

Dated

2018

**RICHARD MACKNEY FULLER**

and

**GLADMAN DEVELOPMENTS LIMITED**

**Planning obligation by deed of undertaking under the Town and Country  
Planning Act 1990 section 106**

relating to

**Land off Dover Road  
Walmer  
Deal  
Kent**



Gladman House  
Alexandria Way  
Congleton Business Park  
Congleton, Cheshire  
CW12 1LB  
Tel: 01260 288800  
Fax: 01260 288861

THIS UNILATERAL UNDERTAKING is given the                    day of                    2018

BY:

- 1) RICHARD MACKNEY FULLER of Sutton Court Farmhouse, Church Hill, Sutton by Dover, Kent, CT15 5DF ('the Owner')

TO:

- 2) DOVER DISTRICT COUNCIL of White Cliffs Business Park, Dover, Kent CT16 3PJ ('the Council') and
- 3) KENT COUNTY COUNCIL of County Hall, Maidstone, ME14 1XQ ('the County Council')

WITH THE CONSENT OF:

- 4) GLADMAN DEVELOPMENTS LIMITED (company registration number 3341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton, CW12 1LB ('the Promoter')

RECITALS

- 1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2) The County Council is the local highway authority and the education authority for the area in which the Site is situated.
- 3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- 4) The Owner and the Promoter have entered into the Promotion Agreement.
- 5) The Promoter submitted the Application to the Council on 26 April 2017.
- 6) The Council resolved on 28 July 2017 to refuse planning permission in respect of the Application and the Promoter has submitted the Appeal for determination by the Secretary of State.
- 7) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that Planning Permission is granted pursuant to the Appeal.

NOW THIS DEED WITNESSES as follows:

## **1. Definitions and interpretation**

### **1.1 Definitions**

For the purposes of this deed the following expressions shall have the following meanings:

- 1.1.1 'the 1980 Act' means the Highways Act 1980
- 1.1.2 'the 1990 Act' means the Town and Country Planning Act 1990 (as amended)
- 1.1.3 'Affordable Housing' means Affordable Rented Housing and Intermediate Housing 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 which remains at an affordable price for future eligible households (including for the avoidance of doubt one Wheelchair Accessible Unit)
- 1.1.4 'the Affordable Housing Land' means the land within the Site upon which the Affordable Housing Units are to be constructed
- 1.1.5 'the Affordable Housing Scheme' means the scheme submitted in accordance with the Planning Permission which shall include details of: (i) the numbers, type, tenure and location on the Site of the Affordable Housing, and (ii) the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Housing Units, and (iii) the arrangements for the transfer of the Affordable Housing to a Registered Provider, and (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing, and (v) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced
- 1.1.6 'the Affordable Housing Units' means that part of the Development comprising 30% of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme, 70% of which shall be Affordable Rented Housing and 30% of which shall be Intermediate Housing and 'an Affordable Housing Unit' shall be construed accordingly
- 1.1.7 'Affordable Rented Housing' has the meaning set out in Annex 2 to the NPPF
- 1.1.8 'the Appeal' means the appeal to the Secretary of State following the refusal of the Application by the Council given appeal reference APP/X2220/W/17/3183959

- 1.1.9 'the Application' means the application for outline planning permission for the Development dated 26 April 2017 submitted to the Council and allocated reference number DOV/17/00487
- 1.1.10 'Approval (Reserved Matters)' means the reserved matters approval or approvals which are obtained in respect of the Planning Permission PROVIDED THAT where more than one reserved matters approval is obtained in respect of the Development for the purposes of calculating financial contributions payable under the terms of this deed it shall mean the reserved matters approval that is implemented for the purposes of Section 56(4) of the 1990 Act
- 1.1.11 'a Chargee' means any mortgagee or chargee of the Registered Provider, the successors in title to such a mortgagee or chargee, or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
- 1.1.12 'the Chargee's Duty' means the tasks and duties set out in Schedule 2 paragraph 5.6
- 1.1.13 "Charging Schedule" means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations
- 1.1.14 'CIL Liability' means the amount imposed as 'CIL' ( as that acronym is defined in the CIL Regulations) including where applicable the combined CIL for each Phase of Development
- 1.1.15 'CIL Regulations' means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.1.16 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and 'Commence Development' shall be construed accordingly
- 1.1.17 'Community Learning Contribution' means the sum derived by multiplying the number of Dwellings by £25.64 payable towards the costs of the provision of IT equipment at Deal Adult Education Centre
- 1.1.18 'Composition of the Development' means the aggregate number of Dwellings (and in the case of the Healthcare Contribution the number of each Dwelling type classified by the number of bedrooms in the Dwellings) referred to in the notice of Approval (Reserved Matters)

- 1.1.19 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect
- 1.1.20 'Decision Letter' means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
- 1.1.21 'the Development' means the development of the Site pursuant to the Planning Permission with the demolition of existing stable blocks and erection of up to 85 dwellings with public open space, landscaping and sustainable drainage system and vehicular access point from Dover Road with all matters reserved except for means of access
- 1.1.22 'a Dwelling' means a dwelling (including a house, flat, maisonette or bungalow) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly
- 1.1.23 'the Education Contribution' means the aggregate of the Primary Education Contribution and the Secondary Education Contribution
- 1.1.24 'Flat' means a Dwelling that occupies a single floor and/or does not benefit from private open space for the exclusive use of the residents of that Dwelling and no other persons
- 1.1.25 'the HCA' means the Homes and Communities Agency (now known as Homes England) created pursuant to the Housing and Regeneration Act 2008 exercising the functions in relation to the funding of affordable housing and includes any successor body exercising similar functions
- 1.1.26 'the Healthcare Contribution' means the sum derived by multiplying the Number of Occupiers by £360 payable towards the costs of increasing capacity at the Balmoral Surgery in Deal
- 1.1.27 'House' means a Dwelling that does not meet the definition of a Flat
- 1.1.28 'the Index' means in relation to contributions payable to the Council under Schedule 2 the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation and in relation to contributions payable to the County Council under Schedule 3 the General Building Cost Index as published by the Building Cost Information Service on behalf of the Royal Institution of Chartered Surveyors or any successor organisation
- 1.1.29 'Infrastructure' has the meaning ascribed in Section 216(2) of the Planning Act 2008
- 1.1.30 'Interest' means interest at 5% above the base lending rate of National Westminster Bank plc from time to time
- 1.1.31 'Intermediate Housing' has the meaning set out in Annex 2 to the NPPF

- 1.1.32 'Library Contribution' means the sum derived by multiplying the number of Dwellings by £48.02 payable towards the costs of the provision of specialised stock at Deal Library
- 1.1.33 '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 and the SUDS
- 1.1.34 'Management Plan' means a scheme to be submitted to and approved in writing by the Council, which identifies:
- (i) the future management and maintenance requirements of the Open Space and the SUDS
  - (ii) the proposed ongoing maintenance operations for the Open Space and the SUDS, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space and the SUDS
  - (iii) the proposed means of funding the ongoing maintenance and management of the Open Space and the SUDS in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company
  - (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan
- 1.1.35 'the Market Housing Units' means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing
- 1.1.36 'the NPPF' means the National Planning Policy Framework issued by the Department for Communities and Local Government and dated March 2012
- 1.1.37 'Number of Occupiers' means the number of Occupiers of the Development calculated by applying the Composition of the Development to the table set out at Schedule 5
- 1.1.38 'to Occupy' means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' 'Occupied' and 'Occupier' shall be construed accordingly

- 1.1.39 '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
- 1.1.40 '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 Council before the Commencement of Development
- 1.1.41 'the Outdoor Sports Contribution' means the sum of £33,900 payable towards the costs of increasing the capacity of recreational sites within Deal
- 1.1.42 'Party' means any of the parties to the deed
- 1.1.43 'Phase of Development' means a phase of development which shall be in accordance with the planning conditions to which the Planning Permission is subject
- 1.1.44 'Planning Inspector' means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal
- 1.1.45 'the Play Area' means a local equipped area for play for use by the general public to be provided on the Site in accordance with the Planning Permission
- 1.1.46 'the Plan' means the plan attached to this deed
- 1.1.47 'the Planning Permission' means any planning permission issued by the Secretary of State in determining the Appeal
- 1.1.48 'Primary Education Contribution' means the sum derived by applying the formula  

$$(A \times £831) + (B \times £3,324)$$
Where  
A is the number of Qualifying Flats and  
B is the number of Qualifying Houses  
payable towards the costs of the Phase 2 expansion of Deal Primary School
- 1.1.49 'the Promotion Agreement' means a promotion agreement dated 11 May 2017 in respect of the Site made between the Owner and the Promoter
- 1.1.50 'a Protected Tenant' means any tenant who:
- 1.1.50.1 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
- 1.1.50.2 has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit, or
- 1.1.50.3 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

- 1.1.51 'Qualifying Flats' means the total number of Dwellings that:
- (i) meet the definition of a Flat, and
  - (ii) have more than one room that may by design be used as a bedroom, and
  - (iii) have a gross internal area of more than 56 square meters
- 1.1.52 'Qualifying Houses' means the total number of Dwellings that:
- (iv) meet the definition of a House, and
  - (v) have more than one room that may by design be used as a bedroom, and
  - (vi) have a gross internal area of more than 56 square meters
- 1.1.53 'the 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 the HCA or any other body who may lawfully provide or fund affordable housing from time to time
- 1.1.54 'Relevant Agreement' means an agreement to secure planning obligations under section 106 of the 1990 Act and which relates to planning permission granted for development where such agreement has been entered into on or after 6 April 2010 and 'Relevant Agreements shall be construed accordingly
- 1.1.55 'Relevant Date' means the date prescribed by paragraph (b) of the definition of 'relevant determination' in Regulation 123(4) of the CIL Regulations in respect of a determination of an application for planning permission being 6 April 2015 or any other date as may be prescribed in Regulation 123(4) of the CIL Regulations or by the Secretary of State as the case may be
- 1.1.56 'Secondary Education Contribution' means the sum derived by applying the formula  
$$(C \times £589.95) + (D \times 2,359.80)$$
  
Where  
C is the number of Qualifying Flats and  
D is the number of Qualifying Houses  
Payable towards the costs of the Phase 3 extension of Sir Roger Manwood Secondary School in Sandwich
- 1.1.57 'Secretary of State' means the Secretary of State for Housing Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act



- 1.1.58 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.59 'Social Care Contribution' means the sum derived by multiplying the number of Dwellings by £76.26 payable towards the costs of the provision of additional services at the Meadowside Social Care Hub in Deal
- 1.1.60 'the SPA Contribution' means the sum of £3,542 towards the costs of the Thanet Coast SPA Mitigation Strategy dated October 2012
- 1.1.61 'the SUDS' means the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme
- 1.1.62 'the SUDS Scheme' means a sustainable urban drainage system scheme for the Development which is to be submitted to and approved in writing by the Council prior to the Commencement of the Development, and which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development, and the timescales for when the said works features and measures are to be carried out
- 1.1.63 'Wheelchair Accessible Unit' means one Affordable Housing Unit which is a wheelchair adaptable home and compliant with the Buildings Regulations 2010 (2015 Edition) Access to and use of Buildings Approved Document M M4 (3) Category-(3) Wheelchair User Dwelling to include the provision of one designed Lifetime Home Wheelchair Adaptable Unit at no cost to the County Council or any replacement thereof as may be agreed in writing by the Council such consent may not be reasonably withheld or delayed

## 1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.2.4 Wherever 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 unless there is an express provision otherwise.

- 1.2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

## **2. Legal basis**

- 2.1 This deed is made pursuant to the 1990 Act section 106.
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the Council and the County Council as local planning authorities.

## **3. Conditions, duration and enforcement**

### **3.1 Conditions precedent**

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Commencement of Development

save for the provisions of clause 6, Provisions of Immediate Effect, and save in respect of 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.

### **3.2 CIL Regulations**

- 3.2.1 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation contained in this deed:
  - 3.2.1.1 is not a material planning consideration; or
  - 3.2.1.2 can be given no weight in determining the Appeal; or
  - 3.2.1.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations; or

3.2.1.4 requires funding or provision towards a project or towards a type of Infrastructure where the Council and /or the County Council has/have following the Relevant Date entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of Infrastructure,

then subject to clause 9.2 of this deed such Planning Obligation shall not be enforceable pursuant to this deed and shall cease to have effect within this deed save as set out in the Decision Letter.

3.2.2 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any contribution payable under the terms of this deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable.

### 3.3 **Duration**

3.3.1 This deed shall cease to have effect, in so far 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 expires before the Commencement of Development.

3.3.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

### 3.4 **Other development**

Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.

### 3.5 **Non-enforcement**

3.5.1 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such

owner-occupiers or tenants or their mortgagees, except in respect of Schedule 2 paragraph 5.5 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed.

- 3.5.2 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.

#### **4. Owner's covenants**

- 4.1 The Owner covenants with the Council as set out in Schedule 2.  
4.2 The Owner covenants with the County Council as set out in Schedule 3.

#### **5. The Promoter's Consent**

- 5.1 The Promoter acknowledges and declares that:  
5.1.1 this deed has been entered into by the Owner with its consent, and  
5.1.2 the Site shall be bound by the obligations contained in this deed.

#### **6. Provisions of immediate effect**

- 6.1 On completion of this deed the Owner shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £820 and £740 respectively.  
6.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.  
6.3 The Owner agrees to give the Council and the County Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not be applicable to the disposal of individual Dwellings to individual purchasers.

#### **7. Notices**

- 7.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered

by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

7.2 The address for any notice or other written communication shall be within the United Kingdom.

7.3 A notice or communication shall be served or given:

7.3.1 on the Owner at the address set out in this deed, or such other address as shall be notified in writing to the Council and the County Council from time to time, and

7.3.2 on the Promoter at its registered office from time to time, or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of Gladman Legal Department, and

7.3.3 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the Head of Regeneration and Development quoting reference DOV/17/00487, and

7.3.4 on the County Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the General Counsel quoting reference KEN001:091144.

## **8. Local land charge**

This deed shall be registerable as a local land charge.

## **9. Jurisdiction and legal effect**

9.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.

9.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.

9.3 No waiver (whether expressed or implied) by the Council (or the County Council) of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council (or the County Council) from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9.4 The provisions of this deed (other than this clause 9.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

**10. Indexation, interest and VAT**

- 10.1 Any sum to be paid to the Council under Schedule 2 shall be increased by an amount equivalent to the increase in the Index from the date of this deed until the date on which such sum is paid.
- 10.2 Any sum to be paid to the County Council under Schedule 3 shall be increased by an amount equivalent to the increase in the Index from October 2016 until the date on which such sum is paid.
- 10.3 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.
- 10.4 All consideration given in accordance with the terms of this deed shall be exclusive of any value added tax properly payable.

IN WITNESS of which the Owner and the Promoter have executed this deed as a deed and delivered it the day and year first before written.

SCHEDULE 1

The Owner's Title and Site Description

<b>Title Number</b>	<b>Description of Site</b>	<b>Owner</b>
K483696	Kings Barn Field Dover Road Walmer Ripple Ringwould with Kingsdown	Richard Mackney Fuller

## SCHEDULE 2

### The Owner's Covenants with the Council

#### **1. Progress of development**

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon Occupation of any part of the Development.

#### **2. Payment of contributions**

- 2.1 To pay the Healthcare Contribution, the Outdoor Sports Contribution and the SPA Contribution to the Council prior to the first Occupation of more than 50% of the Dwellings.
- 2.2 Not to Occupy nor permit the Occupation of more than 50% of the Dwellings until the payments referred to at paragraph 2.1 above have been made.
- 2.3 In the event that the Composition of the Development constructed on the Site does not match the Composition of the Development on which the Healthcare Contribution as paid was based the Owner shall pay to the Council as soon as the revised Composition of the Development becomes apparent any additional amount pertaining to the difference between the amount of the Healthcare Contribution paid and the amount of the Healthcare Contribution that would have been payable using the revised Composition of the Development.

#### **3. Open space transfer and works**

- 3.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan.
- 3.2 Prior to Commencement of Development to submit to the Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space and the SUDS.



- 3.3 Not to permit or allow the Occupation of more than 75% of the Dwellings on any Phase of Development until any Open Space to be located on that Phase of Development has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.
- 3.4 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the Council of completion and to request that the Council inspects the Open Space within thirty Working Days of such notification.
- 3.5 If upon inspection of the Open Space the 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.
- 3.6 To maintain the Open Space in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 3.7 below has been completed.
- 3.7 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 Council under the approved Management Plan and on the terms set out in Schedule 4.
- 3.8 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 he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.8 (i) and 3.8 (ii) of Schedule 2.
- 3.9 Not to amend the approved Management Plan without the Council's written consent.

- 3.10 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.

#### **4. The SUDS**

- 4.1 Prior to the Commencement of Development to submit to the Council for approval the SUDS Scheme.
- 4.2 To implement the approved SUDS Scheme in accordance with the timescales set out therein.
- 4.3 Upon the completion of the laying out of the SUDS in accordance with the approved SUDS Scheme to notify the Council of completion and to request that the Council inspects the SUDS within thirty Working Days of such request.
- 4.4 If upon inspection of the SUDS the Council identifies any works which are necessary to bring the SUDS up to the standard required by the approved SUDS Scheme to complete such works as soon as reasonably practicable.
- 4.5 To maintain the SUDS in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 4.6 below has been completed.
- 4.6 Not to permit the Occupation of more than 95% of the Dwellings that form part of the Development until the SUDS have been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 4.
- 4.7 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 SUDS in accordance with the approved Management Plan; and
  - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 4.7 (i) and 4.7 (ii) of Schedule 2.

#### **5. Affordable housing**

- 5.1 Not to permit or allow the Commencement of Development on any Phase of Development until the Affordable Housing Scheme in relation to that Phase of Development has been agreed in writing by the Council.

- 5.2 No more than 50% of the Market Housing Units on any Phase of Development shall be Occupied until 50% of the Affordable Housing Units to be located on that Phase of Development have been constructed in accordance with the Planning Permission and made ready for residential occupation and have been transferred to the Registered Provider.
- 5.3 No more than 80% of the Market Housing Units on any Phase of Development shall be Occupied until all of the Affordable Housing Units to be located on that Phase of Development have been constructed in accordance with the Planning Permission and made ready for residential occupation and have been transferred to the Registered Provider.
- 5.4 The transfer to the Registered Provider shall transfer to include the following:
- 5.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
  - 5.4.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Land, all such services to be connected to the mains; and
  - 5.4.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.
- 5.5 From the Date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the approved Affordable Housing Scheme, save that this obligation shall not be binding on:
- 5.5.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or
  - 5.5.2 any Chargee provided that he has first complied with the Chargee's Duty, or
  - 5.5.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 5.6 The Chargee shall, before seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge, give not less than three months' prior notice to the Council of its intention to dispose, and the following provisions shall apply, provided that

the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage :

- 5.6.1 if the Council responds within two months from receipt of the Chargee's notice and indicates that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing, the Chargee shall co-operate with those arrangements and use its best endeavours to secure the transfer.
- 5.6.2 If the Council or any other person cannot within three months of the date of service of its response under paragraph 5.6.1 secure the transfer then, provided that the Chargee has complied with its obligations under paragraph 5.6.1, the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 5 which shall then cease to apply to those units.
- 5.6.3 If the Council does not serve its response to the Chargee's notice within two months, the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 5 which shall then cease to apply to those units.

#### 5.7 **Wheelchair Accessible Unit**

The Owner shall provide the Wheelchair Accessible Unit at the Development unless otherwise agreed in writing with the Council.

## SCHEDULE 3

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

#### **1. Progress of development**

The Owner shall notify the County Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon Occupation of any part of the Development.

#### **2. Payment of contributions**

- 2.1 To pay the Education Contribution to the County Council in the following instalments:
  - 2.1.1 50% prior to the first Occupation of the Development, and
  - 2.1.2 the balance prior to the first Occupation of more than 50% of Dwellings.
- 2.2 Not to Occupy nor permit the Occupation of any Dwelling until the payment referred to at paragraph 2.1.1 above has been made.
- 2.3 Not to Occupy nor permit the Occupation of more than 50% of the Dwellings until the payment referred to at paragraph 2.1.2 above has been made.
- 2.4 In the event that the number of Qualifying Flats and/or Qualifying Houses constructed on the Site does not match the number of Qualifying Flats and/or Qualifying Houses on which the Education Contribution as paid was based the Owner shall pay to the County Council as soon as the revised number of Qualifying Flats and/or Qualifying Houses on the Development becomes apparent any additional amount pertaining to the amount paid and the amount that would have been payable using the revised number of Qualifying Flats and/or Qualifying Houses.
- 2.5 To pay the Community Learning Contribution, the Library Contribution and the Social Care Contribution to the County Council prior to the first Occupation of more than 50% of the Dwellings.
- 2.6 Not to Occupy nor permit the Occupation of more than 50% of the Dwellings until the payments referred to at paragraph 2.5 above have been made.

2.7 In the event that the Composition of the Development constructed on the Site does not match the Composition of the Development on which the Community Learning Contribution, the Library Contribution and the Social Care Contribution as paid was based the Owner shall pay to the Council as soon as the revised Composition of the Development becomes apparent any additional amount pertaining to the difference between the amount of the Community Learning Contribution, the Library Contribution and the Social Care Contribution paid and the amount of Community Learning Contribution, the Library Contribution and the Social Care Contribution that would have been payable using the revised Composition of the Development.

## SCHEDULE 4

### Provisions relating to the transfer of the Open Space and the SUDS

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

- i. be a transfer of the entire freehold interest of the Open Space and the SUDS
- 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
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space and the SUDS
- 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 and the SUDS
- 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 or the SUDS
- x. not require consideration in excess of one pound (£1)
- xi. in the case of a transfer to the Management Company contain a covenant for the benefit of the Council to manage and maintain the Open Space and the SUDS in accordance with the approved Management Plan

SCHEDULE 5

Number of Occupiers

<b>DWELLING TYPE</b>	<b>OCCUPIERS PER DWELLING</b>
1 Bedroom	1.4
2 Bedroom	2
3 Bedroom	2.8
4+ Bedroom	3.5



SIGNED AS A DEED by

**RICHARD MACKNEY FULLER**

In the presence of:

Witness name: .....

Witness address: .....

.....

.....

Occupation: .....

EXECUTED as a deed by

**GLADMAN DEVELOPMENTS LIMITED**

Acting by a director

.....  
Director

in the presence of:

Witness name: .....

Witness address: .....

.....

.....

Occupation: .....



**NOTES**

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Ordnance Survey base mapping - supplied by client.

