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Mr A Woolcott  
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London  
SE1 9BB

Please ask for Cheryl Parks  
Direct Line: 01622 602141  
Email:  
Cheryl.parks@midkent.gov.uk  
Our Ref: S014514  
Your Ref:  
Date: 30 June 2021

Dear Alex,

**Completion: s.106 relating to Land At Great Grovehurst Farm Grovehurst Road  
Sittingbourne Kent ME9 8RB  
Planning Ref. No.: 18/502372/EIOUT  
IKEN Ref. No.: S014514**

Further to the above and my email of earlier today, please find enclosed your original copy of the s.106 agreement which completed on 30 June 2021 for your record purposes. Thank you for your efforts in getting this matter resolved.

We will be taking the necessary steps to close our file.

Yours sincerely

On behalf of

**Mid Kent Legal Services | Maidstone, Swale & Tunbridge Wells Borough Councils**  
Maidstone Borough Council, Maidstone House, King Street, Maidstone, Kent ME15 6JQ  
Tunbridge Wells Borough Council, Town Hall, Civic Way, Tunbridge Wells, Kent TN1 1RS  
Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

DATED

30th June 2021

SWALE BOROUGH COUNCIL

-and -

KENT COUNTY COUNCIL

-and-

GH DEAN & COMPANY LIMITED

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DEED OF AGREEMENT PURSUANT TO  
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO THE DEVELOPMENT OF  
LAND AT GREAT GROVEHURST FARM GROVEHURST ROAD KEMSLEY  
SITTINGBOURNE KENT

Planning Application Ref No 18/502372/EIOUT

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Mid Kent Legal Services  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent ME10 3HT  
Ref.: S014514



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THIS DEED OF AGREEMENT is dated the 30<sup>th</sup> day of June 2021

**BETWEEN**

- 1) **SWALE BOROUGH COUNCIL** of Swale House East Street Sittingbourne Kent ME10 3HT (the “**Borough Council**”) and
- 2) **KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ (the “**County Council**”) and
- 3) **G H DEAN & COMPANY LIMITED** (Company Registration No 431776) whose registered office is at Hempstead Farm Hempstead Lane Bapchild Sittingbourne Kent ME9 9BH (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 on 1<sup>st</sup> May 2018 and subsequently validated on 21<sup>st</sup> May 2018.
- C. Pursuant to delegated powers on 6 May 2021 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 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 has undertaken an appropriate assessment dated 17 July 2020 pursuant to regulation 63

(1)(a) and 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 set out within the delegated report referred to above at recital C 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

## **OPERATIVE PROVISIONS**

**IT IS AGREED** as follows

### **1 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"** means the All in Tender Price Index published by the

|   |   |
|---|---|
| <b>Index</b>                                  | Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors  |
| <b>“Application”</b>                          | means the application for outline planning permission submitted by GH Dean & Co Ltd to the Borough Council to carry out the Development at the Land and given the registered reference number 18/502372/EIOUT   |
| <b>“Borough Council Contributions”</b>        | means the financial contributions payable to the Borough Council pursuant to Schedules 3 and 6 comprising <ul style="list-style-type: none"> <li>a) the Emission Mitigation Contribution</li> <li>b) the Formal Sports Contribution</li> <li>c) the NHS Healthcare Contribution</li> <li>d) the SPA Mitigation Contribution</li> <li>e) the Wheelie Bin Contribution</li> </ul> |
| <b>“Civil Engineering Construction Index”</b> | means the Civil Engineering Construction Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors  |
| <b>“Commencement of Development”</b>          | 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 <b>“Commence”</b> and <b>“Commence Development”</b> shall be construed accordingly  |
| <b>“Consumer Price Index”</b>                 | means the Consumer Price Index published by the Office for National Statistics  |
| <b>“County Council”</b>                       | means The Kent County Council of Sessions House County Hall Maidstone Kent ME14 1XQ who are the community learning authority the education authority the local highway authority the transport authority the  |

social care authority the youth services 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 and 4 comprising

- a) the Highways Contribution
- b) the Community Learning Contribution
- c) the Libraries Contribution
- d) the Primary Education Contribution
- e) the Secondary Education Contribution
- f) the Social Care Contribution
- g) the Youth Services Contribution

**“Deed”**

means this deed of agreement together with all Schedules and Appendices

**“Development”**

means the development of up to 115 dwellings and all necessary supporting infrastructure including emergency access roads footpath and cycle links open space play areas and landscaping parking drainage and all utilities and service infrastructure works. All detailed matters are reserved for subsequent approval except (a) mitigation of impacts on Great Crested Newts; (b) vehicular access to Grovehurst Road and (c) extraction of brickearth 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 (and approved pursuant to the Reserved Matters Approval) including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings



|                                      |  |
|--------------------------------------|--|
| <b>“General Building Cost Index”</b> | means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors   |
| <b>“Index Linked”</b>                | means adjusted by reference to the relevant index pursuant to the provisions of Clause 19  |
| <b>“Interest Rate”</b>               | means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment   |
| <b>“Land”</b>                        | means the land against which this Deed may be enforced as detailed in Schedule 1 and shown edged red on the Plan   |
| <b>“Occupy”</b>                      | 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 for the avoidance of doubt the sale of any Dwelling shall constitute permitting its occupation and <b>“Occupation”</b> <b>“Occupier”</b> or <b>“Occupied”</b> shall be construed accordingly |
| <b>“Open Market Dwellings”</b>       | means those Dwellings for sale on the open market and which are not Affordable Dwellings   |
| <b>“Parties”</b>                     | means the Owner the Borough Council and the County Council as the context so requires and <b>“Party”</b> means any one of them   |
| <b>“Plan 1”</b>                      | means the plan entitled “Site Location Plan” (Drawing No 5384/OPA/SK001rB) prepared by Tibbalds and dated May 2020 annexed as Appendix 1   |
| <b>“Planning Permission”</b>         | 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 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 and restoration
- 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 (including for the avoidance of doubt any existing services)
- e) the erection of fences and hoardings around the Land and
- f) construction of temporary access and service roads
- g) works involved in or related to the translocation of any great crested newts on the Land including but not limited to:
  - a. the erection of exclusion fencing and the preparation of receptor areas for that

purpose

b. the partial erection of boundary features;  
and

c. implementation of approved landscaping works related to such translocation (whether associated with a European Protected Species Licence granted by Natural England or otherwise)

h) the removal of brickearth in accordance with the scheme of working approved pursuant to the Planning Permission and the making good of the Land thereafter

**“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 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

## **2 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 the County Council or the NHS Kent and Medway CCG (as the case may be) shall include any successor to its statutory functions
- 2.7 Reference to any officer of the Borough Council or the County Council means such officer or such other officer as may be lawfully designated by the Borough Council or the County Council for the purposes of discharging such duties and functions
- 2.8 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
- 2.9 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
- 2.10 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
- 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

### **3 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 Owners 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 or the County Council (as the case may be) 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

### **4 CONDITIONALITY**

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 8 to 24 inclusive Paragraphs 1 to 5 (inclusive) of Schedule 2 Paragraph 3 of Schedule 3 Paragraph 3 of Schedule 4 Paragraph 2.1 of Schedule 5 and Paragraph 2 of Schedule 6 (which take effect immediately on the date of this Deed) this Deed is conditional on:
- 4.1.1 the grant and issue of the Planning Permission; and
- 4.1.2 the Commencement of Development

## 5 COVENANTS AND OBLIGATIONS OF THE OWNER

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

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 AND PROVIDED ALWAYS THAT the Owner shall not be liable or responsible in respect of any injuries or damage suffered by the Council and its authorised employees and agents through their own negligence or failure to comply with site regulations and requirements and health and safety law and good practice who may enter onto the Land from time to time

5.3 The Owner covenants to pay before completion of this Deed and whether or not this Deed is delivered in accordance with Clause 24

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

5.3.2 the County Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed

5.4 The Owner covenants to pay:

5.4.1 before Commencement of Development the sum of £10,790.50; and

5.4.2 on or prior to Occupation of the 57th Dwelling to be Occupied the sum of £10,790.50

to the Borough Council in connection with the monitoring and administration of this Deed

## **6 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

## **7 COVENANTS AND OBLIGATIONS OF THE COUNTY COUNCIL**

- 7.1 The County 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 County Council's covenants as set out herein

## **8 RELEASE AND EXCLUSIONS**

- 8.1 Save for Clause 5.2 and 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
- 8.2 Save for Clause 5.2 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
- 8.3 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 or the County Council (as the case may be) in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest

## **9 DETERMINATION OF THE PLANNING PERMISSION**

- 9.1 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

- 9.2 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
- 9.3 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

## **10 DISPUTES AND EXPERT DETERMINATION**

- 10.1 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
- 10.2 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

- 10.3 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
- 10.4 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
- 10.5 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
- 10.6 Nothing in this Clause 10 shall be taken to fetter or limit the ability of the Borough Council or the County Council (as the case may be) 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

## **11 NOTICES**

- 11.1 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

**The County Council**                      Reference 18/502372/EIOUT Land at Great Grovehurst  
Farm Grovehurst Road Kemsley Sittingbourne Kent  
The Kent County Council

**Address**                      Kent County Council  
Sessions House  
County Hall  
Maidstone  
Kent ME14 1XQ  
Reference: PH/KEN002:000723

**The Owner**                      **G H Dean and Company Limited**

**Address**                      Hempstead Farm  
Hempstead Lane  
Bapchild  
Sittingbourne  
Kent  
ME9 9BH

11.2 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

11.2.1 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

11.2.2 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

- 11.3 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
- 11.4 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

## **12 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 or the County Council (as the case may be) for confirmation to that effect and (subject to the payment of the Borough Council's or the County Council's (as the case may be) reasonable costs and charges in connection therewith) upon the Borough Council or the County Council (as the case may be) being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council or the County Council (as the case may be) shall as soon as is reasonably practicable issue a written confirmation to such effect to the Owner
- 12.3 The Borough Council or the County Council (as the case may be) shall upon the written request of the Owner as soon as is reasonably practicable (and in any event within not more than 20 Working Days) after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council or the County Council (as the case may be) being satisfied that this Deed no longer serves a useful purpose cancel all entries made in the local land charges register in respect of this Deed

## **13 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 or the County Council (as the case may be) 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

#### **14 POWERS OF THE BOROUGH COUNCIL AND THE COUNTY 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 or the County Council (as the case may be) 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

#### **15 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

#### **16 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

#### **17 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 and that it has not leased mortgaged charged or otherwise created any interest in the Land as at the date of this Deed

17.1.3 they know of no impediment to the validity of this Deed

17.1.4 they shall make good any loss to the Borough Council or the County Council (as the case may be) 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 or the County Council (as the case may be) 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 (save in relation to any transfer of the Highways Improvements Land pursuant to Schedule 4 hereof or of an individual Dwelling) occurring before all the obligations under this Deed have been discharged as soon as reasonably practicable after the completion of such conveyance transfer lease assignment mortgage or other disposition (and in any event within 5 Working Days thereafter) 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 of the Borough Council or the County Council considering it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owner hereby consents

## **18 WAIVER**

18.1 No waiver (whether expressed or implied) by the Borough Council or the County Council (as the case may be) 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 or the County Council (as the case may be) 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

## **19 INDEXATION**

19.1 All the financial contributions payable pursuant to this Deed shall be Index Linked

19.2 The following 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 Planning Permission and the quarterly index figure for the quarter immediately preceding the date of the actual payment :

- 19.2.1 the Borough Council Contributions (save for the SPA Mitigation Contribution)
- 19.2.2 the Sustainable Transport Voucher Contribution
- 19.2.3 the Travel Plan Monitoring Contribution
- 19.2.4 the Open Space Management Contribution
- 19.3 The SPA Mitigation Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the Consumer Price Index between the quarterly index figure immediately preceding the date of the Planning Permission and the quarterly index figure for the quarter immediately preceding the date of the actual payment:
- 19.4 The following 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 actual payment
  - 19.4.1 the Community Learning Contribution
  - 19.4.2 the Libraries Contribution
  - 19.4.3 the Primary Education Contribution
  - 19.4.4 the Secondary Education Contribution
  - 19.4.5 the Social Care Contribution
  - 19.4.6 the Youth Services Contribution
- 19.5 The Highways Contribution shall be increased in the same proportion as the percentage increase in the Civil Engineering Construction Index between the quarterly index figure immediately preceding the date of the Planning Permission and the quarterly index figure for the quarter immediately preceding the date of the 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

## **20 INTEREST**

- 20.1 If any sum or amount due under this Deed has not been paid to the Borough Council or the County Council (as the case may be) by the date it is due the Owner shall pay the Borough Council or the County Council (as the case may be) 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

## **21 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

## **22 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 or the County Council (as the case may be) in the exercise of any other statutory function

## **23 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

## 24 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 )

*Paul Z*



ROBIN MORRIS

Authorised Signatory

The COMMON SEAL of **THE KENT** )  
**COUNTY COUNCIL** was affixed to )  
this Deed in the presence of )

*Mr Gy*

Authorised Signatory





Executed as a deed by **G H DEAN** )  
**& COMPANY LIMITED** acting by a )  
director in the presence of a witness )



Director



Witness

JULIE HADLOW

Witness Name

HIGHSTED FARMHOUSE HIGHSTED

VALLEY RODMERSHAM ME9 0AG .

Witness Address

## **SCHEDULE 1: THE LAND**

1. The land against which this Deed is enforceable comprises part of that land and premises situate at New House Grovehurst Road Iwade Sittingbourne ME9 8RB and known as land at Great Grovehurst Farm registered under title number K388210 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
2. The land in adjacent and adjoining titles being K787033 and K789426 is in the proprietorship of Highways England as the strategic highway authority and for the avoidance of doubt is not bound by the terms of this Deed
3. The land in adjacent and adjoining title being K741615 is in the proprietorship of Kent County Council as the local highway authority and for the avoidance of doubt is not bound by the terms of this Deed
4. The land in adjacent and adjoining title being K211088 is in the proprietorship of South Eastern Power Networks PLC and for the avoidance of doubt is not bound by the terms of this Deed

## **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 first Occupation of the Development and the Owner shall not first 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 first 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 28<sup>th</sup> (twenty-eighth) Dwelling on the Development and the Owner shall not Occupy more than 27 (twenty-seven) Dwellings on the

Development unless and until this notice has been provided to the Borough Council

9. it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling on Development
10. it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development and the Owner shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until this notice has been provided to the Borough Council
11. it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on Development
12. it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the 87<sup>th</sup> (eighty-seventh) Dwelling on the Development and the Owner shall not Occupy more than 86 (eighty-six) Dwellings on the Development unless and until this notice has been provided to the Borough Council
13. it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the 87<sup>th</sup> (eighty-seventh) Dwelling on Development
14. it shall provide the Borough Council with no less than 20 Working Days prior notice of the intended date of Occupation of the 100<sup>th</sup> (hundredth) Dwelling on the Development and the Owner shall not Occupy more than 99 (ninety-nine) Dwellings on the Development unless and until this notice has been provided to the Borough Council
15. it shall notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the 100<sup>th</sup> (hundredth) Dwelling on Development
16. 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**

17. it shall provide the Borough Council with a copy of the final Certificate of Practical Completion of the Development

## SCHEDULE 3: BOROUGH COUNCIL AND COUNTY COUNCIL 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

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

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 new equipment to support additional provision at Sittingbourne Adult Education Centre

**“Emission Mitigation Contribution”** means a contribution of part or all of the Emission Mitigation Fund to be applied by the Borough Council to the Emission Mitigation Projects in accordance with the approved Emission Mitigation Statement

**“Emission Mitigation Fund”**

means the fund to be applied in accordance with the approved Emission Mitigation Statement the amount of which shall be £37,004.00, as calculated in accordance with Great Grovehurst Farm Sittingbourne Air Quality Assessment Addendum Costs Assessment prepared by Aecom dated February 2021

**“Emission Mitigation Projects”**

means projects for the mitigation of emissions with a negative impact on health and/or the local environment arising from the Development and which may include but not be limited to the following measures which may delivered on site (including as part of the design of the Development) and/or off site:

- New residents welcome pack with information and incentives for sustainable travel modes
- Setting up and running of a local Car club / EV Car club
- Improvements to local cycle network connectivity including the funding of improvements to the shared cycle/pedestrian network along the Sheppey Way
- Improvements to pedestrian environment and connectivity in the local area
- Provision of low emission vehicle refueling infrastructure in the borough of Swale
- Increases in low emission bus fleets and waste collection fleets in the borough of Swale including the infrastructure and road furniture to facilitate such increases such as the funding of new bus stops in the local area
- Setting up and running of local bike / e-bike hire

schemes

- Increases in renewable fuel and energy generation projects in the borough of Swale
- Incentive schemes for increased take up of low emission technologies and fuels
- Schemes for the encouragement of the use of non-car modes including any extension or improvement to public transport infrastructure (rail and/or bus) and implementation and management of the same
- Other mitigation measures outlined in the adopted Swale Air Quality Action Plan

**“Emission Mitigation Statement”**

means a statement of the proposed emission impact of the Development as built and including the matters set out in paragraph 3.3 of this Schedule

**“Formal Sports Contribution”**

means a contribution in the sum of £593.00 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £593.00 = \text{£FSC Index Linked}$$

WHERE

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

**£FSC Index Linked** is the Formal Sports Contribution (Index Linked) payable

**“Formal Sports Facilities”**

means increased capacity and/or improvement of formal sports facilities at either Kemsley Recreation Ground or Milton Recreation Ground

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

**“Libraries Contribution ”** means a contribution in the sum of £227.00 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £227.00 = \text{£LC Index Linked}$$

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 additional stock and a new digital den with equipment at Sittingbourne Library

**“NHS Healthcare Contribution”** means a contribution in the sum of £864.00 per dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £864.00 = \text{£NHS Index Linked}$$

WHERE

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

AND

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



**“NHS Kent and Medway CCG”** means the NHS Kent and Medway Clinical Commissioning Group of Wharf House Medway Wharf Road Tonbridge Kent TN9 1RE 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

**“NHS Healthcare Facilities”** means refurbishment, reconfiguration and / or extension of Grovehurst Surgery, Iwade Health Centre, Lakeside Medical Centre or The Meads Medical Practice (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by NHS Kent and Medway CCG directly relevant to the specific projects identified in this definition) AND in the event that any of the above beneficiaries cease to exist or have merged practices into a primary healthcare facility then that primary healthcare facility shall take the benefit of the NHS Healthcare Contribution provided that the primary healthcare facility services some or all of the healthcare requirements of the occupiers of the Development

**“Primary Education Contribution”** means the sum of

- a) £4,535.00 per Applicable House and
- b) £1,134.00 per Applicable Flat

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

$$(AH \times £4,535.00) + (AF \times £1,134.00) = \text{£PEC Index Linked}$$

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 construction of a new primary school at Quinton Road Sittingbourne (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)

**“Secondary Education Contribution**

means the sum of

a) £4,687.00 per Applicable House and

b) £1,172.00 per Applicable Flat

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

**(AH x £4,687.00) + ( AF x £1,172.00) = £SEC 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

**£SEC Index Linked** is the Secondary Education Contribution (Index Linked) payable

**“Secondary Education Facilities”**

means construction of a new secondary school at Quinton Road Sittingbourne (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)

**“Social Care Contribution”**

means a contribution in the sum of £53.36 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £53.36 = £SCC \text{ Index Linked}$$

WHERE

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

**£SCC Index Linked** is the Social Care Contribution (Index Linked) payable

**“Social Care Facilities”**

means the social care community hub in Sittingbourne or additional resources and services locally required to mitigate the impacts of the Development

**“Wheelie Bin Contribution”**

means the sum of

a) £105.20 per house and

b) £189.64 per flat

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

$$(H \times £105.20) + (F \times £189.64) = £WBC \text{ Index Linked}$$

WHERE

H is the number of houses to be provided pursuant to the Reserved Matters Approval

F is the number of flats to be provided pursuant to the Reserved Matters Approval

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

**“Wheelie Bin Provision”** means provision of refuse bins to serve each Dwelling calculated with the following requirement:

Each house to be provided with

- 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

Each 5 flats to be provided with

- a) 1 x 1100ltr refuse bin
- b) 1 x 1100ltr recycling bin
- c) 1 x 140ltr food waste bin

**“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 x £37.58 = £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 additional resources for the New House Youth Centre Chalkwell Road Sittingbourne ME10 2LP

## **2. Community Learning Contribution**

- 2.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Community Learning Contribution before Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling on the Development
- 2.2. The Owner covenants that it shall not Occupy more than 27 (twenty-seven) Dwellings on the Development unless and until 50% (fifty percent) of the Community Learning Contribution has been paid to the Borough Council
- 2.3. The Owner covenants that it shall pay to the Borough Council the balance of the Community Learning Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development
- 2.4. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Community Learning Contribution has been paid to the Borough Council
- 2.5. 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
- 2.6. If the Borough Council are of the view that the Community Learning Contribution will not be spent in accordance with Paragraph 2.5 the Borough Council shall repay as soon as reasonably practicable 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

## **3. Emission Mitigation Assessment**

- 3.1. The Owner shall submit the Emission Mitigation Statement to the Borough Council on or prior to Commencement of Development of any Dwelling for its approval
- 3.2. The Owner shall not suffer or permit Commencement of Development of any Dwelling unless and until the Borough Council has approved the Emission Mitigation Statement PROVIDED ALWAYS THAT the Borough Council shall be deemed to have approved the Emission Mitigation Statement in the event that it has not written to the Owner confirming whether the Emission Mitigation Statement is approved by

the date being 30 Working Days after submission of the proposed Emission Mitigation Statement by the Owner in accordance with Paragraph 3.1 above

- 3.3. The Emission Mitigation Statement shall include a strategy for expenditure of the Emission Mitigation Fund on either or both of:

3.3.1. application of the Emission Mitigation Fund to the Emission Mitigation Projects; and/or

3.3.2. application of the Emission Mitigation Fund to the payment of the Emission Mitigation Contribution

PROVIDED ALWAYS THAT the total cost to the Owner of Emission Mitigation Projects and the Emission Mitigation Contribution shall not exceed the amount of the Emission Mitigation Fund

- 3.4. The Owner shall apply the Emission Mitigation Fund in accordance with the approved Emission Mitigation Statement, or such variation or update thereof as might be agreed by the Borough Council and the Owner from time to time
- 3.5. The Borough Council shall apply any Emission Mitigation Contribution to the Emission Mitigation Projects in accordance with the approved Emission Mitigation Statement or such variation or update thereof as might be agreed by the Borough Council and the Owner from time to time PROVIDED ALWAYS THAT if the Emission Mitigation Contribution (or any part thereof) is not spent or allocated or committed for expenditure by the date being seven years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 3 then the Borough Council shall as soon as reasonably practicable repay the Emission Mitigation Contribution (or relevant part thereof) to the person who paid the contribution (or part thereof) with accrued interest (if any) but less any tax that may be payable thereon

#### **4. Formal Sports Contribution**

- 4.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Formal Sports Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development
- 4.2. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until 50% (fifty percent) of the Formal Sports

Contribution has been paid to the Borough Council

- 4.3. The Owner covenants that it shall pay to the Borough Council the balance of the Formal Sports Contribution before Occupation of the 87<sup>th</sup> (eighty-seventh) Dwelling on the Development
- 4.4. The Owner covenants that it shall not Occupy more than 86 (eighty-six) Dwellings on the Development unless and until the balance of the Formal Sports Contribution has been paid to the Borough Council
- 4.5. The Borough Council covenants with the Owner that it shall apply the Formal Sports Contribution as a contribution towards the Formal Sports Facilities or for such other purposes for the benefit of the Development as the Owner and the Borough Council may otherwise agree in writing prior to its payment by the Owner and not to use the Formal Sports 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 paid under Clause 20 as if it were part of the principal sum paid by the Owner
- 4.6. In the event that all or any part of the Formal Sports Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within seven 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 to repay such sum or amount (or such part thereof) as soon as reasonably practicable to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon

## **5. Libraries Contribution**

- 5.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Libraries Contribution before Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling
- 5.2. The Owner covenants that it shall not Occupy more than 27 (twenty-seven) Dwellings on the Development unless and until 50% (fifty percent) of the Libraries Contribution has been paid to the Borough Council
- 5.3. The Owner covenants that it shall pay to the Borough Council the balance of the Libraries Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the

## Development

- 5.4. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Libraries Contribution has been paid to the Borough Council
- 5.5. 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
- 5.6. If the Borough Council are of the view that the Libraries Contribution will not be spent in accordance with Paragraph 5.5 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
- 5.7. If the Libraries Contribution (or any part thereof) is not:

5.7.1. spent or allocated or committed for expenditure; and/or

5.7.2. transferred to the County Council

by the date being seven years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 5 then the Borough Council or the County Council (as the case may be) shall as soon as reasonably practicable repay the Libraries Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **6. NHS Healthcare Contribution**

- 6.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the NHS Healthcare Contribution before Occupation of first Dwelling to be Occupied
- 6.2. The Owner covenants that it shall not Occupy any Dwelling unless and until 50% (fifty percent) of the NHS Healthcare Contribution has been paid to the Borough Council
- 6.3. The Owner covenants that it shall pay to the Borough Council the remaining 50% (fifty percent) of the NHS Healthcare Contribution before Occupation of the 57<sup>th</sup> (fifty



seventh) Dwelling

- 6.4. The Owner covenants that it shall not Occupy more than 56 (fifty six) Dwellings unless and until the remaining 50% (fifty percent) of the NHS Healthcare Contribution has been paid to the Borough Council
- 6.5. The Borough Council shall not transfer the NHS Healthcare Contribution (or any part thereof) to NHS Kent and Medway CCG unless the Borough Council is satisfied that NHS Kent and Medway CCG will spend the contribution on the NHS Healthcare Facilities
- 6.6. If the Borough Council are of the view that the NHS Healthcare Contribution will not be spent in accordance with Paragraph 6.5 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
- 6.7. If the NHS Healthcare Contribution (or any part thereof) is not spent or allocated or committed for expenditure by the date being seven years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 6 then the Borough Council or the County Council (as the case may be) shall as soon as reasonable practicable repay the NHS Healthcare Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **7. Primary Education Contribution**

- 7.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Primary Education Contribution before Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling on the Development being 25% (twenty-five percent) Occupation of the Development
- 7.2. The Owner covenants that it shall not Occupy more than 27 (twenty-seven) Dwellings on the Development unless and until 50% (fifty percent) of the Primary Education Contribution has been paid to the Borough Council
- 7.3. The Owner covenants that it shall pay to the Borough Council the balance of the Primary Education Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development being 50% (fifty percent) Occupation of the Development

- 7.4. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Primary Education Contribution has been paid to the Borough Council
- 7.5. 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
- 7.6. If the Borough Council are of the view that the Primary Education Contribution will not be spent in accordance with Paragraph 7.5 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
- 7.7. If the Primary Education Contribution (or any part thereof) is not:

7.7.1. spent or allocated or committed for expenditure; and/or

7.7.2. transferred to the County Council

by the date being ten years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 7 then the Borough Council or the County Council (as the case may be) shall as soon as reasonable practicable repay the Primary Education Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **8. Secondary Education Contribution**

- 8.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Secondary Education Contribution before Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling on the Development
- 8.2. The Owner covenants that it shall not Occupy more than 27 (twenty-seven) Dwellings on the Development unless and until 50% (fifty percent) of the Secondary Education Contribution has been paid to the Borough Council
- 8.3. The Owner covenants that it shall pay to the Borough Council the balance of the Secondary Education Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development

- 8.4. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Secondary Education Contribution has been paid to the Borough Council
- 8.5. The Borough Council shall not transfer the Secondary 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 Secondary Education Facilities
- 8.6. If the Borough Council are of the view that the Secondary Education Contribution will not be spent in accordance with Paragraph 8.5 the Borough Council shall repay such of the Secondary 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
- 8.7. If the Secondary Education Contribution (or any part thereof) is not:
- 8.7.1. spent or allocated or committed for expenditure; and/or
  - 8.7.2. transferred to the County Council

by the date being ten years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 8 then the Borough Council or the County Council (as the case may be) shall as soon as reasonable practicable repay the Secondary Education Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **9. Social Care Contribution**

- 9.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Social Care Contribution before Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling on the Development
- 9.2. The Owner covenants that it shall not Occupy more than 27 (twenty-seven) Dwellings on the Development unless and until 50% (fifty percent) of the Social Care Contribution has been paid to the Borough Council
- 9.3. The Owner covenants that it shall pay to the Borough Council the balance of the Social Care Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development

- 9.4. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Social Care Contribution has been paid to the Borough Council
- 9.5. 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
- 9.6. If the Borough Council are of the view that the Social Care Contribution will not be spent in accordance with Paragraph 9.5 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
- 9.7. If the Social Care Contribution (or any part thereof) is not:
- 9.7.1. spent or allocated or committed for expenditure; and/or
  - 9.7.2. transferred to the County Council

by the date being seven years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 9 then the Borough Council or the County Council (as the case may be) shall as soon as reasonable practicable repay the Social Care Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **10. Wheelie Bin Contribution**

- 10.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Wheelie Bin Contribution before first Occupation of the Development
- 10.2. The Owner covenants that it shall not Occupy the Development unless and until 50% (fifty percent) of the Wheelie Bin Contribution has been paid to the Borough Council
- 10.3. The Owner covenants that it shall pay to the Borough Council a further 25% (twenty five percent) of the Wheelie Bin Contribution before Occupation of the 29<sup>th</sup> (twenty ninth) Dwelling
- 10.4. The Owner covenants that it shall not Occupy more than 28 (twenty eight) Dwellings

unless and until a further 25% (twenty five percent) of the Wheelie Bin Contribution has been paid to the Borough Council

- 10.5. The Owner covenants that it shall pay to the Borough Council the balance of the Wheelie Bin Contribution before Occupation of the 87<sup>th</sup> (eighty seventh) Dwelling
- 10.6. The Owner covenants that it shall not Occupy more than 86 (eighty six) Dwellings unless and until the balance of the Wheelie Bin Contribution has been paid to the Borough Council
- 10.7. 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 as might be agreed with the Owner prior to the date of payment of any part thereof 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
- 10.8. If the Wheelie Bin Contribution (or any part thereof) is not spent or allocated or committed for expenditure by the date being seven years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 10 then the Borough Council shall as soon as reasonably practicable repay the Wheelie Bin Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **11. Youth Services Contribution**

- 11.1. The Owner covenants that it shall pay to the Borough Council 50% (fifty percent) of the Youth Services Contribution before Occupation of the 28<sup>th</sup> (twenty-eighth) Dwelling on the Development
- 11.2. The Owner covenants that it shall not Occupy more than 27 (twenty-seven) Dwellings on the Development unless and until 50% (fifty percent) of the Youth Services Contribution has been paid to the Borough Council
- 11.3. The Owner covenants that it shall pay to the Borough Council the balance of the Youth Services Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development

- 11.4. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Youth Services Contribution has been paid to the Borough Council
- 11.5. 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
- 11.6. If the Borough Council are of the view that the Youth Services Contribution will not be spent in accordance with Paragraph 11.5 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
- 11.7. If the Youth Services Contribution (or any part thereof) is not:

11.7.1. spent or allocated or committed for expenditure; and/or

11.7.2. transferred to the County Council

by the date being seven years after the date upon which it was paid to the Borough Council in accordance with this Paragraph 11 then the Borough Council or the County Council (as the case may be) shall as soon as reasonable practicable repay the Youth Services Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## SCHEDULE 4: HIGHWAYS FINANCIAL CONTRIBUTIONS AND OBLIGATIONS

### 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

|  |  |
|--|--|
| <b>“Detention Pond”</b>                                | means the detention pond serving the Development the illustrative intended location and design of which is shown on Plan 2   |
| <b>“Drainage Outfall Pipe Works”</b>                   | means the re-provision of the surface water drainage outfall pipe and all associated conduits which serve the Land (or any part thereof) and pass beneath Swale Way at nil cost to the Owner   |
| <b>“Highways Contribution”</b>                         | means a contribution in the sum of £572,621.00 Index Linked or such amount as might be calculated in accordance with paragraph 3.15.5 below towards an improvement scheme of the A249/Grovehurst Junction as required by the County Council  |
| <b>“Highway Improvements Land”</b>                     | means the land required for the Highway Works to the A249 Grovehurst Junction as illustrated hatched and edged blue on Plan 2  |
| <b>“Highway Improvements Land Availability Notice”</b> | means a notice served by the Owner upon the County Council within 7 Working Days after the completion of the brickearth extraction from the Land (or earlier if the Owner so elects at its sole discretion and subject to any conditions or terms the Owner may elect to impose on such earlier availability) and specifying which of the areas set out in the Highways Improvements Land is to be |

**“Highway Works”**

made available to the County Council *SUCH area within the Highway Improvements Land to be agreed with the County Council* means the improvement scheme and mitigation measures for the A249 / Grovehurst Road Junction (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)

**“Intended Works Notice”**

means a written notice given to the Owner by the County Council:

- 1) confirming that it intends to start the Highway Works;
- 2) confirming the extent of the Services Licence Land it requires the Services Licence in relation to; and
- 3) requesting:
  - a. the Transfer of the Highway Improvements Land; and
  - b. the Services Licence
  - c. Wayleave Agreement

**“Plan 2”**

means the plan entitled “Outline Surface Water Drainage Strategy D118/14/RevE” annexed hereto as Appendix 2

**“Services Licence”**

means the licence to be entered into between the Owner and the County Council giving the County Council access to the Services Licence Land to relocate services from or adjacent to existing highways land to the Services Licence Land such licence to be on the following terms:

- 1) the County Council shall gain access to the Services Licence Land solely from existing highways land already within its ownership and not from any other part of the Land



- save for the Highway Improvements Land
- 2) the County Council shall comply with and not frustrate the Owner's ability to comply with the terms of;
    - a. the Owner's Planning Permission for the Development; and
    - b. any licence received by the Owner for the relocation/translocation of any Great Crested Newts in relation to the Land
  - 3) in the event that the County Council requires that any exclusion fencing already in situ on the Land at the date of the grant of the Services Licence be relocated that such relocated and reinstatement of the exclusion fencing shall be done solely at the County Council's cost and to the Owner's reasonable satisfaction

**"Services Licence Land"**

means the land shown edged and hatched green on Plan 2

**"Transfer"**

means a formal transfer of ownership by way of an application to HM Land Registry and **"Transferred"** shall be construed accordingly

**"Wayleave Agreement"**

means an agreement for access on the Services Licence Land once works have been completed to be granted on such reasonable terms as the Owner might require including the terms identified at limbs 1) and 2) of the definition of Services Licence above and a requirement that the County Council makes good at its own expense and to the Owner's reasonable satisfaction any damage caused by or arising from works undertaken pursuant to any rights granted under the Wayleave Agreement

## **2. Highways Contribution**

- 2.1. The Owner covenants that it shall pay to the County Council 50% (fifty percent) of the Highways Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development
- 2.2. The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until 50% (fifty percent) of the Highways Contribution has been paid to the County Council
- 2.3. The Owner covenants that it shall pay to the County Council the balance of the Highways Contribution before Occupation of the 87<sup>th</sup> (eighty-seventh) Dwelling on the Development
- 2.4. The Owner covenants that it shall not Occupy more than 86 (eighty-six) Dwellings on the Development unless and until the balance of the Highways Contribution has been paid to the County Council
- 2.5. If the Highways Contribution (or any part thereof) is not spent or allocated or committed for expenditure by the date being seven years after the date upon which it was paid to the County Council in accordance with this Paragraph 2 then the County Council shall as soon as reasonably practicable repay the Highways Contribution (or relevant part thereof) to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon

## **3. Highway Improvements**

- 3.1. The County Council covenants to use reasonable endeavours to submit to the ~~County Council~~ <sup>County Borough</sup> Council a planning application for the Highway Works
- 3.2. The Owner shall:
  - 3.2.1. as soon as reasonably practicable following the grant of Planning Permission notify the Council of its intended contractor/partner for the removal of brickearth from the Land (the Brickearth Contractor);
  - 3.2.2. consult with the notified Brickearth Contractor in the preparation of a strategy for the removal of brickearth from the Land (the Brickearth Strategy);
  - 3.2.3. submit to the County Council a copy of the Brickearth Strategy (such strategy

to include a proposed timetable for the removal of the brickearth) prepared in consultation with the Brickearth Contractor **PRIOR TO** any brickearth being removed from the Land (save for any brickearth removed for the conducting of surveys tests analysis and preparation reasonably necessary to inform the preparation of the Brickearth Strategy);

- 3.2.4. have reasonable regard to any comments provided by the County Council on the proposed Brickearth Strategy provided always that such comments are provided to the Owner within 10 Working Days after submission of the proposed Brickearth Strategy to the County Council by the Owner and provided further that the Owner shall give the County Council reasons in writing where any amendments sought by the County Council pursuant to this paragraph have not been incorporated into the Brickearth Strategy
- 3.2.5. provide the County Council with a copy of its application to Natural England for a licence for the relocation/translocation of Great Crested Newts in relation to the Land as soon as reasonably practicable (and in any event within five Working Days) after the date upon which the application for the licence is submitted to Natural England by the Owner
- 3.2.6. provide the County Council with a copy of the licence received from Natural England for the relocation/translocation of Great Crested Newts in relation to the Land as soon as reasonably practicable (and in any event within five Working Days) after the date upon which the licence is received by the Owner
- 3.3. The County Council shall keep the Owner regularly updated in writing (not less than once monthly) as to the proposed schedule for the carrying out of the Highway Works and the Owner and the County Council shall use reasonable endeavours to enable removal of brickearth from the Land in accordance with the timetable proposed in the Brickearth Strategy
- 3.4. The County Council shall use reasonable endeavours to minimise disruption to the brickearth extraction process (as detailed in the Brickearth Strategy) by the Highway Works including but not limited to having regard to the impact of any traffic management measures on Grovehurst Road and Swale Way and the public in the course of the carrying out of the brickearth extraction
- 3.5. The Owner covenants to send the Highway Improvements Land Availability Notice to

the County Council following completion of its works to extract brickearth from the Land (or upon such earlier date as the Owner might elect at its sole discretion) and in any event by not later than 31 December 2021

- 3.6. The County Council covenants not to send the Intended Works Notice to the Owner prior to:

3.6.1. its obtaining planning permission for the Highway Works (a copy of which shall be issued to the Owner by the County Council as soon as reasonably practicable (and in any event within five Working Days) after the date of such planning permission; AND

3.6.2. receipt of the Highway Improvements Land Availability Notice by the County Council

- 3.7. The County Council covenants to send the Intended Works Notice to the Owner:

3.7.1. after receipt of the Highway Improvements Land Availability Notice; and

3.7.2. in advance of the start of the Highway Works; and

the County Council shall not begin the Highway Works unless and until the Intended Works Notice has been sent to the Owner and the Transfer has been completed

- 3.8. The Owner covenants that it shall accept the Intended Works Notice from the County Council during the period commencing upon the date of issue of the Highway Improvements Land Availability Notice and ending on the 31<sup>st</sup> day of March 2024

- 3.9. The Owner covenants to Transfer the Highway Improvements Land and provide the County Council with the Services Licence to the County Council at nil consideration following receipt of the Intended Works Notice so as to allow the County Council to undertake the Highway Works

- 3.10. The County Council covenants that it shall use the Highway Improvements Land for the purpose of the Highway Works and for no other purpose without the express written authority of the Owner save for any works required as a consequence of the Highway Works including but not limited to the diversion of services the County Council covenants that it shall Transfer back to the Owner all those parts of the Highway Improvements Land that have not been used for the Highway Works and which have not been dedicated as public highway land by not later than the date

being 3 months after the practical completion of the Highway Works on the Highway Improvements Land (such level of completion to exclude for the purposes of this paragraph soft landscaping works) and before said Transfer shall return all that land to be Transferred to its original condition as it was before the Highway Works were undertaken (or such other condition as might be agreed between the County Council and the Owner from time to time)

3.11. The County Council covenants to agree in writing the specification for the Drainage Outfall Pipe Works with the Owner before undertaking the Highway Works or the Drainage Outfall Pipe Works and the County Council shall not undertake the Highway Works or the Drainage Outfall Pipe Works unless and until the specification has been agreed in writing with the Owner and such works shall only be required to be carried out by the County Council to re-provide the outfall pipe which is the subject of the Drainage Outfall Pipe Works such that the capacity flow-rate performance and condition thereof remains not less than that set out on the specification annexed to this Schedule (or such other standard and condition as might be agreed between the County Council and the Owner from time to time)

3.12. In carrying out the Highway Improvements Works the County Council shall procure that following the carrying out of any works on the Highway Improvements Land that:

3.12.1. the level of the Highway Improvements Land along the entirety of its boundary with the Land shall be at such level as is agreed by the Owner and which procures that the construction of the Detention Pond in the location shown on Plan 2 is not prejudiced precluded or made any more onerous (including with regard to the cost to the Owner of construction (including excavation) of the Detention Pond) than would have been the case had the Highway Improvements Works or any associated works (or any part thereof) not been carried out on the Highway Improvements Land

3.12.2. the Highway Improvements Works are designed in such a manner as to minimise as far as is practicable the flow of water onto the Land in a quantity which would exceed the drainage capacity of the outfall pipe and Detention Pond serving the Land (as set out in the specification annexed to this Schedule (or as might otherwise be agreed between the Owner and the County Council in accordance with paragraph 3.11 above)) save where previously agreed in writing with the Owner and PROVIDED ALWAYS THAT

the cost of:

3.12.2.1. any works to facilitate such additional flow of water onto the Land in relation to the outfall pipe Detention Pond; and

3.12.2.2. any and all associated apparatus conduits pipes and landscaping

shall be deducted from the amount of the Highways Contribution in accordance with paragraph 3.15.5

3.13. In the event that the Highway Works or any subsequent scheme approved by the County Council and/or Highways England in lieu of the Highway Works do not require the use of the Highway Improvements Land and upon written confirmation being provided by the County Council and where necessary Highways England and the Borough Council of the same the obligations in Paragraphs 3.1 to 3.12 above shall cease to have any effect

3.14. The Owner shall notify the County Council on or before 2021 as to whether:

3.14.1. the extraction of brickearth from the Land will not be completed by 31 December 2021; and

3.14.2. the extent of any compensation that the Owner considers to be payable calculated in accordance with paragraph 3.15.5 below

**(the Owner's Notification)**

3.15. In the event that the Owner's Notification confirms that it is not reasonably practicable to remove the brickearth from the Land by 31 December 2021 then:

3.15.1. the County Council shall within ten Working Days after submission of the Owner's Notification by the Owner to the County Council confirm in writing to the Owner:

3.15.1.1. that the County Council will only access the Highway Improvements Land from land already within its ownership;

3.15.1.2. that the County Council shall comply with the terms of the Planning Permission and any licence for the relocation/translocation of Great

Crested Newts in relation to the Highway Improvements Land save where it has been previously agreed in writing by the Owner (provided always that the Owner shall not be required to enter into or make any such agreement other than at its sole election) that an amendment variation or replacement thereof shall be and has been sought to the Owner's reasonable satisfaction and at the County Council's cost

3.15.1.3. when the County Council intends to commence the Highway Improvements Works on the Highway Improvements Land

PROVIDED ALWAYS THAT the County Council shall be deemed to have served such notice on the eleventh Working Day after receipt of the Owner's Notification by the Owner to the County Council provided always that the County Council shall provide the Owner with written notice of receipt of the Owner's Notification within two Working Days after receipt thereof and in the event that the County Council does not so confirm receipt within two Working Days after a request by the Owner to confirm receipt of the Owner's Notification the Owner's Notification shall be deemed to have been served two Working Days after such request is made by the Owner.

3.15.2. notwithstanding paragraph 3.5 hereof the Owner shall serve the Highway Improvements Land Availability Notice on the County Council by 31 December 2021 prior to the removal of brickearth from the Highway Improvements Land and paragraphs 3.6 to 3.13 above shall apply mutatis mutandis

3.15.3. the County Council shall only access the Highway Improvements Land from highways land already within its ownership and shall use reasonable endeavours (and procure its agents employees and contractors use reasonable endeavours) to reduce as far as practicable any damage and/or contamination to the brickearth on the rest of the Land in carrying out the Highway Works and in the event that such damage and/or contamination giving rise to a reduction in the amount and/or value of the extractable brickearth from the Land occurs as a result of the County Council's (and/or its agents' employees' contractors') action or inaction then the amount of the Highways Contribution shall be adjusted in accordance with the provisions of

paragraph 3.15 mutatis mutandis and where figure C therein is adjusted by the addition thereto of the volume (in cubic metres) of brickearth determined by the Owner's brickearth contractor (acting reasonably) to have been so damaged and/or contaminated

3.15.4. the County Council shall at its own expense procure the relocation of Great Crested Newts in relation to the Land (including the Highway Improvements Land) in accordance with :

3.15.4.1. the requirements of the Planning Permission the terms of the licence for such relocation; and

3.15.4.2. the advice of the Owner's appointed ecologist

provided always that if the Owner has previously installed Great Crested Newt fencing then the Owner shall permit the County Council to relocate such fencing:

3.15.4.3. at its own expense;

3.15.4.4. in accordance with the advice of the Owner's appointed ecologist; and

3.15.4.5. in relation to the Land (including the Highway Improvements Land) subject to the requirements of the Planning Permission and the terms of the licence for such relocation and

3.15.5. the amount of the Highways Contribution shall be reduced to account for the value of the loss of extractable brickearth from the Highways Improvements Land to be transferred to the County Council and the revised amount of the Highways Contribution payable by the Owner in accordance with Paragraph 2 above shall be calculated as follows:

$$A = H - (B \times C)$$

*Where*

A is the revised amount of the Highways Contribution

H is the sum of £572,621.00 Index Linked LESS the amount of any costs



incurred by the Owner of the types identified in paragraph 3.12.2

B is the amount of £20.03 (twenty pounds and three pence)

C is the volume of brickearth estimated by the Owner (in consultation with the Owner's appointed brickearth contractor) to be within the Highways Improvements Land to be transferred to the County Council in cubic metres (as might be adjusted in accordance with paragraph 3.15.3 above)

**LAND AT GREAT GROVEHURST FARM, GROVEHURST ROAD, KEMSLEY, SITTINGBORNE, KENT**

**18/502372/EIOUT**

**Schedule 4 - Annex**

**DRAINAGE SPECIFICATION**

*The re-provision of the surface water outfall pipe shall ensure that the invert level of any new outfall pipe, where it exits from the detention pond to pass under Swale Way and any associated highway embankment, is no higher than 10.000m AOD.*

*The outfall pipe shall be sized so that it has capacity to accept a minimum controlled discharge from the detention pond of 17.4 litres/sec.*

## SCHEDULE 5: 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

**"Additional Affordable Housing"** means a further 18 (eighteen) Affordable Dwellings provided on the Land by the Owner in addition to the Required Affordable Housing

**"Affordable Dwellings "** means the Dwellings together with associated vehicle and cycle parking to be provided by the Owner on the Land and comprising the Required Affordable Housing and the Additional Affordable Housing of which

- a) 90% being 27 Dwellings shall be provided as Affordable Rented Units and
- b) 10% being 3 Dwellings shall be provided as Intermediate Rent To Buy Units or Shared Ownership Units

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 within the Development 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 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 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 appropriately distributed throughout the Development so as not to be segregated from the Open Market Dwellings and ensure inclusive and mixed communities
- identifying the individual tenure of each Affordable Dwelling and its location within the Development by reference to a plan
- the type and size of Dwelling to be provided as the Affordable Dwellings
- (if applicable) identifying which of the Affordable Dwellings is to comprise fully wheelchair accessible Dwellings their location within the Development (as shown on the plan above) and the type and size of Affordable Dwelling to be provided as fully wheelchair accessible

**“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

|                                    |  |
|------------------------------------|--|
| <b>"Affordable Rented Units"</b>   | 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  |
| <b>"Allocations Scheme"</b>        | 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  |
| <b>"Charge"</b>                    | 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   |
| <b>"Chargee"</b>                   | means any mortgagee or chargee of the Registered Provider of the Relevant Affordable Housing (or any number of them) and any receiver (including an administrative receiver) and manager appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver" of the Registered Provider) or any persons or bodies deriving title through such mortgagee or chargee or Receiver |
| <b>"Deed of Nomination Rights"</b> | means the Deed agreed between the Borough Council and the Registered Provider in relation to the nomination rights in respect of the Affordable Dwellings  |
| <b>"HE"</b>                        | means the body known as the 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 Borough Council’s Allocations Scheme and
- b) in relation to the Intermediate Rent To Buy Units the requirement by an eligible person to be registered with the Help to Buy Agent 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 and
- c) in relation to the 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

### **“Intermediate Affordable Housing Units”**

means the Affordable Dwellings that will provided as either Intermediate Rent to Buy Units or as Shared

## Ownership Units

### **“Intermediate Rent”**

means a rent at a value above social rent but below market levels and not exceeding 80% (eighty per cent) of the current market rent (inclusive of service charges)

### **“Intermediate Rent To Buy Units”**

means the Affordable Dwellings let to working households at an Intermediate Rent to give them the opportunity to save for a deposit to buy their first home for a minimum of five years and in accordance with HE’s Shared Ownership and Affordable Homes Programme 2016 to 2021 Prospectus or such similar prospectus as may replace it and let in accordance with HE’s Rent and Tenancy Standards published from time to time and which after a period of not less than five years may be purchased by the tenants at market value

### **“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 in the event that the Owner so requests such other equivalent standard as approved by the Council

### **“Part M4(3)”**

means Part M4(3) Category 2: Wheelchair user 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 in the event that the Owner so requests such other equivalent standard as

approved by the Council

**"Phase"**

means the following numerical phases in respect of the Dwellings:

Phase 1 shall be comprised of 50 (fifty) Dwellings (or such other number as might be agreed by the Owner and the Borough Council)

Phase 2 shall be comprised of 65 (sixty five) Dwellings (or such other number as might be agreed by the Owner and the Borough Council)

**"Registered Provider"**

means any person body or entity which is registered with the Regulator of Social Housing as a provider of social housing in accordance with section 80(2) and chapter 3 of the Housing and Regeneration Act 2008 (or any other body defined by subsequent legislation as having a similar role) or such other body as might be agreed by the Council from time to time

**"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

**"Required Affordable Housing"**

means the Affordable Dwellings required to be provided by the policies in the Council's development plan and pursuant to the Application and which shall be 10% of the Dwellings (rounded up to the nearest whole Dwelling) calculated as 12 (twelve) Dwellings

**"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 PROVIDED ALWAYS THAT the Owner may submit from time to time a revised Affordable Housing Scheme to the Council for its approval in respect of any Phase(s)
- 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
  - 2.3.1. the Affordable Dwellings shall be constructed in accordance with Part M4(2)
  - 2.3.2. 2 (two) Affordable Dwellings across the Development as a whole shall be constructed and delivered in accordance with Part M4(3)
- 2.4. 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
- 2.5. SUBJECT ALWAYS TO PARAGRAPH 5 the Owner covenants that
  - 2.5.1. the Affordable Rented Units shall not be Occupied other than by persons who are in Housing Need
  - 2.5.2. the Intermediate Affordable Housing 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. Prior to Occupation of more than 25% (twenty five) percent) of the Open Market Housing Units in each Phase the Owner covenants that it shall have secured the exchange of contracts of the Affordable Dwellings within the relevant Phase to a Registered Provider and shall provide to the Borough Council sufficient evidence as the Borough Council shall require to show that this Paragraph has been complied with and the Owner covenants that it shall not permit the Occupation of more than 25% of the Open Market Housing Units in the relevant Phase unless and until the provisions of this Paragraph have been complied with
- 3.2. Prior to Occupation of more than 50% (fifty percent) of the Open Market Housing Units within the relevant Phase the Owner shall ensure that
  - 3.2.1. all of the Affordable Dwellings within the relevant Phase 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) and
  - 3.2.2. a freehold interest or a leasehold interest of at least 125 years on a full repairing and insuring basis of the relevant 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 shall grant (or if the Owner is not a Registered Provider shall procure that the Registered Provider shall grant) to the Borough Council the right to nominate suitable households in Housing Need to the Affordable Rented Units in the relevant Phase as follows:
    - 3.2.3.1. 100% of first Occupations of the Affordable Rented Units and
    - 3.2.3.2. 75% of any subsequent Occupations of the Affordable Rented Units

**AND** the Owner covenants that no more than 50% (fifty percent) 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 relevant 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 let at an Affordable Rent
- 3.5. The Owner covenants that the Intermediate Rent To Buy Units shall each be let on an assured shorthold tenancy with a fixed term of less than two years and
  - 3.5.1. shall be let to eligible applicants only and
  - 3.5.2. the rent to be charged shall be Intermediate Rent with each subsequent annual rent increase or increases limited to the Consumer Price Index plus 1% and
  - 3.5.3. any occupants of the Intermediate Rent To Buy Units shall be offered the opportunity to convert their assured shorthold tenancy to a Shared Ownership Lease on request subject to satisfying the Registered Provider's eligibility criteria
- 3.6. The Owner covenants that no more than a 25% to 75% share in any Shared Ownership Units shall be sold to eligible applicants initially and the rent (excluding service charge) to be charged on the remaining percentage share in the Shared Ownership Units shall not be more than 3% of the capital value of the unsold equity in that particular individual Shared Ownership Unit with each subsequent annual rent increase or increases limited to further increases in the Retail Price Index plus 0.5%
- 3.7. Unless otherwise agreed by the Borough Council or directed by HE any proceeds derived from the sale of a Shared Ownership Unit or an Intermediate Rent To Buy Unit or the proceeds from the right to buy or right to acquire an Affordable Rented Unit shall be used by the Registered Provider to re-invest in affordable housing within

(in order of priority)

3.7.1. the local authority district of Swale

3.7.2. then Neighbouring Councils

3.7.3. then the County of Kent and

3.7.4. 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 in each Phase

4.1.1. all public highways (if any) and public sewerage and drainage serving the relevant 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 relevant 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 relevant Affordable Dwellings shall be constructed laid connected operational and serviceable

#### **5. Exclusions**

5.1. The obligations contained in Paragraphs 2.5 2.6 3.4 3.5 3.6 and 3.7 ("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 Chargee identifies and provides to the Head of Planning Services the Affordable Housing Manager 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

5.1.1.2. such Chargee shall first give notice pursuant to Clause 11 to the Head of Planning Services the Affordable Housing Manager 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 attempted over a period of three months 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

5.1.1.3. if such disposal has not completed within the three month period from the date of the notification in Paragraph 5.1.1.2 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 Shared Ownership leaseholder who has acquired 100% of the shares in the Shared Ownership Unit

5.1.5. a tenant of an Intermediate Rent To Buy Unit who has exercised their right to purchase after the initial period of five years and

5.1.6. any successor in title of any persons detailed in Sub-Paragraphs 5.1.2 to 5.1.5 above or their mortgagee or chargee

## SCHEDULE 6: 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

**“Appropriate Assessment”** means the appropriate Habitats Regulations Assessment conducted by the Borough Council in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) and dated 17 July 2020

**“Dwelling”** for the purposes of this Schedule means any residential unit (including the for the avoidance of doubt any residential units provided as flats) to be erected on the Land pursuant to the Planning Permission (and approved pursuant to the Reserved Matters Approval) including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings

**“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** means the sum of £250.39 per Dwelling where the total

**Contribution”**

contribution shall be calculated in accordance with the following formula

$$D \times \text{£}250.39 = \text{£SPA Index Linked}$$

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 pursuant to the SAMMS to avoid adverse effects on the Special Protection Area in accordance with the Appropriate Assessment and comprising (but not limited to) 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

**“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
- 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 covenants that it shall apply the SPA Mitigation Contribution towards the cost of SPA Mitigation Measures



## SCHEDULE 7: TRAVEL PLAN AND SUSTAINABLE TRANSPORT VOUCHERS

### 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

**“Allocation”** means site allocation MU1 identified within the adopted Swale Borough Local Plan 2017-2031 as at the date of this Deed

**“Framework Travel Plan”** means the Framework Travel Plan prepared by Peter Brett Associates and dated April 2018 pursuant to the Application

**“Sustainable Transport Voucher Contribution”** means a contribution in the sum of £350.00 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times £350.00 = \text{£STVC Index Linked}$$

WHERE

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

**£STVC Index Linked** is the Sustainable Transport Voucher Contribution (Index Linked) payable and to be used for the purposes of providing the Travel Plan Voucher

**“Sustainable Transport Voucher”** means a voucher for sustainable travel modes being either a bus travel voucher or a rail travel voucher or a voucher redeemable at a local or national cycle store with one voucher to be supplied to every new Dwelling on the Development

|  |  |
|--|--|
| <b>“Travel Plan Monitoring Contribution”</b> | means a contribution in the sum of £19,283.00 Index Linked   |
| <b>“Travel Plan Monitoring”</b>              | means the administering and monitoring of the Framework Travel Plan by the Travel Plan Scheme Administrator  |
| <b>“Travel Plan Scheme Administrator”</b>    | means a consultant jointly appointed by the developers of the Allocation with responsibility for administration initially falling to the first developer to proceed with the construction of residential units within the developments forming part of the Allocation and thereafter and chronologically the developers of the balance of the Allocation |
| <b>“Travel Planning Measures”</b>            | means all those measures and agreed recommendations contained within the Framework Travel Plan relating to managing and mitigating travel impacts associated with the Development  |

## **2. Owner’s Covenants**

- 2.1. The Owner covenants with the Borough Council that it shall apply the Travel Planning Measures in accordance with the approved Framework Travel Plan
- 2.2 The Owner covenants that it shall pay to the Travel Plan Scheme Administrator 50% (fifty percent) of the Travel Plan Monitoring Contribution either:
  - 2.2.1 before Occupation of any Dwelling on the Development; or
  - 2.2.2 in the event that the Travel Plan Scheme Administrator has not yet been appointed as at the anticipated date of Occupation of the first Dwelling to be Occupied, within 10 Working Days after the appointment of the Travel Plan Scheme Administrator
- 2.3 The Owner covenants that it shall not Occupy any Dwelling on the Development unless and until 50% (fifty percent) of the Travel Plan Monitoring Contribution has

been paid to the Travel Plan Scheme Administrator unless the provisions of paragraph 2.2.2 above apply in which case there shall be no limitation or restriction on Occupations

- 2.4 The Owner covenants that it shall notify the Borough Council and the County Council that 50% (fifty percent) of the Travel Plan Monitoring Contribution has been paid to the Travel Plan Scheme Administrator within 5 working days after such payment being made
- 2.5 The Owner covenants that it shall pay to the Travel Plan Scheme Administrator the balance of the Travel Plan Monitoring Contribution before Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development
- 2.6 The Owner covenants that it shall not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the balance of the Travel Plan Monitoring Contribution has been paid to the Travel Plan Scheme Administrator
- 2.7 The Owner covenants that it shall notify the Borough Council and Kent County Council that the balance of the Travel Plan Monitoring Contribution has been paid to the Travel Plan Scheme Administrator within 5 working days of such payment being made

### **3. Sustainable Transport Voucher Contribution**

- 3.1. The Owner covenants that it shall offer a Sustainable Transport Voucher to the purchaser of any Dwelling before first Occupation of the Dwelling
- 3.2. The Owner covenants that it shall not allow first Occupation of any Dwelling unless and until the Sustainable Transport Voucher has been offered to the purchaser of the relevant Dwelling
- 3.3. The Owner covenants with the Borough Council that it shall notify the Borough Council and the County Council annually in writing of each sale and of which Sustainable Transport Voucher has been chosen in each instance
- 3.4. The Sustainable Transport Voucher shall be offered to the first purchaser of the relevant Dwelling as a choice of one of the following three items:

3.4.1 a bus voucher in the sum £350.00 toward the costs of purchasing up to six

four-weekly bus passes OR

3.4.2 a cycle voucher in the sum £350.00 toward the cost of purchasing bikes and/or bike equipment / accessories OR

3.4.3 a rail voucher in the sum £350.00 toward the cost of purchasing tickets for rail travel

and the purchaser of the Dwelling shall be able to elect which Sustainable Transport Voucher it wishes to receive upon purchase of the Dwelling and shall receive the Sustainable Transport Voucher upon legal completion of the purchase of the relevant Dwelling

## SCHEDULE 8: OPEN SPACES 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

**“Bank Account”** means a bank account that conforms to the requirements of Paragraph 3.6 of this Schedule

**“Management Company”** means a company established pursuant to Paragraph 3.1 of this Schedule to *inter alia* monitor maintain and manage the Open Space Areas in accordance with the Open Space Areas Management Plan

**“Open Space Areas”** means all those communal landscaped areas and open spaces within the Development including

- a) the great crested newt mitigation measures together with appropriate management prescriptions as approved by the Council and/or modified by Natural England in accordance with the terms of the licence granted by Natural England
- b) the children’s play areas
- c) the multi use open space areas (that to the north of Great Grovehurst Farmhouse and that next to the Grovehurst Road/Swale Way junction including a SUDS basin with specified management measures) AND
- d) any other incidental areas of open space within the development

**“Open Space Areas Management Plan”** means a management plan for the Open Space Areas approved pursuant to the Planning Permission setting out the long term maintenance and management of

these areas and which for the avoidance of doubt shall include a list of reasons for which public access to the Open Space Areas (or any part(s) thereof) may be restricted including but not limited to closures:

- in order to allow building works maintenance management improvement installation and/or laying of services service media drains sewers conduits cables pipes and/or repairs (whether to the Open Space Areas or other areas of the Land) to be carried out
- for the purposes of maintaining public safety

**“Open Space  
Management Fund  
Contribution ”**

means a contribution in the sum of £20,000.00 Index Linked

**“Open Space  
Management Fund”**

means a sinking fund solely for the purposes of monitoring, managing and maintaining areas of Open Space Areas on the Development (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the Management Company that shall be established for the purposes of monitoring, managing and maintaining the open space)

## **2 Owner’s Covenants**

- 2.1 The Owner covenants with the Borough Council that it will establish and incorporate the Management Company in accordance with Paragraph 3.1 prior to Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development
- 2.2 The Owner covenants with the Borough Council that it will not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until the Management Company has been established and incorporated
- 2.3 The Owner covenants to provide to the Borough Council a copy of the certificate of

incorporation and articles of association of the Management Company within 10 Working Days after incorporation of the Management Company

- 2.4 The Owner covenants to pay 50% (fifty percent) of the Open Space Management Fund Contribution into the Bank Account prior to Occupation of the 57<sup>th</sup> (fifty-seventh) Dwelling on the Development
- 2.5 The Owner covenants with the Borough Council that it will not Occupy more than 56 (fifty-six) Dwellings on the Development unless and until 50% (fifty percent) of the Open Space Management Fund Contribution has been paid into the Bank Account
- 2.6 The Owner covenants to pay the balance of the Open Space Management Fund Contribution into the Bank Account prior to Occupation of the 100<sup>th</sup> (hundredth) Dwelling on the Development
- 2.7 The Owner covenants with the Borough Council that it will not Occupy more than 99 (ninety-nine) Dwellings on the Development unless and until the balance of the Open Space Management Fund Contribution has been paid into the Bank Account

### **3 Management Company**

#### **3.1 The Management Company**

- 3.1.1 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 monitoring, management and maintenance of the Open Space Areas pursuant to Paragraph 3.2.1 and 3.2.2 below
  - c) where upon the transfer of any Dwelling one person from said Dwelling shall become a Director of the Management Company and will receive one share and one vote per Dwelling
  - d) shall specify as its aims and objectives the monitoring management and maintenance of the Open Space Areas pursuant to Paragraph 3.2.1 and 3.2.2 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 and shall at the Annual

General Meeting set the annual service charge amount for the forthcoming year

- 3.1.2 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 Management Company shall not be effective unless and until the written approval of the Borough Council is received
- 3.2 The Management Company shall in accordance with the terms of this Deed and the approved Open Space Areas Management Plan
  - 3.2.1 carry out the monitoring and maintenance of the Open Space Areas
  - 3.2.2 keep a maintenance log of all monitoring management and maintenance carried out in relation to the Open Space Areas 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
  - 3.2.3 not expend any part of the Open Space Management Fund Contribution other than on the monitoring management and maintenance of the Open Space Areas
- 3.3 The Management Company shall be funded by means of an annual service charge payable by all owners of the Dwellings with all costs divided equally amongst the Occupiers of each Dwelling (which for the avoidance of doubt for the purposes of this paragraph includes all affordable dwellings and any residential unit provided as a flat) and which shall be expended by the Management Company for the sole purpose of the monitoring management and maintenance of the Open Space Areas
- 3.4 The Owner shall
  - 3.4.1 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 Areas

- 3.4.2 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 Areas to be paid for through the annual service charge levied against each of the Dwellings
- 3.4.3 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
- 3.5 The first levy payable pursuant to Paragraph 3.3 of this Schedule to the Management Company shall be payable upon the Occupation of the final Dwelling to be occupied
- 3.6 The Bank Account shall operate as follows
  - 3.6.1 the account shall be held at a clearing bank
  - 3.6.2 the account shall be in the name of the Management Company
  - 3.6.3 the account shall where reasonably practicable be an interest-bearing account and interest earned therefrom shall be credited to the account
  - 3.6.4 the account shall only be used for the monitoring management and maintenance of the Open Space Areas in accordance with the terms of the Open Space Areas Management Plan
  - 3.6.5 Subject to the provisions of Paragraph 6.1.1 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 6.1.1 of this Schedule and the Management Company shall pay to the Borough Council the costs and expenses contemplated by Paragraph 6.1.2 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

#### **4 Transfer of the Open Space Areas to the Management Company**

4.1 The Owner shall transfer the Open Space Areas to the Management Company as follows:

4.1.1 the transfer of the Open Space Areas shall be offered to the Management Company as soon as reasonably practicable after the date being 12 (twelve) months after the date of practical completion and planting of all of the Open Space Areas

4.1.2 such transfer shall be offered to the Management Company on the following terms:

4.1.2.1 for consideration of not more than £1.00 (one pound)

4.1.2.2 free from encumbrances (other than those disclosed at the date of this Deed) together with all necessary rights of access and easements;

4.1.2.3 subject to rights for the Owner to lay run retain maintain repair service cleanse inspect and alter such services service media drains sewers conduits cables pipes etc on over or under the Open Space Areas as might be reasonably required by the Owner

4.1.2.4 subject to such rights of way and easements as are required to facilitate its use by the general public.

4.2 Immediately following the transfer of the Open Space Areas to the Management Company the obligations in this Deed relating to:

4.2.1 the management maintenance and monitoring of the Open Spaces Areas;  
and

4.2.2 compliance with the Open Space Areas Management Plan

shall be deemed to be covenants on the part of the Management Company

#### **5 Review of the Open Space Areas Management Plan**

5.1 Following approval of the Open Space Areas Management Plan

5.1.1 the Owner or the Management Company (as the case may be) shall be

entitled to submit a new or revised Open Space Areas Management Plan to the Borough Council for approval by the Borough Council (and following such approval the Open Space Areas Management Plan shall take effect as replaced or revised)

- 5.1.2 on approval the Owner or the Management Company (as the case may be) shall implement the new or revised Open Space Areas Management Plan as approved by the Borough Council pursuant to this Schedule

## **6 Enforcement**

- 6.1 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 or the Management Company (as the case may be) with any term of the approved Open Space Areas Management Plan for the time being in force or any of the obligations contained in this Schedule the Borough Council may

- 6.1.1 (and the Owner or the Management Company (as the case may be)) 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 Areas Management Plan and

- 6.1.2 at the Borough Council's election recover from the Owner or the Management Company (as the case may be) the costs and expenses (including legal and administrative costs and expenses) incurred by the Borough Council in remedying such non-compliance (which shall be paid within 28 Working Days of the date of notification for payment from the Borough Council


**PROVIDED THAT** the Borough Council shall 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 AND  
**SUBJECT ALWAYS TO:**

- (i) the Borough Council and its employees agents contractors and any other persons effecting entry pursuant to this paragraph 6 complying at all times with the Owner's and/or the Management Company's applicable health and safety and site regulations;
- (ii) the Borough Council making good or procuring the making good at its own costs and to the Owner's and the Management Company's reasonable satisfaction any damage caused to the Land (including the other Open Space Areas not the subject of the alleged breach or non-compliance) as a result of the said works or effecting entry onto the Land in order to carry them out.

## **APPENDIX 1: PLAN 1**

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

543-2021

155/21

PLD

Swale Way

Excluded Area

Grovehurst Road

Location of  
proposed access

Railway line

KENT COUNTY

Godwin Close

Danes Mead

KEMSLEY WARD



#### KEY

— Application site boundary (red line)

Drawing no. 5384/OPA/SK001rB Scale 1:1250 @ A3

Client GH Dean & Co. Ltd. Date January 2019, revision B May 2020

**Great Grovehurst Farm**  
Site Location Plan



## **APPENDIX 2: PLAN 2**

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

543-2021



300mm Dia Pipe  
Connection to  
Main Drainage  
Authorised Signatory

Catchpit  
C.L. 10.450  
I.L. 9.400

Drainage extracted from PFA Consulting Drawing Number K34-101M  
Road and Drainage Layout (As Constructed Drawing)

Catchpit  
C.L. 11.100  
I.L. 10.000

FLOW CONTROL MANHOLE  
Q<sub>f</sub>: 14.8 l/s  
Q<sub>BAR</sub>: 17.4 l/s

Minimum offset 3m

**DETENTION BASIN**  
Base Level: 10.50m AOD  
Outfall I.L.: 10.30m AOD  
Side Slopes: 1:4  
Safety Bench: 0.5m above base level @ 1:15  
Freeboard: 0.3m  
Design water depth 1:100+40%: 1.319m  
Design Attenuation Volume: 1919 m<sup>3</sup>  
Maximum Attenuation Volume: 2489 m<sup>3</sup>  
Top of Bank: 12.23m AOD

Notes:  
a. Low flow channel recommend.  
b. Levels based upon Drawing Number D118/09  
c. Subject to detailed design & technical approval.

Level of detention basin to  
tie into 'finalised site levels'  
as set out in drawing  
number D118/09

Great Grovehurst  
Farm

Developable Area  
3.089ha

- KEY**
- Site Boundary (Indicative Only)
  - Surface Water Sewer (Proposed)
  - Land Drainage System (Existing)
  - Land Take Required for KCC Highway Improvement Works
  - Land Take Required for Utility Diversion
  - 100 +40% Water level



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**For Planning**  
These drawings are produced for the purposes of  
supporting a planning application and should not be  
relied upon for tender, pricing, or construction purposes.

#### NOTES

- Based upon Topographical Survey - MULTI-LIMN  
Land Surveyors, July 2014.
- Based on Mitigation Option Plan revB DRAFT,  
Tibbalds - Drawing Number 5384/4.2/GCN.
- Drainage strategy should be read in conjunction with  
Flood Risk Assessment (Ref: D118-DOC08, February  
2018):
  - Q<sub>f</sub> = 14.8 l/s
  - Q<sub>BAR</sub> = 17.4 l/s
  - Impermeable area estimated 65% of  
developable area (including 10% uplift for  
urban creep) = 2.209 Ha impermeable
  - QSE 20% Climate Change = ~ 1630 m<sup>3</sup>
  - QSE 40% Climate Change = ~ 1990 m<sup>3</sup>
- Kent County Council land take areas based on  
Systro Drawing No. 109617-dwg-109-04 Rev P0,  
date 22/12/2020.

| Rev | Date     | Description   | Initials | Check |
|-----|----------|---|----------|-------|
| A   | 19/07/16 | Detention basin redesigned. Moved west.   | NG       | BF    |
| B   | 21/07/16 | Red line updated to better reflect title deeds  | BF       | RCI   |
| C   | 28/02/18 | Greenfield runoff rate updated for<br>consistency with FRA. Attenuation volumes<br>added for clarity. | BF       | GE    |
| D   | 12/01/21 | Detention basin redesigned due to KCC<br>Highway Improvement works.                                   | DAB      | BF    |
| E   | 13/01/21 | Minor Amendment   | DAB      | GE    |

Status

**FOR PLANNING**

Client

**G H Dean & Co Ltd**

Project

**Great Grovehurst Farm  
Sittingbourne**

Drawing Title

**Outline Surface Water  
Drainage Strategy**

Drawing No.

**D118/14**

Rev E

|           |                           |            |    |
|-----------|---------------------------|------------|----|
| Date      | April 2016                |            |    |
| Scale     | 1:1000 @ A2               |            |    |
| Drawn By  | NG                        | Checked By | BF |
| E-Mail    | bfox@pfpplc.com           |            |    |
| File Ref. | D118\Drawings\D118_14.dwg |            |    |

0m 50m 100m

Scale 1:1000

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