

DATED

2018

SWALE BOROUGH COUNCIL

-and -

MICHAEL EDWARD PARKER

-and-

SALLY DIANE PARKER

-and-

TERRENCE ANTHONY PARKER

-and-

GILLIAN PARKER

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND AT The Slips, Scocles Road, Minster on Sea, Kent ME12 3SN
Planning Application Ref No 16/508117

Mid Kent Legal Services
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent ME10 3HT
Ref.: S010057



CONTENTS

CONTENTS	<u>23</u>
RECITALS	<u>45</u>
OPERATIVE PROVISIONS	<u>56</u>
1. Definitions	<u>56</u>
2. Interpretation.....	<u>1011</u>
3. Legal Basis	<u>1112</u>
4. Conditionality	<u>1213</u>
5. Covenants and Obligations of the Owner	<u>1213</u>
6. Covenants and Obligations of the Borough Council	<u>1314</u>
7. Mortgagee's Consent.....	<u>1314</u>
8. Release and Exclusions.....	<u>1314</u>
9. Determination of the Planning Permission.....	<u>1415</u>
10. Disputes and Expert Determination	<u>1516</u>
11. Notices	<u>1617</u>
12. Local Land Charge	<u>1819</u>
13. Successors in Title	<u>1920</u>
14. Powers of the Borough Council	<u>1920</u>
15. Severability.....	<u>1920</u>
16. Rights of Third Parties	<u>1920</u>
17. Change of Ownership and New Interest	<u>1920</u>
18. Waiver.....	<u>2022</u>
19. Indexation.....	<u>2122</u>
20. Interest	<u>2223</u>
21. VAT	<u>2223</u>
22. Agreements and Declarations	<u>2223</u>
23. Jurisdiction	<u>2223</u>
24. Delivery	<u>2324</u>

SCHEDULE 1 : THE LAND.....	<u>2627</u>
SCHEDULE 2 : FINANCIAL CONTRIBUTIONS.....	<u>2728</u>
SCHEDULE 3: SPECIAL PROTECTION AREA.....	<u>3839</u>
SCHEDULE 4 : ON SITE PUBLIC OPEN SPACE.....	<u>4142</u>
SCHEDULE 5: S278 AGREEMENT AND TRAFFIC REGULATION ORDER.....	<u>5354</u>
APPENDIX 1 : PLAN.....	58
APPENDIX 2 : DRAFT CONDITIONS.....	<u>5658</u>
APPENDIX 3 : PUBLIC RIGHTS OF WAY PLAN.....	<u>5759</u>
APPENDIX 4 : s278 PLAN.....	<u>5860</u>
APPENDIX 5 : DRAFT TERMS OF TRANSFER OF THE OPEN SPACE.....	<u>5962</u>
APPENDIX 6 : MAINTENANCE CONTRIBUTION FORMULA.....	<u>6164</u>

SPECIMEN DRAFT

THIS DEED OF AGREEMENT is dated the day of

BETWEEN

- 1) **SWALE BOROUGH COUNCIL** of Swale House East Street Sittingbourne Kent ME10 3HT (the “**Borough Council**”) and
- 2) MICHAEL EDWARD PARKER of Gaze Hill House, Nutfields, Sittingbourne, Kent ME10 4JP, (the “**First Owner**”)
- 3) SALLY DIANE PARKER of Gaze Hill House, Nutfields, Sittingbourne, Kent ME10 4JP, (the “**Second Owner**”)
- 4) TERRENCE ANTHONY PARKER of 44 Gableside, Nelson Avenue, Minster on Sea, Kent ME12 3SE (the “**Third Owner**”) and
- 5) GILLIAN PARKER of 47 Pond Drive, Chilton Manor, Sittingbourne, Kent ME10 4QF (the “**Fourth Owner**”)

RECITALS

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated
- B. The Application was made to the Borough Council
- C. The Borough Council by its Planning Committee at its meeting held on 20th July 2017 resolved that planning permission be granted for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused) making provision for *inter alia* planning obligations
- D. The Owner (being the First Owner the Second Owner the Third owner and the Fourth Owner) is interested in the Land by virtue of being the registered proprietor with freehold title absolute of the Land as set out in Schedule 1
- E. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Regulations 2010

- F. Pursuant to The Conservation of Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) the Borough Council must be satisfied that the Development will not adversely affect the integrity of the Special Protection Area. The Borough Council is required to have regard to the views of Natural England in this context. Natural England's position is in the absence of the Development providing any avoidance or mitigation measures the likelihood of a significant effect upon the Special Protection Area cannot be ruled out and an appropriate assessment would be necessary. However Natural England advises that the likely significant effect of recreational impact on the SPA from new residential development can be screened out if an appropriate contribution is made towards the provision of SPA Mitigation Measures across the Special Protection Area.
- G. The Owner has agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Borough Council's Planning Committee hereinbefore recited which Deed may also secure other planning benefits.
- H. The Borough Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this Deed will facilitate, be conducive to and be incidental to the Borough Council's functions.
- I. The County Council is the statutory authority responsible for education, local highways, libraries, youth services, community learning and adult social care for the area within which the Land is situated.
- J. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of the Local Government Act 1972, sections 12 and 93 of the Local Government Act 2003, section 1 of the Localism Act 2011 and all other powers so enabling.

Commented [1]: To be edit as necessary.

OPERATIVE PROVISIONS

IT IS AGREED as follows

DEFINITIONS

- 1.1 Unless the context otherwise requires, where in this Deed the following defined terms

and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the interpretation provisions contained in Paragraphs 1.1 to the relevant Schedule

“1990 Act”	means the Town and Country Planning Act 1990 (as amended)
“All in Tender Price Index”	means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors
“Application”	means the application for outline planning permission submitted by the Owner to the Borough Council to carry out the Development at the Land and given the registered reference number 16/508117/OUT
“Borough Council Contributions”	means the financial contributions payable to the Borough Council pursuant to Schedule 2 comprising <ul style="list-style-type: none">a) the NHS Healthcare Contributionb) the Open Space Contributionc) the SPA Mitigation Contributiond) the Wheelie Bin Contributione) the SPA Contribution
“Commencement of Development”	means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words “Commence” and “Commence Development” shall be construed accordingly
“County Council”	means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the education authority the local highway authority the transport authority the social care authority and the libraries authority for the area within which the Land is

	situated
“County Council Contributions”	means the financial contributions pursuant to Schedule 2 comprising <ul style="list-style-type: none"> a) the Community Learning Contribution b) the Highways Contribution c) the Libraries Contribution d) the Primary Education Contribution e) the Secondary Education Contribution f) the Youth Services Contribution
“Deed”	means this deed of agreement together with all Schedules and Appendices
“Development”	Means the construction of up to 62 dwellings including vehicular access on the Land as set out in the Application pursuant to the Planning Permission
“Dwelling”	means any dwelling to be erected on the Land pursuant to the Planning Permission and approved pursuant to the Reserved Matters Approval WHICH FOR THE AVOIDANCE OF DOUBT shall consist only of Houses and not of Flats
“Flat”	means a separate and self-contained set of premises constructed or adapted for use for the purpose of a residential dwelling and forming part of a building separate from the other part of which it is divided horizontally
“General Building Cost Index”	means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors

“Index Linked” means adjusted by reference to the relevant index pursuant to the provisions of Clause 19

“Interest Rate” means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment

“Land” means the land against which this Deed may be enforced as detailed in Schedule 1 and shown for identification purposes only edged red on the Plan

“Monitoring FeeAdministration Fee” Means the sum payable to the Borough Council in connection with the monitoring and administration of this Deed where the total contribution shall be calculated in accordance with the following formula

$$\text{£19,839.06} * (\text{D} / 62) = \text{£MF}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£MF is the Monitoring FeeAdministration Fee payable

“Occupy” means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed accordingly

“Open Market Dwellings” means those Dwellings for sale on the open market and which are not Affordable Dwellings

“Owner” Means the First Owner the Second Owner the Third Owner and the Fourth Owner

- “Parties”** means the Owner and the Borough Council as the context so requires and **“Party”** means any one of them
- “Plan”** means the plan numbered 2666-01 Rev A dated July 2015 annexed as Appendix 1
- “Planning Permission”** means planning permission for the Development to be granted pursuant to the Application subject to conditions a draft of which is annexed as Appendix 2
- “Practical Completion”** means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to this Deed or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term **“Practically Complete”** shall be construed accordingly
- “Preparatory Operation”** means an operation or item of work of or connected with or ancillary to
- a) archaeological investigation
 - b) exploratory boreholes and trial pits
 - c) site clearance (but excluding demolition of a building or structure)
 - d) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
 - e) the erection of fences and hoardings around the Land and
 - f) construction of temporary access and service roads

“Public Rights of Way Plan”	Means the plan numbered ZS6/71018 dated 24 th October 2017 attached to this Deed at Appendix 3
“Reserved Matters Application”	means an application for approval of reserved matters in accordance with the Planning Permission
“Reserved Matters Approval”	means an approval given by the Borough Council of a Reserved Matters Application
“Retail Prices Index”	means the Retail Prices Index as published by the Office for National Statistics
“Section 106 Monitoring Officer”	means the Borough Council’s section 106 Monitoring Officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions
“Statutory Undertakers”	means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator
“VAT”	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
“Working Day”	means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

INTERPRETATION

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this Deed
- 2.3 Words importing the singular include the plural and vice versa

- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.5 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.6 Reference to any Party to this Deed shall include the successors in title to that Party and to any person deriving title through or under that Party and in the case of the Borough Council shall include any successor to its statutory functions
- 2.7 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 2.8 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.9 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time
- 2.10 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail
- 2.11 Any words following the terms including include in particular for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms

LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed

- 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act
 - 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
 - 3.2.3 relate to the Land
 - 3.2.4 are entered into with intent to bind the Owner's interest in the Land as set out in Schedule 1 and each and every part thereof into whosoever hands the same may come
 - 3.2.5 are enforceable by the Borough Council as local planning authority
 - 3.2.6 are executed by the respective Parties as a deed
- 3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Borough Council pursuant to the powers contained in section 111 of Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling

CONDITIONALITY

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 7 to 24 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

Commented [2]: To be cross referenced and checked prior to engrossment.

COVENANTS AND OBLIGATIONS OF THE OWNER

- 5.1 The Owner covenants with the Borough Council to perform and observe the covenants obligations restrictions and requirements contained herein
- 5.2 The Owner shall permit the Borough Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Borough Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice

5.2—The Owner covenants to pay before completion of this Deed

5.2-25.2.1 —the Borough Council's reasonable legal and administrative

costs and disbursements in connection with the negotiation preparation and execution of this Deed

~~5.2.3 the sum of £10,000 to the Borough Council as part payment of the Monitoring Fee~~

5.2.2 whether or not this Deed is delivered in accordance with Clause 24

5.4 The Owner covenants to pay prior to Commencement of Development the ~~remaining part payment of the AdministrationMonitoring Fee which for the avoidance of doubt shall be the figure of MF less the amount paid as part payment on completion of this deed~~ AND no Development shall Commence until the ~~Monitoring FeeAdministration Fee~~ has been paid to the Borough Council

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COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL

6.1 The Borough Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the Borough Council's covenants as set out herein

MORTGAGEE'S CONSENT

7.1 The Parties agree that a mortgagee of the Land shall have no liability under this Deed **UNLESS** it takes possession of the Land or any part of the Land in which case the mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner and the security of its charge over the Land shall take effect subject to this Deed

RELEASE AND EXCLUSIONS

8.1 Save for Clause 5.2 the obligations contained in this Deed shall not be binding upon nor enforceable against

8.1.1 any Statutory Undertaker with any existing interest in any part of the Land or acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services

8.1.2 No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their

entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Borough Council in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest

8.1.3 individual owners occupiers or tenants and their mortgagees of individual Dwellings and their successors in title except for

8.1.3.1 any restriction on Occupation of the Open Market Dwellings and

~~the provisions of Schedule 4~~

8.1.3.2

8.1.3.3

DETERMINATION OF THE PLANNING PERMISSION

- 2.1 Save for Clause 5.3 this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to Commencement of Development without the consent of the Owner
- 2.2 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 or modification variation or amendment thereof) granted after the date of this Deed
- 2.3 If the Borough Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission **UNLESS** the Borough Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the section 73 application in which circumstances a separate deed under section 106 or s.106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission **BUT** nothing in this deed shall in any way fetter the

Commented [3]: The payment of a service charge isn't something that should fall within the s106 obligations – we have no issue with the obligation to set up the manco, transfer land or the obligations to impose covenants requiring payment.

Borough Council's discretion in relation to the section 73 application or the determination thereof

DISPUTES AND EXPERT DETERMINATION

- 3.1 In the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference
- 3.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 10.1 within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares
- 3.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares
- 3.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material
- 3.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall be reached

and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation

- 3.6 Nothing in this Clause 10 shall be taken to fetter or limit the ability of the Borough Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales

NOTICES

- 11.1 Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that
- 11.1.1 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development unless and until this notice has been provided to the Borough Council and
- 11.1.2 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development and
- 11.1.3 it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the Development and the Owner shall not Occupy the Development unless and until this notice has been provided to the Borough Council
- 11.1.4 it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development
- 11.1.5 it shall provide the Borough Council with the final Certificate of Practical Completion of the Development
- 11.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this Deed must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the

Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Borough Council	Swale Borough Council
Address	The Development Manager Swale Borough Council Swale House East Street Sittingbourne Kent ME10 3HT Reference 16/508117/OUT – The Slips, Scocles Road, Minster on Sea, Kent ME12 3SN
With a copy to	The Section 106 Monitoring Officer
Where required	The Greenspaces Manager
The First Owner	Michael Edward Parker,
Address	Gazehill House, Nutfields, Sittingbourne, Kent ME10 4JP,
The Second Owner	Sally Diane Parker
Address	Gazehill House, Nutfields, Sittingbourne, Kent ME10 4JP,
The Third Owner	Terrence Anthony Parker
Address	Gableside, Nelson Avenue, Minster on Sea, Kent ME12 3SE
The Fourth Owner	Gillian Parker
Address	47 Pond Drive, Chilton Manor, Sittingbourne, Kent ME10 4QF

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11.3 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received

- 11.3.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or
- 11.3.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting
- 11.4 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates
- 11.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution

LOCAL LAND CHARGE

- 12.1 This Deed is a local land charge and shall be registered as such
- 12.2 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Borough Council for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner
- 12.3 The Borough Council shall upon the written request of the Owner (and subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this

Deed

SUCCESSORS IN TITLE

- 13.1 The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Borough Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof

POWERS OF THE BOROUGH COUNCIL

- 14.1 Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Borough Council under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority

SEVERABILITY

- 15.1 If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

RIGHTS OF THIRD PARTIES

- 16.1 The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed save for the successors in title to the Parties and in the case of the Borough Council the successor to its statutory functions

CHANGE OF OWNERSHIP AND NEW INTEREST

- 17.1 The Owner warrants that
- 17.1.1 they have full authority to enter into this Deed
 - 17.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land

- 17.1.3 they know of no impediment to the validity of this Deed
- 17.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed
- 17.1.5 they shall make good any loss to the Borough Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so
- 17.2 The Owner shall give the Borough Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or 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
- 17.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and
- 17.2.2 the nature and extent of the interest disposed of by reference to a plan
- 17.3 In the event that the Owner's existing interest in the Land shall be determined (whether by surrender merger forfeiture or otherwise) and the Owner shall acquire another interest in the Land (written notice of which shall be given to the Borough Council) and the Planning Permission shall have either been Implemented or shall remain capable of Implementation then the Owner as the case may be will within twenty-eight (28) days from a written request from the Borough Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed
- 17.4 The Parties agree that a mortgagee of the Land shall have no liability under this Deed **UNLESS** it takes possession of the Land or any part of the Land in which case the mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner and the security of its charge over the Land shall take effect subject to this Deed

WAIVER

- 18.1 No waiver (whether expressed or implied) by the Borough Council of any breach or

default or delay 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 Borough Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and 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

INDEXATION

- 19.1 All the financial contributions payable pursuant to this Deed shall be Index Linked
- 19.2 The Borough Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately preceding the date of the Committee Resolution of the 20th July ~~2016~~2017 and the quarterly index figure for the quarter immediately preceding the date of actual payment
- 19.3 The Highways Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the monthly index figure immediately preceding the date of the Committee Resolution of 20th July 2017 and the monthly index figure for the month of the date of actual payment
- 19.4 The Primary Education Contribution and Secondary Education Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the monthly index figure ~~for October 2016~~ immediately preceding the date of the Committee Resolution of 20th July 2017 and the monthly index figure for the month of the date of actual payment
- 19.5 The Community Learning Contribution Libraries Contribution and "Youth Services Contribution" payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the monthly index figure immediately preceding the date of the Committee Resolution of 20th July 2017 and the monthly index figure for the month of the date of actual payment
- 19.6 Where reference is made to any index in this Deed and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or

any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council (in consultation with the County Council where County Council Contributions are affected) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council (in consultation with the County Council where County Council Contributions are affected) shall approve

INTEREST

- 20.1 If any sum or amount due under this Deed has not been paid to the Borough Council by the date it is due the Owner shall pay the Borough Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

VAT

- 21.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT
- 21.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

AGREEMENTS AND DECLARATIONS

- 22.1 The Parties agree that
- 22.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 22.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough Council in the exercise of any other statutory function

JURISDICTION

- 23.1 This Deed and any dispute or claim arising out of or in connection with it or its subject

matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

DELIVERY

24.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated

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

The COMMON SEAL of **SWALE**)
BOROUGH COUNCIL was affixed)
to this Deed in the presence of)

Authorised Signatory

Signed as a DEED by **MICHAEL**)
EDGAR PARKER in the presence)
of)

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Signed as a DEED by **SALLY DIANE**)
PARKER in the presence of)

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Signed as a DEED by **TERRENCE**)
ANTHONY PARKER in the)
presence of

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Signed as a DEED by **GILLIAN**)
PARKER in the presence of)

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

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Executed as a deed by • **LIMITED**)
acting by two directors or a director)
and its secretary])

Director

Director/Company Secretary
(Delete as necessary)

SCHEDULE 1 : THE LAND

The land against which this Deed is enforceable comprises all that land and premises situate at **The Slips, Scocles Road, Minster on Sea, Sheerness** as shown on the Plan of which

1. The Owner is the registered proprietor with freehold title of all the land and premises as the same is shown for the purposes of identification only edged coloured red on the Plan and is registered at the Land Registry under title number K399264

SPECIMEN DRAFT

SCHEDULE 2 : FINANCIAL CONTRIBUTIONS

1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

“Applicable Flat” means those Dwellings comprising flats but excluding Applicable Houses and those flats (if any) of less than 56sqm GIA and excluding sheltered accommodation

“Applicable House” means all Dwellings but excluding Applicable Flats and those Dwellings (if any) of less than 56sqm GIA and excluding sheltered accommodation

“Community Learning Contribution” means a contribution in the sum of £60.43 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$D \times \text{£}60.43 = \text{£CLC Index Linked}$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£CLC Index Linked is the Community Learning Contribution (Index Linked) payable

“Community Learning Facilities” means the Phase 1 expansion of the Adult Education Centre at Oasis Academy at Minster, Sheppey

“GIA” means Gross Internal Area as measured in accordance with the ‘International Property Measurement Standards: Residential Buildings (IPMS 2 – Residential (Internal))’ (September 2016) or any amendment update or variation thereto or any subsequent

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replacement thereof or such other standard as may be approved by the Royal Institution of Chartered Surveyors (RICS)

“Highways Contribution”

means a contribution in the sum of £1,006 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times \text{£1,006} = \text{£HC Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£HC Index Linked is the Highways Contribution (Index Linked) payable

“Libraries Contribution ”

means a contribution in the sum of £48.02 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times \text{£48.02} = \text{£LC Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£LC Index Linked is the Libraries Contribution (Index Linked) payable

“Library Facilities”

Means Minster on Sea Library book stock and shelving

“NHS Healthcare Contribution”

means a contribution in the sum of £360 per person where the total contribution shall be calculated in accordance with the following formula

$$D \times 2.4 \times \text{£360} = \text{£NHS Index Linked}$$

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£NHS Index Linked is the NHS Healthcare Contribution (Index Linked) payable

“NHS Swale CCG”

means the NHS Swale Clinical Commissioning Group of Bramblefield Clinic Grovehurst Road Kemsley Sittingbourne Kent ME10 2ST which is a statutory body established under the Health and Social Care Act 2012 which have the function of commissioning services for the purposes of the health service in England and are treated as NHS bodies for the purposes of the National Health Service Act 2006 or its successor in title or successor to its statutory functions

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“NHS Healthcare Facilities”

means Sheppey Community Hospital (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by NHS [Swale](#) CCG)

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“Open Space Contribution ”

means the sum of £484 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £484 = \text{£OSC Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£OSC Index Linked is the Open Space Contribution payable

“Open Space Facilities”

means King Georges Playing Field, Queenborough (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Borough Council)

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“Primary Education Contribution”

means a contribution in the sum of

- a) £4,535 per Applicable House and
- b) £1,134 per Applicable Flat

(as the case may be) where the total contribution shall be calculated in accordance with the following formula

$$(AH \times £4,535) + (AF \times £1,134) = \text{£PEC Index Linked}$$

WHERE

AH is the number of Applicable Houses to be provided pursuant to the Reserved Matters Approval

AF is the number of Applicable Flats to be provided pursuant to the Reserved Matters Approval

£PEC Index Linked is the Primary Education Contribution (Index Linked) payable

“Primary Education Facilities”

Means the new Free Primary School upon Sheppey (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

“Public Rights of Way Contribution”

means a contribution in the sum of £13,640 Index Linked

“Public Right of Way”

Means improvements to the Public footpath ZS6 as shown coloured purple on the Public Rights of Way Plan

“Social Care Contribution”

means a contribution in the sum of £60.99 per Dwelling where the total contribution shall be calculated in

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accordance with the following formula

$$D \times \text{£}60.99 = \text{£SCC Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£SCS Index Linked is the Social Care Contribution (Index Linked) payable

“Social Care Facilities” Means a new Nursing Care Home on the Isle of Sheppey

“Wheelie Bin Contribution” means a contribution in the sum of £92 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times \text{£}92 = \text{£WBC Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£WBC Index Linked is the Wheelie Bin Contribution (Index Linked) payable

“Wheelie Bin Provision” means the provision of black (refuse) green (recycling) and grey (food) waste bins to each Dwelling

“Youth Services Contribution” means a contribution in the sum of £
£37.58
per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times \text{£}37.58 = \text{£YSC Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£YSC Index Linked is the Youth Services Contribution (Index Linked) payable

“Youth Services Facilities” means Minster Lilypad Children Centre improvements

2. Community Learning Contribution

- 2.1. The Owner covenants that it shall pay to the Borough Council the Community Learning Contribution ~~before Commencement~~prior to the date on which 50/70% (3145st dwelling) of Developmentthe Dwellings are Occupied
- 2.2. The Owner covenants that it shall not ~~Commencement of Development~~allow occupation of more than 3145 Dwellings unless and until the Community Learning Contribution has been paid to the Borough Council
- 2.3. The Borough Council shall not transfer the Community Learning Contribution (or any part thereof) (together with any interest accrued thereon) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Community Learning Facilities
- 2.4. If the Borough Council are of the view that the Community Learning Contribution will not be spent in accordance with Paragraph 2.3 the Borough Council shall repay such of the Community Learning Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

3. Highways Contribution

- 3.1. The Owner covenants that it shall pay to the Borough Council the Highways Contribution ~~before Commencement of Development~~prior to the date on which 70% (45th dwelling) of the Dwellings are Occupied before First Occupation
- 3.2. The Owner covenants that it shall not ~~Commencement~~allow Occupation of any

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~~Dwelling – Development more than 45 Dwellings~~, unless and until the Highways Contribution has been paid to the Borough Council

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- 3.3. The Borough Council shall not transfer the Highways Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Highways Works
- 3.4. If the Borough Council are of the view that the Highways Contribution will not be spent in accordance with Paragraph 3.3 the Borough Council shall repay such of the Highways Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

4. Libraries Contribution

- 4.1. The Owner covenants that it shall pay to the Borough Council the Libraries Contribution ~~before Commencement of Development~~ prior to the date on which 5070% (3145st Dwelling) of the Dwellings are Occupied
- 4.2. The Owner covenants that it shall not ~~Commencement~~ allow occupation of ~~Development more than 3145 Dwellings~~, unless and until the Libraries Contribution has been paid to the Borough Council
- 4.3. The Borough Council shall not transfer the Libraries Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Library Facilities
- 4.4. If the Borough Council are of the view that the Libraries Contribution will not be spent in accordance with Paragraph 4.3 the Borough Council shall repay such of the Libraries Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

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5. NHS Healthcare Contribution

- 5.1. The Owner covenants that it shall pay to the Borough Council the NHS Healthcare Contribution ~~before Commencement of Development~~ prior to the date on which 5070% (3145st dwelling) of the Dwellings are Occupied

5.2. The Owner covenants that it shall not ~~Commencement~~allow occupation of Development more than 3145 Dwellings unless and until the NHS Healthcare Contribution has been paid to the Borough Council

5.3. The Borough Council shall not transfer the NHS Healthcare Contribution (or any part thereof) to NHS Swale CCG unless the Borough Council is satisfied that NHS Swale CCG will spend the contribution on the NHS Healthcare Facilities

5.4. If the Borough Council are of the view that the NHS Healthcare Contribution will not be spent in accordance with Paragraph 5.3 the Borough Council shall repay such of the NHS Healthcare Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

6. Open Space Contribution

6.1. The Owner covenants that it shall pay to the Borough Council the Open Space Contribution ~~before Commencement of Development~~prior to the date on which 5070% (3145th dwelling) of the Dwellings are Occupied

6.2. The Owner covenants that it shall not ~~Commencement~~allow occupation of Development more than 3145 Dwellings unless and until the Open Space Contribution has been paid to the Borough Council

6.3. The Borough Council covenants with the Owner that it shall apply the Open Space Contribution as a contribution towards the Open Space Facilities or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree in writing and not to use the Open Space Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20 as if it were part of the principal sum paid by the Owner

6.4. In the event that all or any part of the Open Space Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development (as notified to the Borough Council by the Owner pursuant to Clause 11.1) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on

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written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses

OR

If the Borough Council are of the view that the Open Space Contribution will not be spent in accordance with Paragraph 6.3 the Borough Council shall repay such of the Open Space Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

7. Primary Education Contribution

- 7.1. The Owner covenants that it shall pay to the Borough Council the Primary Education Contribution ~~before Commencement of Development~~prior to the date on which 5070% (3145th dwelling) of the Dwellings are Occupied
- 7.2. The Owner covenants that it shall not ~~Commencement~~allow occupation of Development more than 3145 Dwellings unless and until the Primary Education Contribution has been paid to the Borough Council
- 7.3. The Borough Council shall not transfer the Primary Education Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Primary Education Facilities
- 7.4. If the Borough Council are of the view that the Primary Education Contribution will not be spent in accordance with Paragraph 7.3 the Borough Council shall repay such of the Primary Education Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

8. Social Care Contribution

- 8.1. The Owner covenants that it shall pay to the Borough Council the Social Care Contribution ~~before Commencement of Development~~prior to the date on which 5070% (3145th dwelling) of the Dwellings are Occupied
- 8.2. The Owner covenants that it shall not ~~Commencement~~allow occupation of

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Development more than 45 Dwellings, unless and until the Social Care Contribution has been paid to the Borough Council

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- 8.3. The Borough Council shall not transfer the Social Care Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Social Care Facilities
- 8.4. If the Borough Council are of the view that the Social Care Contribution will not be spent in accordance with Paragraph 8.3 the Borough Council shall repay such of the Social Care Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

9. Wheelie Bin Contribution

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- 9.1. The Owner covenants that it shall pay to the Borough Council the Wheelie Bin Contribution before Commencement of Development
- 9.2. The Owner covenants that it shall not Commence Development unless and until the Wheelie Bin Contribution has been paid to the Borough Council
- 9.3. The Borough Council covenants with the Owner that it shall apply the Wheelie Bin Contribution for the Wheelie Bin Provision or for such other purposes for the benefit of the Development as achieve the same objectives and not to use the Wheelie Bin Contribution otherwise than for such purposes **PROVIDED THAT** for the avoidance of doubt the Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20 as if it were part of the principal sum paid by the Owner
- 9.4. In the event that all or any part of the Wheelie Bin Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within 10 years from the date of Practical Completion of the Development (as notified to the Borough Council by the Owner pursuant to Clause 11.1) and unless the Borough Council and the Owner agree otherwise the Borough Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administration expenses

Commented [4]: Wheelie bin's have to be ordered and ready to be in place prior to Occupation. To make payment shortly before Occupation will not ensure delivery of wheelie bins on occupation.

Commented [5]: Noted, but given the size of the development, can we split this in two – first half payable prior to commencement, second prior to the 30th dwelling being occupied (to give lead time for the second half)?

10. Youth Services Contribution

- 10.1. The Owner covenants that it shall pay to the Borough Council the Youth Services Contribution before Commencement of Development prior to the date on which 5070% (3145st dwelling) of the Dwellings are Occupied
- 10.2. The Owner covenants that it shall not Commencement allow occupation of Development more than 3145 Dwellings unless and until the Youth Services Contribution has been paid to the Borough Council
- 10.3. The Borough Council shall not transfer the Youth Services Contribution (or any part thereof) to the County Council unless the Borough Council is satisfied that the County Council will spend the contribution on the Youth Services Facilities
- 10.4. If the Borough Council are of the view that the Youth Services Contribution will not be spent in accordance with Paragraph 10.3 the Borough Council shall repay such of the Youth Services Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

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SCHEDULE 3: SPECIAL PROTECTION AREA

1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other Schedules

“Natural England” means the executive non-departmental public body established pursuant to the Natural Environment and Rural Communities Act 2006 who is responsible for ensuring that the natural environment is conserved enhanced and managed for the benefit of present and future generations or any successor body that replaces it

“SPA Mitigation Contribution” means the sum of £223.58 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times \text{£}223.58 = \text{£SPA Index Linked}$$

WHERE

D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval

£SPA Index Linked is the SPA Mitigation Contribution payable

“SPA Mitigation Measures” means the strategic mitigation measures employed by the Borough Council to avoid adverse effects on the Special Protection Area comprising some or all of the following elements:

- provision of wardens
- visitor access management
- infrastructure works including site protection

- habitat improvements and/or management
- education
- enforcement
- codes of conduct
- interpretation and signage
- dog project – to include education and involvement of dog owners
- monitoring of birds and visitors and the effectiveness of mitigation measures
- provision of alternative natural greenspace sites

or such other mitigation measures as may be required by Natural England

“SPA Strategy”

means the ‘Thames, Medway & Swale Estuaries – Strategic Access Management and Monitoring Strategy’ dated 22 July 2014 (or any modification of amendment thereto or replacement thereof)

“Special Protection Area”

means

- a) the Thames Estuary and Marshes Special Protection Area and Ramsar Site
- b) the Medway Estuary and Marshes Special Protection Area and Ramsar Site
- c) The Swale Special Protection Area and Ramsar Site

designated under the Ramsar Convention and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of

wild birds (the codified version of Council Directive 79/409/EEC as amended) and implemented pursuant to the Wildlife & Countryside Act 1981 (as amended) and The Conservation of Habitats and Species Regulations 2010 (as amended) and the acronym “SPA” shall be construed accordingly

2. SPA Mitigation Contribution

- 2.1. The Owner covenants that it shall pay to the Borough Council the SPA Mitigation Contribution ~~before Occupation of any Dwelling prior to the date on which 70% (45th dwelling) of the Dwellings are Occupied~~
- 2.2. The Owner shall not Occupy ~~any Dwelling~~ allow occupation of more than 45 Dwellings, unless and until it has paid to the Borough Council the SPA Mitigation Contribution
- 2.3. Following Occupation of any Dwelling the Owner shall not seek repayment of the SPA Mitigation Contribution or any part thereof
- 2.4. In the event that either the SPA Strategy and/or the advice from Natural England and/or the payment of the SPA Mitigation Contribution are the subject of legal challenge the Owner shall not require the Borough Council to repay the SPA Mitigation Contribution or any part thereof
- 2.5. The Borough Council agrees that it shall apply the SPA Mitigation Contribution towards the cost of SPA Mitigation Measures

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SCHEDULE 4 : ON SITE PUBLIC OPEN SPACE

1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other Schedules

“Bank Account” means a bank account that conforms to the requirements of Paragraph 5.4 of this Schedule

“Maintenance Contribution” means a commuted sum for the future maintenance of the Open Space to be calculated in accordance with the formula set out in Appendix 6

“Management Company” means a company established pursuant to Paragraph 5.3 of this Schedule to *inter alia* monitor maintain and manage the Open Space in accordance with the Open Space Management Plan

“Monitoring Contribution” means a sum calculated in accordance with the following formula to monitor compliance with the terms of this Schedule

$(MC \times 5)/100 = \text{Monitoring Contribution (Index Linked)}$

Where

MC is the Maintenance Contribution calculated in accordance with the formula set out in Appendix 6

“Open Space” means the area of land within the Land to be laid out and delivered in accordance with the Open Space Specification and thereafter maintained for the benefit and use of the public and occupiers of the Development

“Open Space Management Plan” means a scheme approved by the Borough Council setting out procedures and measures to secure the future on-going monitoring management and

maintenance of the Open Space which scheme shall inter alia provide a verifiable indication as to the annual costs associated with the monitoring management and maintenance (allowing for contingencies and indexation) of the Open Space

“Open Space Specification” means the scheme approved by the Borough Council pursuant to this Schedule to secure the delivery of the Open Space

“Retained Amount” means an amount equivalent to one years Maintenance Contribution (Index Linked)

2 Provision of Open Space

2.1 The Owner shall provide the Open Space within the Land in accordance with the Open Space Specification and the Open Space shall thereafter

2.1.1 (if the Open Space is to be retained by the Owner or transferred in accordance with Paragraph 5.1 of this Schedule to a Management Company) be monitored managed and maintained in accordance with the Open Space Management Plan

2.1.2 retained and maintained as public open space for the benefit and use of the public and occupiers of the Development in perpetuity

2.2 The Open Space shall comprise a minimum of 10% of the total area of the Land identified in and approved pursuant to the Open Space Specification **AND WHICH FOR THE AVOIDANCE OF DOUBT** shall not include

2.2.1 privately owned domestic gardens that form the curtilage of each Dwelling

2.2.2 those communal areas within the Development or the curtilage of or adjacent to a Dwelling which are not large enough to be nor can reasonably expected to comprise public open space

3 Open Space Specification

3.1 Prior to Commencement of the Development the Owner shall submit to and have approved by the Borough Council the Open Space Specification and the Owner shall

not Commence Development unless and until the Open Space Specification has been approved by the Borough Council

3.2 The Open Space Specification shall include (but not be limited to)

3.2.1 a plan identifying

3.2.1.1 the extent and area of the Open Space

3.2.1.2 the layout of the play space to include an equipped toddler children's play area and casual 'kick about' area

3.2.1.3 the access for the general public to the Open Space

3.2.2 a specification for the play space including surfacing and landscaping

3.2.3 a works schedule for the delivery of the Open Space

3.2.4 a schedule identifying the play equipment to be provided together with a specification thereof

3.2.5 (Where the Open Space is to be retained by the Owner or is to be transferred to a Management Company) an Open Space Management Plan

AND such other matters as the Borough Council may approve

4 Implementation

4.1 Prior to Occupation of any Dwelling the Owner shall

4.1.1 deliver the Open Space in accordance with the Open Space Specification to the satisfaction of the Borough Council

4.1.2 pay the Retained Amount to the Borough Council

AND the Owner shall not Occupy any Dwelling unless and until the Open Space has been delivered and the Retained Amount has been paid to the Borough Council **AND** the Owner shall thereafter monitor manage and maintain the Open Space to the satisfaction of the Borough Council until the transfer of the Open Space in accordance with paragraph 5.1 of this Schedule is completed

4.2 The Owner covenants that

4.2.1 no permanent operational or other development will take place on the Open Space other than works required or permitted pursuant to the Open Space Specification and/or the Open Space Management Plan or as otherwise permitted under the Planning Permission

4.2.2 it shall not grant any rights or easements over or under the Open Space or any part thereof

without the prior written consent of the Borough Council **PROVIDED THAT** this will not prevent the laying beneath the Open Space of underground pipes cables and conduits which may be required to supply the Development with electricity gas water telephone television internet and related services and the maintenance of the same thereafter

4.3 The Owner shall provide a right of access for the general public to the Open Space following the delivery of the Open Space in accordance with the Open Space Specification

5 Disposal of the Open Space

5.1 Following the completion of the Open Space to the Borough Council's satisfaction the Owner may transfer the unencumbered freehold of the Open Space to in the first instance the Borough Council and then in the event of the Borough Council refusing (in writing) to take transfer the Management Company in consideration of the sum of £1.00 such transfer to be

5.1.1 with full title guarantee

5.1.2 with vacant possession and

5.1.3 upon the terms set out in Appendix 5 or such other terms as agreed with the Owner

5.2 If the Open Space is to be transferred to the Borough Council the Owner shall

5.2.1 not execute the transfer of the Open Space to the Borough Council unless and until the Owner has paid to the Borough Council

5.2.1.1 the Maintenance Contribution and

5.2.1.2 the Monitoring Contribution

AND the Borough Council shall

5.2.2 following completion of the transfer of the Open Space to the Borough Council repay to the Owner the Retained Amount to the Owner within 20 Working Days of completion of the transfer pursuant to this Sub-Paragraph 5.2

5.2.3 only use the Maintenance Contribution (together with any accrued interest or any interest payable under Clause 19 of the Deed) for the monitoring management and maintenance of the Open Space

5.3 Where the Open Space is to be transferred to the Management Company then

5.3.1 such transfer will not be completed unless and until

5.3.1.1 the Open Space Management Plan has been submitted to and approved by the Borough Council

5.3.1.2 the Management Company has been established in accordance with the terms of this Sub-Paragraph 5.3 and a certified copy of the certificate of incorporation of the Management Company together with the memorandum and articles of association and its registered address

5.3.1.3 the Bank Account has been opened and the details of the Bank Account have been provided to the Borough Council's satisfaction

5.3.2 the Management Company

5.3.2.1 shall be established as a management company limited by guarantee

- a) where there shall be no distribution of profits
- b) where all income and receipts net of expenditure shall be retained and applied for the maintenance or improvement of the Open Space
- c) each of the owners of the Dwellings shall be a member of the Management Company

5.3.2.2 shall include within its aims and objects the monitoring management and maintenance of the Open Space in accordance with the Open Space Management Plan and

5.3.2.3 any resolution to alter or amend the constitution or memorandum and/or articles of association of the Management Company shall be submitted to the Borough Council for written approval at least seven days before a vote being taken on such a resolution and any such resolution of the Company shall not be effective unless and until the written approval of the Borough Council is received

5.3.3 the Management Company shall

5.3.3.1 carry out the monitoring management and maintenance of the Open Spaces in accordance with the terms of this Deed and the approved Open Space Management Plan

5.3.3.2 keep a maintenance log of all monitoring management and maintenance carried out in relation to the Open Space and the Management Company shall on receipt of notice provide the Borough Council with access to or a copy of the maintenance log and any associated documentation either in electronic or paper format which documentation shall be provided to the Borough Council within 10 Working Days of receipt of the notice from the Borough Council

5.3.4 the Management Company shall be funded by means of annual service charges payable by all owners of the Dwellings

5.3.5 The Owner shall

5.3.5.1 not transfer the freehold of (or grant a leasehold interest in) a Dwelling unless and until there shall be included in the transfer deed of the freehold or leasehold interest in each of the Dwellings a requirement that each transferee or grantee (as the case may be) shall pay an annual service charge to the Management Company for the ongoing monitoring maintenance and management of the Open Space

- 5.3.5.2 ensure that the annual service charge shall be set (and thereafter maintained) at a level that allows the Management Company to fund the monitoring management and maintenance of the Open Space to be paid for through the annual service charge levied against each of the Dwellings
- 5.3.5.3 ensure that a restriction on title is entered on the title of each Dwelling transferred requiring on any subsequent transfer of the Dwelling a deed of covenant to be given to the Management Company by the new owner of the relevant Dwelling to pay the sums due under the service charge and requiring the restriction to be retained on the title of the Dwelling
- 5.3.6 the first levy payable pursuant to Paragraph 5.3.4 of this Schedule to the Management Company shall be payable prior to the first Occupation of each Dwelling and no Dwelling shall be first Occupied unless and until this payment has been made to the Management Company
- 5.3.7 the Company Secretary shall within 10 Working Days of any requests made by or on behalf of the Borough Council provide such details as the Borough Council may request as to the current standing of the Bank Account (including **FOR THE AVOIDANCE OF DOUBT** the provision of any statements of account relating to such account) details of monies in the account)
- 5.4 The Bank Account shall operate as follows
- 5.4.1 the account shall be held at a clearing bank
- 5.4.2 the account shall be in the name of the Management Company
- 5.4.3 the Borough Council shall be provided with a third party mandate on the account
- 5.4.4 the account shall be an interest-bearing account and interest earned therefrom shall be credited to the account
- 5.4.5 The account shall only be used for the monitoring management and maintenance of the Open Space in accordance with the terms of the Open

Space Management Plan

- 5.4.6 Subject to the provisions of Paragraph 8 of this Schedule and there being funds within the Bank Account to satisfy in whole or in part any claim made by the Borough Council in exercise of any rights pursuant to Paragraph 8 of this Schedule the Management Company shall pay to the Borough Council the costs and expenses contemplated by Paragraph 8 of this Schedule (which shall be paid within 10 Working Days of the date of notification for payment from the Borough Council) from the Bank Account

6 Review of the Open Space Management Plan

6.1 Following approval of a Open Space Management Plan

- 6.1.1 the Owner or the Management Company (as the case may be) shall be entitled to submit a new or revised Open Space Management Plan to the Borough Council for approval by the Borough Council (and following such approval the Open Space Management Plan shall take effect as replaced or revised)

- 6.1.2 on approval the Owner or the Management Company (as the case may be) shall implement the new or revised Open Space Management Plan as approved by the Borough Council pursuant to this Schedule and the Owner or the Management Company (as the case may be) shall pay the Borough Council's reasonable costs and expenses (including any professional fees that may be incurred and any abortive costs and expenses in the event that the new or revised Open Space Management Plan is withdrawn by the Owner prior to approval by the Borough Council) associated with assessing and approving the new or revised Open Space Management Plan submitted pursuant to this Sub-Paragraph 6.1 within 10 Working Days of the date of written notification for payment by the Borough Council

- 6.2 Where the Borough Council believes that the extant approved Open Space Management Plan requires amendments or revisions in that the Open Space Management Plan fails to deliver either an adequate system of monitoring or the Open Space is not being adequately maintained or managed in accordance with the approved Open Space Management Plan

- 6.2.1 the Borough Council may serve a notice on the Owner or the Company Secretary of Management Company (as the case may be) specifying (in as much detail as reasonable practicable) the Borough Council's concerns ("**the Notice**").
- 6.2.2 If the Owner or the Management Company (as the case may be) agrees with the Borough Council (or it is determined following the ADR Procedure that the Borough Council is right (subject to any recommendations agreed or determined during or by the ADR Procedure)) the Owner or the Management Company (as the case may be) shall within 20 Working Days of receipt of the Notice (or the determination following the ADR procedure) submit a new or revised Open Space Management Plan to the Borough Council for approval and following approval the Owner shall implement the new or revised Open Space Management Plan in accordance with this Schedule
- 6.2.3 If the Owner or the Management Company (as the case may be) does not agree with the Borough Council the Owner or the Management Company (as the case may be) shall serve a notice on the Borough Council specifying (in as much detail as is reasonably practicable) the Owners concerns within 20 Working Days of receipt of the Notice and the Owner or the Management Company (as the case may be) and Borough Council shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Sub-Paragraph 6.2 in accordance with the following procedure ("**the ADR Procedure**")
- 6.2.3.1 Each party shall nominate a representative who shall meet to try to resolve the matter
- 6.2.3.2 If the matter is not resolved within 10 Working Days of either party requesting such meeting (or such longer period as may be agreed between the parties) the matter may at either party's request be referred for discussion at a meeting to be attended by a senior executive from each party
- 6.2.3.3 If the meeting between the senior executives fails to result in a settlement within 10 Working Days of the date of the request for such a meeting (or if it is not possible to convene a meeting within

this period or such longer period as may be agreed between the parties) then either party may refer the matter to dispute resolution in accordance with Clause 9

6.2.4 If the Owner or the Management Company (as the case may be) does not respond to the Notice within 20 Working Days (or within such extended time as the Borough Council may agree)

6.2.4.1 a revised Open Space Management Plan may be provided by the Borough Council to the Owner which the Owner shall from the date of the new or revised Open Space Management Plan implement in accordance with this Schedule until the Owner or the Management Company (as the case may be) submits a new or revised Open Space Management Plan and the same is approved by the Borough Council

6.2.4.2 the Borough Council's costs and expenses associated with providing a new or revised Open Space Management Plan in accordance with this Sub-Paragraph 6.2.4 shall be paid by the Owner or the Management Company (as the case may be) to the Borough Council as notified to the Owner or the Management Company (as the case may be) and will be paid within 10 Working Days of the date of notification by the Borough Council

7 Retained Amount

7.1 The Owner covenants with the Borough Council that the Retained Amount shall be an amount equivalent to one years estimated annual cost of managing monitoring and maintaining (allowing for contingencies and indexation) the Open Space pursuant to the Open Space Management Plan

7.2 Without prejudice to any other rights under this Schedule the Borough Council covenants with the Owner that it shall only use the Retained Amount in those circumstances where it is required to exercise its rights pursuant to Paragraph 8 of this Schedule (Enforcement) (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Borough Council) and not to use the Retained Amount otherwise than for such purposes **PROVIDED THAT** for the avoidance of doubt the

Borough Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 19 of the Deed as if it were part of the principal sum paid by the Owner

8 Enforcement

8.1 In addition to Clause 5.2 and without prejudice to the Borough Council's statutory powers and to any other means at its disposal to enforce this Deed at law where there is any failure breach or non-compliance by the Owner with any term of the approved Open Space Management Plan for the time being in force or any of the obligations contained in this Schedule the Borough Council may

8.1.1 (and the Owner hereby grants authority for the Borough Council and its authorised employees and agents) enter the Land with staff contractors plant and equipment and carry out such steps measures or operations on the Land as the Borough Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with and/or to remedy any non-compliance with the approved Open Space Management Plan and

8.1.2 at the Borough Council's election recover from the Owner or the Bank Account or the Retained Amount (as the case may be) the costs and expenses (including legal and administrative costs and expenses and any professional and other fees and investigative works and studies) incurred by the Borough Council in remedying such non-compliance (which shall be paid within 10 Working Days of the date of notification for payment from the Borough Council and may be charged on the Owners interest in the Land)

PROVIDED THAT the Borough Council shall (unless otherwise agreed by the Borough Council) give the Owner or the Management Company (as the case may be) not less than 20 Working Days prior notice of its intention to remedy such non-compliance to allow the Owner or the Management Company (as the case may be) an opportunity to remedy the same themselves

9 General

9.1 The Owner shall have due regard to any reasonable requirements and/or recommendations made by the Borough Council in relation to the drafting and operation of the Open Space Specification and/or (if applicable) the Open Space

Management Plan submitted pursuant to the terms of this Schedule and/or any subsequent review or amendment thereto

SPECIMEN DRAFT

SCHEDULE 5: S278 AGREEMENT AND TRAFFIC REGULATION ORDER

1 Interpretation of this Schedule

1.2. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other Schedules

“s278 Agreement” means an agreement under s278 of the Highways Act 1980 to be entered in to by the Owner and the Kent County Council for the provision of the s278 Works

“s278 Works” means:

- 1) the widening of the Scocles Road to 5.5 metres
- 2) provision of footpaths on both the west and the east side of Scocles Road as shown hatched red on the s278 Plan
- 3) Installation of the gateway feature as shown in solid red on the s278 Plan together with accompanying street furniture

“s278 Plan” Means the plan attached at Appendix 4 numbered 619/209A

“TRO application” means an application to the Kent County Council for a Traffic Regulation Order under the Road Traffic Regulation Act 1984 for the TRO Specification

“TRO Specification” means the provision of a 30mph speed zone on Scocles Road to provide that the 30mph zone shall commence at the gateway shown in solid red on the s278 Plan

“Traffic Regulation” means an Order made pursuant to the TRO application providing for the TRO Specification

Order”

2. The s278 Agreement

2.1 The Owner covenants that it:

2.1.1 shall enter in to the s278 Agreement prior to Commencement of Development

2.1.2 shall not Commence Development until the s278 Agreement has been entered in to a copy of the completed s278 Agreement has been provided to the Borough Council

2.1.3 shall carry out the s278 Works in accordance with the s278 Agreement prior to the Occupation of any Dwelling

2.1.4 shall not Occupy any Dwelling unless and until the s278 Works have been carried out in accordance with the s278 Agreement

3. The Traffic Regulation Order Application

3.1 The Owner covenants that it:

3.1.1 shall make the TRO Application prior to Commencement of Development

3.1.2 shall not Commence Development until the TRO Application has been made and a copy of the application has been provided to the Borough Council

3.1.3 shall not Occupy any Dwelling unless and until the Traffic Regulation Order has been made and a copy of the Traffic Regulation Order has been provided to the Borough Council

APPENDIX 1 : PLAN

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APPENDIX 2 : DRAFT CONDITIONS

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APPENDIX 3 : PUBLIC RIGHTS OF WAY PLAN

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APPENDIX 4 : s278 PLAN

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APPENDIX 5 : DRAFT TERMS OF TRANSFER OF THE OPEN SPACE

The Open Space transfer will define:

- 1.1 “Conduits” as all media for the supply or removal of electricity, gas, water, sewerage, energy, telecommunications, television, data and all other services and utilities and all subterranean structures, machinery and equipment ancillary to those media
- 1.2 ‘the Property’ as the Open Space
- 1.3 ‘the Retained Land’ as the land shown edged and coloured red on the Plan (and any part of it), being all the land in Land Registry Title Number K340195 as at the date of the Deed except the land comprising the Open Space
- 1.4 “the Open Space Management Plan” as the open space management plan for the management monitoring and maintenance and where necessary the remediation and improvement of the Open Space as approved by the local planning authority pursuant to the Deed

AND WILL:

1. be made for £1
2. contain a declaration that the transfer of the freehold is made with full title guarantee
3. contain a provision that all matters recorded at the date of the transfer in registers open to public inspection are deemed to be within the actual knowledge of the Transferee for the purposes of Section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 notwithstanding Section 6(3) of that Act
4. contain a provision that the Property will not, by virtue of the transfer, have any rights or easements or the benefit of any other matters over the Retained Land other than those which are expressly mentioned or granted by the transfer and a provision that Section 62 of the Law of Property Act 1925 is qualified so as not to include any liberties, privileges, easements, rights or advantages over the Retained Land except as expressly mentioned in or granted by the transfer
5. insofar as they have not at the time of the land transfer(s) already been granted or reserved, contain a provision reserving to the Transferor for the benefit of the Retained Land the following rights:

- 5.1. the right to enter in and upon the Property in order to lay, construct, replace, repair and maintain any Conduits now or at any time in the future in, under or over the Property on giving (except in the case of emergency) reasonable prior notice to the Transferee;
- 5.2. the right to use and to connect into any Conduits in, under or over the Property from time to time
6. contain a provision by which the Transferee covenants with the Transferor for the benefit of the Retained Land:
 - 6.1. not to use the Property for any purpose other than public open space
 - 6.2. not to construct on the Property any building
 - 6.3. to keep the Property managed and maintained in good order in accordance with the Open Space Management Plan
 - 6.4. not to dispose of the Property or any part thereof (other than by way of charge) without first obtaining from the proposed disponee a covenant executed as a Deed and given in favour of the registered proprietor from time to time of the Retained Land to observe and perform the covenants on the part of the Transferee in the transfer
7. contain a provision by which the Transferor covenants with the Transferee for the benefit of the Property to make good promptly and to the reasonable satisfaction of the Transferee any damage caused to the soil and surface of the Property by the exercise of the rights referred to in clause 5 above
8. contain an application to the Chief Land Registrar for a restriction in the following form to be entered in the Proprietorship Register of the title to the Property:

“No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or of a registered charge is to be registered without a certificate signed by the applicant for registration or his conveyancer that the provisions of clause [insert the clause numbers from the Transfer equivalent to clause 6 above] of the transfer dated • and made between • (1) and • (2) has been complied with”

APPENDIX 6 : MAINTENANCE CONTRIBUTION FORMULA

The maintenance contribution shall cover a 10 year period with the commuted sum based on actual annual contract costs and taking account of inflation and interest (the formula is set out below).

Definitions

“C” is the Annual Cost of maintenance

“X” Is the Interest Rate divided by 100

“Y” is the Inflation Rate divided by 100

“N” Is the Number of years

“P” is the Commuted Sum payable

The Maintenance Contribution shall be calculated using the following formula

$$P = \frac{A \{1 - (1/(1+r)^N)\}}{r}$$

where $A = C/(1+Y)$

and $r = (X-Y)/(1+Y)$

Worked Example:

'C' is the Annual Cost of maintenance E.g. £3000

'X' is the Interest Rate divided by 100 E.g. 6% (0.06)

'Y' is the Inflation Rate divided by 100 E.g. 2% (0.02)

'N' is the Number of years E.g. 10 years

Firstly we need to work out A & r

$A = C[\text{£}3000] / (1 + Y[0.02]) \dots \dots \dots \text{£}3000/1.02 = \text{£}2941.18$, therefore **A = £2941.18**

$r = (X[0.06] - Y[0.02]) / (1 + Y[0.02]) \dots \dots \dots (0.06 - 0.02) / (1 + 0.02) \dots \dots 0.04 / 1.02 = 0.039$, therefore **r = 0.039**

Now we can complete the formula

$$P = \frac{A[2941.18] \{1 - (1/(1+r[0.039])^N)^{10}\}}{r}$$

$$P = \frac{2941.18 \{1 - (1/1.039^{10})\}}{r}$$

$$P = \frac{2941.18 \{1 - (1/1.039^{10})\}}{r}$$

$$P = \frac{2941.18 \{1 - (0.96^{10})\}}{r}$$

$$P = \frac{2941.18 \{1 - 0.67\}}{r}$$

$$P = \frac{2941.18 \times 0.33}{r}$$

$$P = \frac{970.59}{0.039}$$

$$P = £24,886.9$$

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