

BETWEEN

- (1) **REX GOODBAN and ANN RUBY GOODBAN** of The Clump, Valley Road, Margate, CT9 4LF ("**First Owner**");
- (2) **MITCHEL TAYLOR** c/o Active Design & Build Ltd c/o Wilkins Kennedy, Delandale House, 37 Old Dover Road, Canterbury, Kent CT1 3JF ("**Second Owner**"); and
- (3) **THANET DISTRICT COUNCIL** of Cecil Square, Margate, Kent CT9 1XZ ("**Council**") together

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and is entitled to enforce the obligations contained in this Deed.
- (B) The First Owner is the registered proprietor of that part of the Site registered at HM Land Registry under title number TT49577.
- (C) The Second Owner is the registered proprietor of that part of the Site registered at HM Land Registry under title number K981358.
- (D) The Second Owner has applied to the Council for planning permission and is proposing to carry out the Development.
- (E) The Council is minded to grant the Planning Permission subject to the completion of this Deed.
- (F) The parties hereto are satisfied that the provisions of this Deed comply with the requirements of Regulations 122 and 123 of the Community Infrastructure Regulations 2010 as amended.

1 OPERATIVE PROVISIONS

Interpretation

The following definitions and rules of interpretation apply in this Deed.

- 1.1 Any reference to a clause or schedule is to a clause or schedule in this Deed and the headings of clauses are for ease of reference and do not form part of this Deed.
- 1.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is express provision otherwise.
- 1.5 References to any party shall include the successor in title to that party and any person deriving title through or under that party and in the case of the Council their successor to their statutory functions.

- 1.6 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and any words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of that restriction.
- 1.7 Any reference to an Act of Parliament shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom.
- 1.8 "including" means "including, without limitation".
- 1.9 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 1.10 Definitions:

1980 Act	the Highways Act 1980.
1990 Act	the Town and Country Planning Act 1990.
Affordable Housing	has the meaning given to it in Annex 2 of the NPPF 2012.
Affordable Housing Scheme	means a scheme that sets out: (a) the precise number of Affordable Housing Units to be provided within the development, which for the avoidance of doubt shall be thirty percent (30%) of the number of Dwellings approved by the Planning Permission and the Reserved Matters approvals, but rounded down to the nearest whole dwelling; (b) the precise mix of dwellings (i.e. the mix of houses and flats and whether they have 1, 2, 3 or 4 bedrooms); (c) the tenure mix, and for the avoidance of any doubt not less than seventy percent (60% of the Affordable Housing Units shall be Affordable Rented Units and the remainder shall be Shared Ownership Units; (d) the precise location of the Affordable Housing Units, to include a plan with a legend that identifies the tenure and type of each Affordable Housing Units; (e) identifies the Affordable Housing Units dedicated as the wheelchair adapted home
Affordable Housing Units	means the 30 Dwellings comprised within the Affordable Housing Scheme, and which Dwellings: <ul style="list-style-type: none"> () a shall be constructed in accordance with standards acceptable to Homes England at the date of Commencement of Development; and () b shall achieve Life Time Homes Standard; () c shall be available to Persons in Housing Need;
Affordable Rent	means rent levels not exceeding 80% (including service charges) of the level that could be charged if the relevant Dwelling had been let on the open market.
Affordable Rented Units	means an Affordable Housing Unit to be let at an Affordable Rent.
Chargee	means any mortgagee or charge of the Registered Provider or any receiver or manager (including an

administrative receiver) appointed pursuant to the Law of Property Act 1925.

Commencement of Development

means the carrying out in relation to the Development of any material operation as defined by section 54(4) of the 1990 Act but disregarding for the purposes of this Deed and for no other purpose the following operations: ground investigations; site investigations or surveys; site decontamination or other remedial works in respect of ground conditions; the demolition of any existing buildings or structures; the clearance or regrading of the Site; works connected with infilling; archaeological investigation; temporary access construction works; erection of any fences or hoardings around the Site; temporary display of site notices or adverts, works for the provision of drainage or mains services to prepare the Site or the Development and “Commence” and “Commences” shall be construed accordingly.

Contributions

means:

- () a The Special Protection Area Contribution
- () b The Library Contribution
- () c The Primary School Contribution
- () d The Secondary School Contribution
- () e The NHS Contribution

Commencement Date

means the date Development Commences.

Development

the erection of 100no. dwellings with creation of access on to Haine Road and all other matters reserved on land at and adjoining St Stephens Bungalow as described in the Planning Application.

Dwellings

means the dwellings to be provided as part of the Development and “Dwelling” shall mean any one such dwelling and shall include both Affordable Housing Units and Open Market Units

Expert

means an independent person appointed to determine a dispute in accordance with clause 12.

Highway Works

means the off-site highway works as shown on the Highway Works Plan.

Highway Works Plan

means the drawing numbered 618/205C and attached to this Deed at Schedule 4.

Index Linked

increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A = the figure for the Retails Prices Index (All Items) that

	applied immediately preceding the date of actual payment;
	B = the figure for the Retail Prices Index (All Items) that applied where the Index was last published prior to the date of this Deed.
Library Contribution	means the sum of £4,743.57 (four thousand seven hundred and forty-three pounds and fifty-seven pence) payable as a contribution towards the cost of providing books at Newington library.
New Permission	means a planning permission authorising development of the Site in a manner which would cause the Owners to be in breach of any or all of its obligations under this Deed.
NHS Contribution	means the sum calculated in accordance with the NHS Contribution Formula and payable as a contribution towards the provision of a new purpose built medical facility at Westwood.
NHS Contribution Formula	means the sum of: <ul style="list-style-type: none"> () a £720 x number of 2-bed Dwellings provided within the Development () b £1,008 x number of 3-bed Dwellings provided within the Development () c £1,260 x number of 4-bed Dwellings provided within the Development.
Occupation	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly.
Open Market Units	means those Dwellings which are not Affordable Housing Units.
Owners	means the First Owner and the Second Owner.
Plan	means the plan attached to this Deed at Schedule 3 showing the Site.
Planning Application	an application for outline planning permission for the carrying out of the Development made by the Second Owner on the 3 October 2017 and given reference number OL/TH/16/1374.
Planning Permission	the planning permission which may be granted for the Development in pursuance of the Planning Application.
Primary School Contribution	means the sum calculated in accordance with the Primary School Contribution Formula and payable as a contribution towards the construction of Manston

Green Primary School.

Primary School Contribution Formula	means the sum of £4,535 x number of houses provided within the Development £1,134 x number of flats provided within the Development.
Protected Tenant	means any tenant: () a who has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; () b who has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; () c of a Shared Ownership Unit who has acquired 100% of the equity.
Registered Provider	means a registered social landlord or registered provider of Affordable Housing within the meaning of the Housing Act 1996 (as amended) and registered with Homes England (or successor authority).
Reserved Matters Application(s)	means an application(s) for approval of matters not specified in the Planning Application, as defined in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and “ Reserved Matters ” shall be construed accordingly.
Secondary School Contribution	means the sum calculated in accordance with the Secondary School Contribution Formula and payable as a contribution towards the expansion of Royal Harbour Academy.
Secondary School Contribution Formula	means the sum of: () a £4,115 x number of houses provided within the Development () b £1,029 x number of flats provided within the Development.
Shared Ownership	means those Affordable Housing Units which can be part sold and part rented and which comply with the following terms: () a the minimum percentage of the first part to be sold shall be no lower than 25% of the equity value of the Unit; () b the rent to be charged shall be no more than 2.75% of the capital value of the equity share

which is not purchased and where the owner has an option to acquire up to 100% of the equity.

Shared Ownership Units	means an Affordable Housing Unit which is to be let or sold on a Shared Ownership basis.
Site	means the land at and adjoining St Stephens Bungalow, St Stephens, Haine Road, Ramsgate, CT12 5ES and for the avoidance of doubt shown edged red on the Plan.
Special Protection Area Contribution	means the sum of £408.00 (four hundred and eight pounds) per Dwelling payable as a contribution towards mitigation measures to avoid adverse impacts on the Thanet Coast and Sandwich Bay SPA.

2 EFFECT OF THIS DEED

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and any other enabling powers. To the extent that they fall within the terms of section 106 of the 1990 Act, the covenants contained in this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.
- 2.2 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.3 This Deed will be registered as a local land charge by the Council.
- 2.4 Nothing in this Deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Deed, whether or not pursuant to an appeal.
- 2.5 This Deed comes into effect on the date of the grant of Planning Permission and the Commencement of Development.

3 OBLIGATIONS OF THE OWNERS

The Owners shall comply with the obligations set out in Schedule 1.

4 OBLIGATIONS OF THE COUNCIL

The Council shall comply with the obligations set out in Schedule 2.

5 DETERMINATION OF DEED

- 5.1 This Deed shall cease to have effect if before the Commencement Date the Planning Permission:

5.1.1 is quashed;

5.1.2 revoked, varied or otherwise withdrawn other than at the request of the Owners so as to render this Deed or any part of it irrelevant, impractical or unviable;

5.1.3 expires without having been implemented; or

5.2 This Deed shall cease to have effect at any time if the Council or any other competent authority grants a New Permission under which development is initiated for the purposes of section 56 of the 1990 Act.

6 INTEREST ON LATE PAYMENT OF CONTRIBUTIONS

If the Contributions have not been paid to the Council on the due dates for payment under this Deed the Owners shall pay the Council interest on the Contribution at the rate of 3% above the base rate from time to time of National Westminster Bank Plc (both before and after any judgement). Such interest shall accrue on a daily basis for the period from the due date for payment to and including the actual date of payment.

7 RELEASE AND EXCLUSIONS

This Deed shall not be binding upon nor enforceable against.

7.1 any statutory undertaker with any existing interest in any part of the Site or acquires an interest in any part of the Site for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services.

7.2 the Owners (or any person deriving an interest in the Site from such Party) after they have disposed of their interest in the Site (or in the event of a disposal of part in relation to the part disposed of) but not so as to release the Owners from any antecedent breach non-performance or non-observance of their obligations or other provisions of this Deed arising prior to parting with such interest.

7.3 an owner or occupier of a completed Dwelling and their respective successors in title and a mortgagee or charge of any owner of a Dwelling.

8 NOTICES

8.1 Any notice, demand or any other communication served under this Deed is to be delivered by hand or sent by first class post, pre-paid or recorded delivery.

8.2 Any notice, demand or any other communication served is to be sent to the following address of the parties or to such other address as one party may notify in writing to the others at any time as its address for service:

8.2.1 on the Council at the address set out in this Deed; and

8.2.2 on the Owners at their respective addresses set out in this Deed.

8.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

8.3.1 if delivered by hand, at the time of delivery;

8.3.2 if sent by post, on the second working day after posting; or

8.3.3 if sent by recorded delivery, at the time delivery was signed for.

8.4 If a notice, demand or any other communication is served after 4.00 pm on a working day, or on a day that is not a working day, it is to be treated as having been served on the next working day.

8.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 OWNERSHIP

9.1 The Owners warrant that no person other than the Owners have any legal or equitable interest in the Site.

9.2 The Owners agree with the Council to give the Council within five (5) working days' notice of any change of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to contain full details of the transferee's full name and registered office (if a company and usual address if not) lease assignment mortgage or other disposition entered into in respect of all or any part of the Site together with the area of the Site (but excluding single dispositions of any Dwelling).

10 INDEXATION OF CONTRIBUTIONS

10.1 All the Contributions payable to the Council shall be Index linked.

10.2 Where reference is made to an Index and that Index ceases to exist or is replaced or rebased then it shall include reference to an Index which replaces it or a rebased Index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the Index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owners in writing.

11 COUNCIL'S COSTS

The Owners shall pay to the Council on the date of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed up to the sum of £1500.

12 DISPUTES

12.1 In the event of any dispute or difference arising between the parties to this deed in respect of any matter contained in this deed such dispute or difference shall be referred to an Expert who shall be an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute.

12.2 The parties agree that the Expert shall act as an expert and not as an arbitrator and the decision of the Expert, howsoever appointed, shall be final and binding on the parties in the absence of manifest error and any cost shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.

12.3 In appointing the Expert the parties shall require that he makes and notifies his decision about the issues in dispute to the parties within 30 working days or as quickly as practicable from the date of his appointment having regard to the nature and complexity of the dispute.

12.4 The parties agree to comply with the timetable set by the Expert for submission of any evidence or supporting material and any other directions of the Expert to ensure prompt resolution of the dispute.

12.5 The provisions of this clause shall not affect the ability of either party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this deed and consequential and interim orders and relief.

13 **REASONABLENESS**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this Deed shall not be unreasonably withheld or delayed.

14 **JURISDICTION**

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

This document is executed as a deed and it is delivered and takes effect on the date stated at the beginning of it

SCHEDULE 1 THE OWNERS' OBLIGATIONS

The Owners' covenant with the Council as follows:-

1 Notification of the Commencement Date.

1. To give the Council no less than 7 days' notice of the Commencement Date.

2 Payment of the Contributions.

1. On submission of a Reserved Matters Application to submit with that application details of the number and mix of Dwellings comprised in that application such that the Council can calculate the NHS Contribution, the Primary School Contribution and the Secondary School Contribution.
2. Prior to Occupation of 35% of Dwellings to pay fifty per cent (50%) of the Primary School Contribution, the Secondary School Contribution, the Library Contribution and the NHS Contribution to the Council
3. Not to Occupy (or allow cause or permit the Occupation of) more than thirty five percent (35%) of the Dwellings unless and until the payment in paragraph 2.2 has been made to the Council
4. Prior to Occupation of sixty percent (60%) of Dwellings to pay the remaining fifty per cent (50%) of the Primary School Contribution, the Secondary School Contribution, the Library Contribution and the NHS Contribution to the Council
5. Not to Occupy (or allow cause or permit the Occupation of) any more than sixty per cent (60%) of the Dwellings unless and until the payment in paragraph 2.4 has been made to the Council
6. Prior to Commencement of Development to pay fifty percent (50%) of the Special Protection Area Contribution to the Council.
7. Not to Occupy (or allow cause or permit the Occupation of) more than fifty percent (50%) of the Development unless and until the remaining fifty percent (50%) of the Special Protection Area Contribution has been paid to the Council.

3 Highway Works

1. Prior to the Commencement Date to enter into the s278 Agreement with the local highway authority to secure the completion of the Highway Works.

4 Affordable Housing

1. The Owners covenant that prior to the Commencement Date the Owners shall submit to the Council for its approval the Affordable Housing Scheme.
2. The Owners shall not commence the Development unless and until the Council has approved in writing the Affordable Housing Scheme (such consent not to be unreasonably withheld or delayed).
3. Prior to occupation of 40% (forty percent) of the Open Market Units all of the Affordable Housing Units within the Development must have been constructed in accordance with the Affordable Housing Scheme and be available to be occupied for their intended purpose.
4. Not to occupy more than 50% (fifty percent) of the Open Market Units unless and until all of the Affordable Housing Units have been transferred to a Registered Provider.

5. Nominations: 100% of Affordable Rented Units shall be let to individuals or families who have been nominated by the Council, in accordance with its published allocations policy at the time
6. The restrictions in this clause 4 shall not apply to:
 - 4.6.1 A tenant or leaseholder who becomes a Protected Tenant; nor
 - 4.6.2 A Chargee who has complied with clause 7; nor
 - 4.6.3 In each case, to anyone who is a successor in title to such tenant leaseholder or Chargee or who derives title from them or any of them.
7. Any Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 3 months' prior notice to the Council of its intention to dispose and;
 - 4.7.1 In the event that the Council responds within 4 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall, provided the sale is at full market value (disregarding the affordable restrictions in this paragraph 4) co-operate with such arrangements and use reasonable endeavours to secure such transfer;
 - 4.7.2 If the Council does not serve its response to the notice served under paragraphs 4.7.1 within 4 months then the Chargee shall be entitled to dispose free of the restrictions set out in paragraph 4 of this Schedule which shall from the time of the disposal cease to apply.
 - 4.7.3 If the Council or any other person cannot within 4 months of the date of service of its response under paragraph 4.7.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 4.7.1 the Chargee shall be entitled to dispose free of the restrictions set out in paragraph 4 of Schedule 1 which shall from the time of completion of the disposal cease to apply.

PROVIDED THAT at all times the rights and obligations in this paragraph 7 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

SCHEDULE 2 THE COUNCIL'S OBLIGATIONS

1 Contributions

1. To use the Contributions for the purpose set out in this Deed.
2. In the event any Contribution (or part thereof) paid to the Council pursuant to the terms hereof has not been spent in accordance with the provisions of this Deed (and money shall be deemed to be spent if a contract has been entered into committing the expenditure of that payment for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within five years of the date of receipt the Council shall refund such Contribution (or part thereof) to the payer forthwith together with any accrued interest.

2 Cancellation of entries

Following the performance and full satisfaction of all the obligations contained in this Deed the Council shall on the written request of the Owners cancel all entries made in the Register of Local Land Charges in respect of this Deed.

3 Confirmation of discharge of obligations

At the written request of the Owners the Council shall provide written confirmation of the discharge of any or all of the obligations contained in this Deed when satisfied that such obligation(s) has been performed.

SCHEDULE 3 THE PLAN

SCHEDULE 4 THE HIGHWAY WORKS PLAN

Signed as a deed by
MICHAEL TAYLOR,
in the presence of:

.....
Michael Taylor

Name of Witness:

.....
Witness

Address of Witness:

Occupation of
Witness:

Signed as a deed by
REX GOODBAN, in
the presence of:

.....
Rex Goodban

Name of Witness:

.....
Witness

Address of Witness:

Occupation of
Witness:

Signed as a deed by
**ANN RUBY
GOODBAN**, in the
presence of:

.....
Ann Ruby Goodban

Name of Witness:

.....
Witness

Address of Witness:

Occupation of
Witness: