

DATED

27 November 2020

SWALE BOROUGH COUNCIL

-and -

MIDDLEFIELDS LIMITED

**DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND OFF SHEPPEY WAY AT IWADE, SITTINGBOURNE KENT
Planning Application Ref No 19/505215/FULL**

Mid Kent Legal Services
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent ME10 3HT
Ref.: **S014523**



CONTENTS

CONTENTS	2
RECITALS	3
OPERATIVE PROVISIONS	4
Definitions	4
Interpretation	7
Legal Basis	8
Conditionality	8
Covenants and Obligations of the Owner	8
Covenants and Obligations of the Borough Council	9
Release and Exclusions	9
Determination of the Planning Permission	9
Disputes and Expert Determination	10
Notices	11
Local Land Charge	13
Successors in Title	13
Powers of the Borough Council	13
Severability	14
Rights of Third Parties	14
Change of Ownership and New Interest	14
Waiver	14
Indexation	14
Interest	15
VAT	15
Agreements and Declarations	16
Jurisdiction	16
Delivery	16
SCHEDULE 1 : THE LAND	18
SCHEDULE 2 : NOTICES	19
SCHEDULE 3: FINANCIAL CONTRIBUTIONS	20
SCHEDULE 4 : AFFORDABLE HOUSING	24
SCHEDULE 5 : SPECIAL PROTECTION AREA	34
SCHEDULE 6 : COMMUNAL AREAS MANAGEMENT COMPANY	37
SCHEDULE 7 : RESTRICTION ON OCCUPATION OF THE DEVELOPMENT	40
APPENDIX 1: PLAN	42

THIS DEED OF AGREEMENT is dated the 27th day of November 2020

BETWEEN

- 1) **SWALE BOROUGH COUNCIL** of Swale House East Street Sittingbourne Kent ME10 3HT (the “**Borough Council**”) and
- 2) **MIDDLEFIELDS LIMITED** (Company Registration No 01568259) whose registered office is at Hillreed House 60 College Road Maidstone Kent ME15 6SJ and care of Knights PLC Horizon House 1 Eclipse Park Maidstone Kent ME14 3EN (the “**Owner**”) and

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. Pursuant to delegated powers on 11 November 2020 the Council 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)
- D. The Owner is a person interested in the Land by virtue of being the registered proprietor with freehold with 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 Council is satisfied that the likely significant effect of the Development on the protected habitat sites identified in the SAMMS can be mitigated through a financial contribution towards the provision of SPA Mitigation Measures across the Special Protection Area pursuant to the SAMMS
- 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

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 definitions contained in Paragraphs 1.1 to the relevant Schedules

“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 full planning permission submitted by Hume Planning Consultancy Ltd to the Borough Council to carry out the Development at the Land and given the registered reference number 19/505215/FULL
“Borough Council Contributions”	means the financial contributions payable to the Borough Council pursuant to Schedule 3 comprising <ul style="list-style-type: none">a) the Formal Sports Contributionb) the SPA Mitigation Contributionc) the Bin 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 community learning authority the waste 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 payable to the County Council pursuant to Schedule 3 comprising <ul style="list-style-type: none"> a) the Community Learning Contribution b) the Libraries Contribution c) the Social Care Contribution d) the Waste Contribution
“Deed”	means this deed of agreement together with all Schedules and Appendices
“Development”	means the erection of 14 (fourteen) bungalows to provide age restricted general market accommodation for those over the age of 55 together with 21 communal car park spaces and amenity space on the Land as set out in the Application pursuant to the Planning Permission
“Dwelling”	means any residential unit to be erected on the Land pursuant to the Planning Permission including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings
“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 18
“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 edged red on the Plan
“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 or for marketing purposes and for the avoidance of doubt the sale of a any Dwelling shall constitute permitting its occupation 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
"Parties"	means the Owner and the Borough Council as the context so requires and "Party" means any one of them
"Plan"	means the plan entitled "Location Plan" (Drawing No 766:P01) prepared by CDP Architecture Ltd and dated August 2019 annexed as Appendix 1
"Planning Permission"	means planning permission for the Development to be granted pursuant to the Application subject to conditions
"Practical Completion"	means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to the Planning Permission 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 <ul style="list-style-type: none"> a) archaeological investigation b) exploratory boreholes and trial pits c) remedial work in respect of any contamination or other adverse ground conditions d) site clearance (but excluding demolition of a building or structure) e) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities f) the erection of fences and hoardings around the Land and g) construction of temporary access and service roads and any other site infrastructure h) the temporary display of site notices or advertisements

“Retail Price Index”	means the Retail Price Index published by the Office for National Statistics
“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

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. 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
3. Words importing the singular include the plural and vice versa
4. Words importing the masculine gender include the feminine and neuter genders and vice versa
5. Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
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
7. Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions
8. 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
9. 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

10. 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
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

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
2. The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
 - 2.1. are entered into pursuant to the provisions of section 106 of the 1990 Act
 - 2.2. are planning obligations for the purposes of section 106 of the 1990 Act
 - 2.3. relate to the Land
 - 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
 - 2.5. are enforceable by the Borough Council as local planning authority
 - 2.6. are executed by the respective Parties as a deed
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

1. With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 7 to 23 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

COVENANTS AND OBLIGATIONS OF THE OWNER

1. The Owner covenants with the Borough Council to perform and observe the covenants obligations restrictions and requirements contained within this Deed
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

3. The Owner covenants to pay before completion of this Deed

3.1. the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed

3.2. the sum of £880.00 to the Borough Council in connection with the monitoring and administration of this Deed

whether or not this Deed is delivered in accordance with Clause 23

COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL

4. 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

RELEASE AND EXCLUSIONS

- 1.** Save for those obligations contained in this Deed specifically regulating the use of land or buildings after construction no planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings (or their respective mortgagees or successors in title) constructed pursuant to the Planning Permission
- 2.** No planning obligations contained in this Deed shall be binding on 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
- 3.** 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

DETERMINATION OF THE PLANNING PERMISSION

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

DISPUTES AND EXPERT DETERMINATION

4. 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
5. In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 9.1 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

6. 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
7. 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
8. 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
9. Nothing in this Clause 9 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

4. 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 19/505215/FULL Land Off Sheppey Way at Iwade Sittingbourne
With a copy to	The Section 106 Monitoring Officer
Where required	The Affordable Housing Manager
Where required	The Greenspaces Manager
The Owner	MIDDLEFIELDS LIMITED
Address	C/O Knights PLC Horizon House 1 Eclipse Park Maidstone Kent ME14 3EN

2. 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
 - 2.1. 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
 - 2.2. 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

3. 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
4. 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

5. This Deed is a local land charge and shall be registered as such
6. 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
7. 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

8. 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

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

2. 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

3. 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

CHANGE OF OWNERSHIP AND NEW INTEREST

4. 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 (other than the conveyance transfer lease assignment mortgage or other disposition of an individual Dwelling) occurring before all the obligations under this Deed have been discharged such notice to give
 - 4.1. 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
 - 4.2. the nature and extent of the interest disposed of by reference to a plan
5. In the event of the Borough Council considering it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owner (and Mortgagee) hereby consents

WAIVER

6. 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

7. All the financial contributions payable pursuant to this Deed shall be Index Linked
8. Save for the SPA Mitigation Contribution 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 proceeding the date of the delegated officer report of 11 November 2020 and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due

9. The SPA Mitigation Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the Retail Price Index between the quarterly index figure immediately proceeding the date of the delegated officer report of 11 November 2020 and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due
10. The County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index from October 2016 (Index 328.3) and the monthly index figure for the month of the date of the payment becoming due
11. 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

12. 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

13. Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT
14. 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

15. The Parties agree that

- 15.1. nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 15.2. 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

- 16. 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
- 17. It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

DELIVERY

- 18. 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)





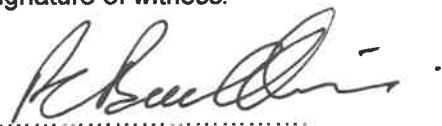
Authorised Signatory

Signed as a deed and
delivered by []
(DIRECTOR) on behalf of

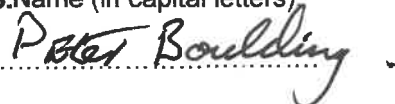
1. **MIDDLEFIELDS LIMITED** in
the presence of

2.

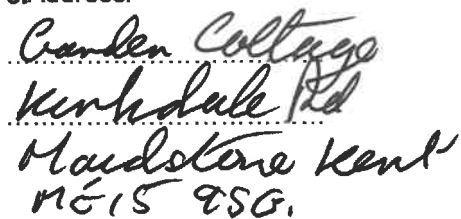
3. Signature of witness:

4. 

5. Name (in capital letters):



6. Address:



7.

9.



Director

SCHEDULE 1 : THE LAND

The land against which this Deed is enforceable comprises part of that land and premises situate at the north west side of Sheppey Way Iwade Sittingbourne and known as land off Sheppey Way Iwade registered under title number TT5031 and shown edged red on the Plan of which the Owner is the registered proprietor of the freehold with title absolute subject to the matters in the Charges Registers but otherwise free from encumbrances

SCHEDULE 2 : NOTICES

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that

Notification of Implementation of Planning Permission

1. it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of implementation of the Planning Permission and for the avoidance of doubt implementation of the Planning Permission does not mean Commencement of Development
2. it shall not implement the Planning Permission unless and until this notice has been provided to the Borough Council and
3. it shall subsequently notify the Borough Council promptly and in any event within 5 Working Days of the actual date on which the Planning Permission is implemented

Notification of Commencement of Development

4. 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
5. it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development and

Notification of Occupation

6. 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
7. it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development
8. it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the last Dwelling of the Development and the Owner shall not Occupy such Dwelling unless and until this notice has been provided to the Borough Council

Notification of Completion

9. it shall provide the Borough Council with the final Certificate of Practical Completion of the Development

SCHEDULE 3: 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

“Bin Contribution”	means a contribution in the sum of £1,472.80 Index Linked
“Bin Provision”	means the provision of sufficient refuse bins to serve the development calculated as follows: Each Dwelling to be provided with <ul style="list-style-type: none"> a) 1 x 180ltr refuse bin b) 1 x 240ltr recycling bin c) 1 x 23ltr food waste bin d) 1 x 5ltr kitchen caddy
“Community Learning Contribution”	means a contribution in the sum of £229.88 Index Linked
“Community Learning Facilities”	means additional provision at Sittingbourne Adult Education Centre
“Formal Sport Contribution”	means a contribution in the sum of £6,244.00 Index Linked
“Formal Sport Facilities”	means the provision of outdoor fitness / gym equipment on the open space at Peach Blossom Drive adjacent to the Health Centre
“Libraries Contribution”	means a contribution in the sum of £776.30 Index Linked
“Library Facilities”	means additional bookstock and services at Sittingbourne Library
“Social Care Contribution”	means a contribution in the sum of £2,056.32 Index Linked
“Social Care Facilities”	means specialist care accommodation in the Borough of Swale

“Waste Contribution”	means a contribution in the sum of £3,325.56 Index Linked
“Waste Facilities”	means additional capacity at the Sittingbourne Household Waste and Recycling Centre and Waste Transfer Station

2. Bin Contribution

- 2.1. The Owner covenants that it shall pay to the Borough Council the Bin Contribution before Commencement of the Development
- 2.2. The Owner covenants that it shall not Commence the Development unless and until the Bin Contribution has been paid to the Borough Council
- 2.3. The Borough Council covenants with the Owner that it shall apply the Bin Contribution for the Bin Provision or for such other purposes for the benefit of the Development as achieve the same objectives and not to use the 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 19 as if it were part of the principal sum paid by the Owner
- 2.4. In the event that all or any part of the 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 receipt of the Bin Contribution 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 the Borough Council’s administration expenses

3. Community Learning Contribution

- 3.1. The Owner covenants that it shall pay to the Borough Council the Community Learning Contribution before Occupation of the Development
- 3.2. The Owner covenants that it shall not Occupy the Development unless and until the Community Learning Contribution has been paid to the Borough Council
- 3.3. 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
- 3.4. If the Borough Council are of the view that the Community Learning Contribution will not be spent in accordance with Paragraph 3.3 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 the Borough Council's administrative expenses within 10 years from the date of receipt of the Community Learning Contribution

4. Libraries Contribution

- 4.1. The Owner covenants that it shall pay to the Borough Council the Libraries Contribution before Occupation of the Development
- 4.2. The Owner covenants that it shall not Occupy the Development 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 the Borough Council's administrative expenses within 10 years from the date of receipt of the Libraries Contribution

5. Formal Sport Contribution

- 5.1. The Owner covenants that it shall pay to the Borough Council the Formal Sport Contribution before Occupation of the Development
- 5.2. The Owner covenants that it shall not Occupy the Development unless and until the Formal Sport Contribution has been paid to the Borough Council
- 5.3. The Borough Council covenants with the Owner that it shall apply the Formal Sport Contribution as a contribution towards the Formal Sport 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 Formal Sport 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 19 as if it were part of the principal sum paid by the Owner
- 5.4. In the event that all or any part of the Formal Sport 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 receipt of the Formal Sport Contribution 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 the Borough Council's administration expenses

6. Social Care Contribution

- 6.1. The Owner covenants that it shall pay to the Borough Council the Social Care Contribution before Occupation of the Development
- 6.2. The Owner covenants that it shall not Occupy the Development unless and until the Social Care Contribution has been paid to the Borough Council
- 6.3. 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
- 6.4. If the Borough Council are of the view that the Social Care Contribution will not be spent in accordance with Paragraph 6.3 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 the Borough Council's administrative expenses within 10 years from the date of receipt of the Social Care Contribution

7. Waste Contribution

- 7.1. The Owner covenants that it shall pay to the Borough Council the Waste Contribution before Occupation of the Development
- 7.2. The Owner covenants that it shall not Occupy the Development unless and until the Waste Contribution has been paid to the Borough Council
- 7.3. The Borough Council shall not transfer the Waste 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 Waste Facilities
- 7.4. If the Borough Council are of the view that the Waste Contribution will not be spent in accordance with Paragraph 7.3 the Borough Council shall repay such of the Waste Contribution as the Borough Council is holding to the person who paid the contribution with accrued interest (if any) but less the Borough Council's administrative expenses within 10 years from the date of receipt of the Waste Contribution

SCHEDULE 4 : AFFORDABLE HOUSING

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

"Affordable Dwellings "	means 10% of the Dwellings (rounded up to the nearest whole Dwelling equating to 2 Dwellings) together with associated vehicle and cycle parking to be provided by the Owner pursuant to Paragraph 2.6 of this Schedule and which are to be transferred to a Registered Provider for housing persons in Housing Need in accordance with the provisions of this Schedule
"Affordable Housing"	means the Affordable Dwellings to be provided which are available to persons in Housing Need and which are to be made permanently available to such persons nominated by the Borough Council
"Affordable Housing Land"	means those plots on the Land approved by the Borough Council pursuant to the Affordable Housing Scheme for the location of the Affordable Housing where this is to be provided on-site pursuant to Paragraph 2.6 of this Schedule and on which the Affordable Dwellings will be constructed and provided in accordance with the obligations set out in this Deed
"Affordable Housing Manager"	means the Borough Council's Affordable Housing Manager or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging his duties and functions

“Affordable Housing Scheme”

means a scheme (or any revised scheme to be agreed between the Council and the Owner) for the provision of the Affordable Dwellings to be provided by the Owner which scheme shall (as a minimum) provide

- a plan showing the location of the Affordable Dwellings on the Land
- the type and size of Dwelling of the Affordable Dwellings

AND such other matters as the Borough Council may reasonably require

“Affordable Rent”

means chargeable rent that is subject to the HE’s Rent Standard (April 2015) as expanded on by the Rent Standard Guidance (April 2015) as such document and/or associated guidance may be amended updated or replaced from time to time and is required to be offered to eligible householders in Housing Need at an open market rental level which does not exceed 80% of gross local market rent (inclusive of service charges) for an equivalent property of that size and location or the applicable Local Housing Allowance rate for the Council (whichever is the lower)

“Affordable Rented Units”

means the Affordable Dwellings that will be let to persons in Housing Need at an Affordable Rent in accordance with the HEs Tenancy Standard (April 2012) as may be amended updated or replaced from time to time

“Allocations Scheme”

means the Borough Council’s published scheme of allocations presently contained in the Borough Council’s document entitled “Housing Allocations Policy 2013” or any amendment update or variation thereto or any subsequent replacement thereof

“Charge”

means a mortgage charge or other security or loan documentation granting a security interest in the Relevant Affordable Housing (or any number of them) in favour of the Chargee

“Chargee”	means any person holding a Charge in the Relevant Affordable Housing (or any number of them) or any persons or bodies deriving title through such person or any administrator (howsoever appointed) including a housing administrator
“Deed of Nomination Rights”	means the Deed agreed between the Borough Council and the Registered Provider in relation to the nomination rights in respect of the Affordable Dwellings
“HE”	means the body known as Homes England (or any successor body to its functions) within the meaning of Part I of the Housing and Regeneration Act 2008 that funds new affordable homes and regulates Registered Providers in England
“HE’s East and South East Operating Area”	consists of the counties of Buckinghamshire Cambridgeshire East Sussex Essex Hertfordshire Kent Norfolk Suffolk Surrey and West Sussex and the unitary authorities of Brighton and Hove Medway Towns Peterborough Southend-on-Sea and Thurrock but shall not include Greater London
“Help to Buy Agent”	means an agent commissioned by the HE to provide a one stop shop service to qualifying applicants enquiring about and applying for the low cost home ownership schemes within Swale Borough Council including shared ownership schemes

“Housing Need”

means

- a) in relation to the Affordable Rented Units the requirement by a person for social housing allocation in accordance with the Allocations Scheme and
- b) in relation to any Shared Ownership Units the requirement by a person to be registered with the Help to Buy Agent to be granted a Shared Ownership Lease because the persons income is insufficient to enable them rent or buy housing available locally on the open market determined with regard to local incomes and local house prices

“Local Housing Allowance”

means the flat rate rental allowance providing financial assistance towards the housing costs of low income households for different rental market areas and property types set out and reviewed by the Valuation Office Agency under a framework introduced by the Department of Works and Pensions or such similar framework that may replace it

“Neighbouring Councils”

means Councils who share the same housing market within the Borough Council’s Strategic Housing Market Assessment

“Part M4(2)”

means Part M4(2) Category 2: Accessible and adaptable dwellings of Schedule 1 to the Building Regulations 2010 as supported by “Approved Document M: Access to and use of buildings, volume 1: Dwellings” as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

"Registered Provider"	means either one or a combination of <ul style="list-style-type: none"> a) a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time) as nominated by the Council from the Council's approved list (as maybe amended from time to time) or another registered provider of social housing as maybe proposed by the Head of Regeneration & Economic Development and approved by the Council OR b) an unregistered provider of social housing approved by the Council or such other body or organisation approved by the Council whose main object is the provision of Affordable Housing Units
"Relevant Affordable Housing"	means the Affordable Housing that the Chargee intends to enforce its Charge against as identified pursuant to Paragraph 5.1.1 of this Schedule
"Shared Ownership Lease"	means a lease which accords with the HE's model form of lease issued from time to time
"Shared Ownership Units"	means the Affordable Dwellings to be occupied by persons who are in Housing Need whereby a person granted a Shared Ownership Lease can purchase an initial equity share in a Shared Ownership Unit of not less than 25% and not more than 75% and pay rent on the unsold equity with flexibility for such a person to purchase further equity shares in the Shared Ownership Unit up to 100% or such other equity sharing or retention terms from time to time approved by the Borough Council

2. General Provisions

- 2.1. The Owner covenants that prior to Commencement of Development the Owner shall submit to the Council for its approval the Affordable Housing Scheme and the Owner shall not Commence Development unless and until the Borough Council has approved the Affordable Housing Scheme
- 2.2. The Owner covenants that it shall construct and deliver the Affordable Dwellings on

the Affordable Housing Land in accordance with the Affordable Housing Scheme and the other provisions of this Schedule

- 2.3.** The Owner covenants that the Affordable Dwellings shall be constructed by the Owner in accordance with Part M4(2)
- 2.4.** The Owner covenants that the Affordable Dwellings shall be Practically Completed within 24 calendar months of the date of Commencement of the Development
- 2.5.** The Owner covenants that the Affordable Dwellings shall not be Occupied or used for any other purpose other than as Affordable Housing unless otherwise agreed by the Borough Council and subject always to Paragraph 2.13 of this Schedule 4
- 2.6.** The Owner covenants that in the first instance the Affordable Dwellings shall be delivered as Affordable Rented Units on the Land as part of the Development.
- 2.7.** Where the Owner is unable to secure a transfer of the Affordable Dwellings to a Registered Provider despite making reasonable endeavours the Owner shall notify the Borough Council in writing ("the Notification") and seek the written approval of the Borough Council to deliver the Affordable Dwellings on the Land as Shared Ownership Units
- 2.8.** Pursuant to Paragraph 2.7 of this Schedule 4 the Borough Council covenants to confirm in writing within 14 Working Days of receipt of the Notification whether or not they agree that the Affordable Dwellings can be provided as Shared Ownership Units (such approval not to be unreasonably withheld or delayed).
- 2.9.** If the Borough Council fails to provide a response pursuant to paragraph 2.8 the Owner shall be permitted to deliver the Affordable Dwellings on the Land as Shared Ownership Units
- 2.10.** Should the Owner remain unable to secure a transfer of the Affordable Dwellings to a Registered Provider despite the change in tenure pursuant to Paragraphs 2.7 and 2.8 above the Owner shall seek the written approval of the Borough Council ("Approval Request") to deliver an equivalent number of Affordable Dwellings on an alternative site ("Alternative Site") under the Owner's direct control and located within the Swale Borough Council administrative area and shall provide evidence to the Borough Council of the Owner's interest in the Alternative Site by provision of up to date Land Registry title documents
- 2.11.** Pursuant to Paragraph 2.10 of this Schedule 4 the Borough Council covenants to confirm in writing within 14 Working Days of receipt of the Approval Request whether or not they agree that the Affordable Dwellings can be provided on the Alternative Site (such approval not to be unreasonably withheld or delayed)
- 2.12.** If the Borough Council fails to provide a response pursuant to paragraph 2.11 or where

the Owner has no Alternative Site and has been unable to meet the requirements of Paragraphs 2.6, 2.7 and 2.10 above the Owner shall seek the written approval of the Borough Council to make a financial contribution by way of a commuted sum in lieu of the Affordable Dwellings being constructed and the Owner covenants that it will enter into a legal agreement made pursuant to s106 or s106A of the 1990 Act to secure such contribution (such contribution to be calculated using the Council's formula in effect at the date of this Deed)

2.13. It is agreed with the Borough Council that in the event the Owner provides Affordable Housing on an Alternative Site pursuant to Paragraph 2.10 or pays a commuted sum in lieu of the Affordable Dwellings pursuant to Paragraph 2.12 the Owner may dispose of the Affordable Dwellings on the open market as Open Market Dwellings and the obligations and restrictions in this Schedule 4 shall cease to take effect and shall no longer be enforceable

2.14. The Owner covenants that subject to Paragraph 2.13 of this Schedule 4

2.14.1. the Affordable Rented Units shall not be Occupied other than by persons who are in Housing Need

2.14.2. any Shared Ownership Units shall not be Occupied other than by persons who are in Housing Need and registered with the Help to Buy Agent

3. Transfer of the Affordable Dwellings

3.1. Subject to Paragraph 2.13 of this Schedule 4 prior to Occupation of the Development the Owner covenants that it shall have secured the exchange of contracts of the Affordable Dwellings to a Registered Provider and shall provide to the Borough Council sufficient evidence as the Borough Council shall reasonably require to show that this Paragraph has been complied with and the Owner covenants that it shall not Commence Development unless and until the provisions of this Paragraph have been complied with

3.2. Prior to Occupation of 75% (fifty percent) of the Open Market Housing Units the Owner shall ensure that

3.2.1. all of the Affordable Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (a copy of the Certificate of Practical Completion shall be provided to the Affordable Housing Manager with a copy to the Section 106 Monitoring Officer) and

3.2.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of each of the Affordable Dwellings has been transferred or granted to the Registered Provider free from all encumbrances

(other than those on the title of the Land at the date of this Deed) and free from all financial charges for the Affordable Dwellings

- 3.2.3.** the Owner has granted (or if the Owner is not a Registered Provider shall ensure that the Registered Provider shall grant) to the Borough Council the exclusive right to nominate suitable households in Housing Need to the Affordable Dwellings in accordance with the Borough Council's published Allocations Scheme and the provisions of this Deed and on the terms set out in the Deed of Nomination Rights

AND the Owner covenants that no more than 75% of the Open Market Dwellings shall be Occupied unless and until the provisions of this Paragraph 3.2 have been complied with

- 3.3.** The Owner covenants that it shall provide evidence of the transfer of the freehold or leasehold interest of the Affordable Dwellings referred to in Paragraph 3.2.2 of this Schedule to the Affordable Housing Manager within 5 Working Days of completion of the transfer
- 3.4.** The Owner covenants that it shall ensure that the price to be paid for the Affordable Rented Units by the Registered Provider (or the Borough Council as the case may be) shall be at a level that allows the Affordable Rented Units to be paid for through rents to be charged as Affordable Rent
- 3.5.** Unless otherwise agreed by the Borough Council or directed by HE any proceeds derived from the right to buy or right to acquire an Affordable Housing Rental Unit shall be used by the Registered Provider to re-invest in affordable housing within (in order of priority)
- 3.5.1.** the local authority district of Swale
- 3.5.2.** then Neighbouring Councils
- 3.5.3.** then the County of Kent and
- 3.5.4.** then the HE's East and South East Operating Area (but excluding the County of Kent)

with priority given to the provision of new dwellings for Affordable Rent

4. Miscellaneous Provisions

- 4.1.** The Owner covenants that prior to Practical Completion of the Affordable Dwellings
- 4.1.1.** all public highways (if any) and public sewerage and drainage serving the Affordable Dwellings shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over

consents or agreements that might be required

4.1.2. all private roads footways and footpaths (if any) serving the Affordable Dwellings shall be in place and constructed to an adoptable standard

4.1.3. all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Dwellings shall be constructed laid connected operational and serviceable

5. Exclusions

5.1. The obligations contained in Paragraphs 2.5 2.14 3.4 and 3.5 ("the Affordable Housing Provisions") of this Schedule shall not be binding upon nor enforceable against

5.1.1. a Chargee who is proposing to exercise its power of sale or otherwise dispose of the Relevant Affordable Housing **PROVIDED THAT**

5.1.1.1. the legal requirements appointing such Chargee shall first have been complied with and proof thereof has been the provided to the Head of Planning Services the Head of Housing and the Head of Legal Partnership (Mid Kent Legal Services) and

5.1.1.2. the Chargee identifies and provides to the Head of Planning Services the Head of Housing and the Head of Legal Partnership (Mid Kent Legal Services the associated official copies of the title registers (and plan) for the Relevant Affordable Housing and

5.1.1.3. such Chargee shall first give notice pursuant to Clause 11 to the Head of Planning Services the Head of Housing and the Head of Legal Partnership (Mid Kent Legal Services) of its intention to enforce its security and dispose of the Relevant Affordable Housing pursuant to the Charge and shall have used reasonable endeavours over a period of three months (or such longer period as may be agreed by the Chargee) from the date of the notice to secure the disposal of the Relevant Affordable Housing to another Registered Provider or to the Borough Council for a consideration not less than the amount due and outstanding to a Chargee pursuant to the terms of the Charge including all accrued principal monies interest and reasonable costs and expenses and

5.1.1.4. if such disposal has not been secured within the three month period (or such longer period as may be agreed by the Chargee) from the date of the notification in Paragraph 5.1.1.3 the Chargee shall be

entitled to dispose of the Relevant Affordable Housing free from the Affordable Housing Provisions which provisions shall determine absolutely **BUT FOR THE AVOIDANCE OF DOUBT** all other obligations contained in this Deed shall continue to apply

- 5.1.2. a tenant of an Affordable Rented Unit who has exercised a statutory right to acquire
- 5.1.3. a tenant of an Affordable Rented Unit who has exercised a statutory right to buy
- 5.1.4. a leaseholder of a Shared Ownership Unit who has subsequently purchased from the freeholder all the remaining equitable shares in that Shared Ownership Unit so that the said leaseholder owns the freehold of the entire Shared Ownership Unit
- 5.1.5. any successor in title of any persons detailed in Sub-Paragraphs 5.1.2 5.1.3 and 5.1.4 above or their mortgagee or chargee

SCHEDULE 5 : 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
“SAMMS”	means the ‘Thames, Medway & Swale Estuaries – Strategic Access Management and Monitoring Strategy’ produced by Footprint Ecology dated 22 July 2014 (or any modification or amendment thereto or replacement thereof as approved by the Borough Council)
“SPA Mitigation Contribution”	means the sum of £3,505.46 Index Linked
“SPA Mitigation Measures”	<p>means the strategic mitigation measures employed pursuant to the SAMMS to avoid adverse effects on the Special Protection Area comprising (but not limited to) some or all of the following elements</p> <ul style="list-style-type: none"> • 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 <p>or such other mitigation measures as may be required by Natural England</p>

“Special Protection Area” means the protected habitat sites identified in the SAMMS (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 Commencement of Development
- 2.2.** The Owner shall not Commence Development unless and until it has paid to the Borough Council the SPA Mitigation Contribution
- 2.3.** Following Commencement of Development the Owner shall not seek repayment of the SPA Mitigation Contribution or any part thereof
- 2.4.** The Borough Council agrees that it shall apply the SPA Mitigation Contribution towards the cost of SPA Mitigation Measures

SCHEDULE 6 : COMMUNAL AREAS MANAGEMENT COMPANY

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

“Communal Areas”	means all those communal landscaped areas and grounds within the Development including hedges trees landscape buffers parking areas driveways and communal garden and amenity areas
“Communal Areas Management Plan”	means a management plan for the Communal Areas secured pursuant to the Planning Permission setting out the long term maintenance and management of these areas
“Management Company”	means a company established pursuant to Paragraph 2.3 of this Schedule to <i>inter alia</i> monitor maintain and manage the Communal Areas in accordance with the Communal Areas Management Plan

2. Transfer of the Communal Areas

- 2.1.** Following the Practical Completion of the last Dwelling on the Development the Owner shall transfer the unencumbered freehold of the Communal Areas to the Management Company in consideration of the sum of £1.00 such transfer to be

2.1.1. with full title guarantee and

2.1.2. with vacant possession

2.2. The Management Company

2.2.1. 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 Communal Areas pursuant to Paragraphs 2.4.1 below
- c) where upon the transfer of the final Dwelling one person from each Dwelling shall become a Director of the Management Company and will receive one share and one vote per Dwelling

- d) shall include within its aims and objectives the monitoring management and maintenance of the Communal Areas pursuant to Paragraph 2.4.1 below
- e) shall provide annual management reports and accounts to be agreed at an Annual General Meeting for which not less than 28 (twenty-eight) days notice shall be given to members

2.3. The Management Company shall in accordance with the terms of this Deed and the approved Communal Areas Management Plan carry out the monitoring and maintenance of the Communal Areas

2.4. The Management Company shall be funded by means of annual service charges payable by all owners of the Dwellings with all costs divided equally amongst the Occupiers of each Dwelling

2.5. The Owner shall

2.5.1. 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 Communal Areas

2.5.2. 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 Communal Areas to be paid for through the annual service charge levied against each of the Dwellings

2.5.3. 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

3. Review of the Communal Areas Management Plan

3.1. Following approval of the Communal Areas Management Plan

3.1.1. the Owner or the Management Company (as the case may be) shall be entitled to submit a new or revised Communal Areas Management Plan to the Borough Council for approval by the Borough Council (and following such approval the Communal Areas Management Plan shall take effect as replaced or revised)

on approval the Owner or the Management Company (as the case may be) shall implement the new or revised Communal Areas 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 Communal Areas Management Plan is withdrawn by the Owner prior to approval by the Borough Council) associated with assessing and approving the new or revised Communal Areas Management Plan submitted pursuant to Sub-Paragraph 5.1.1 within 10 Working Days of the date of written notification for payment by the Borough Council

4. General

4.1. The Owner or the Management Company (as the case may be) 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 Communal Areas Management Plan submitted pursuant to the terms of this Schedule and/or any subsequent review or amendment thereto

SCHEDULE 7 : RESTRICTION ON OCCUPATION OF THE DEVELOPMENT

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

"Transfer"	means any transfer of part or all of the Land or any Dwelling on the Development and Transferor and Transferee shall be construed accordingly
-------------------	---

2. Owner's Covenants

2.1. The Owner covenants with the Borough Council that

- 2.1.1. it shall not permit Occupation of the Development by any person who is under the age of 55 (fifty-five) years**
- 2.1.2. it shall not Transfer any part of the Land whether freehold or leasehold unless the said Transfer contains a restrictive covenant that shall be binding on the Transferor and the Transferee and any successor in title of the Transferee which covenant shall restrict the Occupation of any Dwelling on the Land to persons over the age of 55 (fifty-five) years only**

AND FOR THE AVOIDANCE OF DOUBT the restriction shall be equally applicable to the Open Market Dwellings and the Affordable Dwellings

APPENDIX 1: PLAN

[THIS PAGE IS DELIBERATELY LEFT BLANK]

16/3/20
JH/le



ASum

1:1250 scale bar



CDP original printed to scale.
Prints from PDF's could distort.



CDP Architecture Ltd
22-23 North Lane
Canterbury
Kent
CT2 7EE
Tel 01227 458181
Fax 01227 451543
info@thinkcdp.com
www.thinkcdp.com

Client
Hume Planning

Job Title
Proposed Retirement
Cottages, Iwade

Drawing Title
Location Plan

Scale 1:1250	Drawn MH	Date Aug 19
Status Planning	Checked	Date Checked

A	B	C	D	E	F	G	H	J	K	L	M	N	P	Q	R	S	T
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

766 : P01

