMMON SEAL]
[COMPANY NAME/SOCIETY/LLP]
in the presence of:-

[Director/Committee Member/
Member]

[Director/Secretary /
Committee Member/Member]