

DATED

10 September

2019

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**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990 RELATING TO**

**LAND EAST OF KINGS HILL  
WEST MALLING  
KENT**

between

- (1) TONBRIDGE AND MALLING BOROUGH COUNCIL**
- (2) KENT COUNTY COUNCIL**
- (3) ANTONIA RUTH HAMILTON POWELL POLLY AUGUSTA  
MARCHANT GRYLLS GEORGE FAM POWELL and GEORGE PIPON  
FRANCIS**
- (4) GLADMAN DEVELOPMENTS LIMITED**

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THIS DEED is dated

2019

- (1) **TONBRIDGE AND MALLING BOROUGH COUNCIL** of Gibson Buildings Gibson Drive, Kings Hill, West Malling, Kent ME19 4LZ (hereinafter called "**the Council**")
- (2) **KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ (hereinafter called "**the County Council**")
- (3) **ANTONIA RUTH HAMILTON POWELL POLLY AUGUSTA MARCHANT GRYLLS GEORGE FAM POWELL and GEORGE PIPON FRACIS** c/o 10 New Square London WC2A 3QG (hereinafter called "**the Owner**")
- (4) **GLADMAN DEVELOPMENTS LIMITED** (Company number 03341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton, Cheshire, CW12 1LB (hereinafter called "**the Promoter**")

#### **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the local highway authority in respect of highways and transport in the County of Kent and is also the authority with responsibility for education, libraries, youth and social services matters in the County of Kent.
- (C) The Owner is the freehold owner of the Property free from encumbrances.
- (D) The Owner and the Promoter have entered into the Promotion Agreement.
- (E) The Promoter has made the Planning Application to the Council.
- (F) At a meeting of the Council's Area 2 Planning Committee held on 10 April 2019 it was resolved that Planning Permission should be granted for the Development subject to the terms of the Planning Permission and this agreement.
- (G) The Owner and the Council and the County Council agree the need for the planning obligations contained in this deed both for the benefit of the Development and in the interests of the proper planning of the area which the property is situated.

#### **AGREED TERMS**

##### **I INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this deed:

**Affordable Housing:** Affordable Rented Housing, Social Rented Housing and Intermediate Affordable Housing provided to eligible households whose needs are not met by the market where eligibility is determined with regard to local incomes and local house prices and which:

- (i) remains at an affordable price for future eligible householders subject to the provisions of this deed;
- (ii) comprises 40% of the total number of Residential Dwellings constructed pursuant to the Planning Permission which shall comprise the Specified Tenure Mix

**Affordable Housing Land :** the land within the Property upon which the Affordable Housing Units are to be constructed

**Affordable Housing Scheme:** the scheme submitted in accordance with the Planning Permission which shall include details of:

- (i) the numbers, type, tenure and location on the site of the Affordable Housing which shall include the Specified Tenure Mix; and
- (ii) the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Housing Units; and
- (iii) in relation to the Affordable Rented Housing and/or the Social Rented Housing and any Affordable Housing Units that are to be managed by a Registered Provider the arrangements for the transfer of the Affordable Housing to a Registered Provider; and
- (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing; and
- (v) the occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced.
- (vi) details of the provision of a Wheelchair Accessible Unit, provided that the total number of Wheelchair Accessible Units shall not be required to be more than one.

**Affordable Housing Unit:** any dwelling constructed on the Property for Affordable Housing.

**Affordable Rented Housing:** Affordable Housing for rent as described in paragraph a) to the definition of 'Affordable Housing' in Annex 2:Glossary to the NPPF where the rent is set in accordance with the Government's rent policy for affordable rent or is at least 20% below local market rents (including service charges where applicable).

**Approval (Reserved Matters):** the reserved matters approval or approvals which are obtained in respect of the Planning Permission PROVIDED THAT where more than one reserved matters approval is obtained in respect of the Development for the purposes of calculating financial contributions payable under the terms of this deed it

shall mean the reserved matters approval that is implemented for the purposes of Section 56(4) of the TCPA 1990.

**Base Rate:** the base rate from time to time of the Bank of England.

**Commencement of Development:** means the commencement of any material operation (as defined in the TCPA 1990 section 56(4)) forming part of the Development other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and **Commence Development, Commence and Commences** shall be construed accordingly.

**Commencement Date:** the date Development Commences.

**Community Learning Contribution** the sum derived by multiplying the number of Residential Dwellings by £32.57 payable towards the costs of the provision of additional equipment and classes at the Tonbridge Adult Education Centre.

**Composition of the Development:** means the aggregate number of Residential Dwellings (and in the case of the calculation of the Residents Generated the number of each Residential Dwelling type classified by the number of bedrooms in the Residential Dwelling) referred to in the notice of Approval (Reserved Matters).

**Date of Practical Completion:** the date of issue of a certificate of practical completion by the Owner's architect or, if the Development is constructed by a party other than the Owner, by that other party's architect.

**Default Interest Rate:** 4% per annum above the Base Rate.

**Development:** the development of the Property authorised by the Planning Permission.

**Education Contribution:** means the aggregate of the Primary Education Contribution and the Secondary Education Contribution.

**Flat:** a Residential Dwelling that occupies a single floor and/or does not benefit from private open space for the exclusive use of the residents of that Residential Dwelling and no other persons.

**Healthcare Contribution:** the sum derived by applying the formula

$$(F \times 2.34) \times £360$$

Where F is the Composition of the Development

payable towards the costs of refurbishment and/or reconfiguration of the West Malling Group Practice.

**Highway Works Contribution:** the sum of £120,000 (one hundred and twenty thousand pounds) payable towards the costs of improvements to either the Tower View roundabout or Gibson Drive Roundabout or both.

**House:** means a Residential Dwelling that does not meet the definition of a Flat.

**Index:** the General Building Costs Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or successor organisation or in the event that such index shall no longer be published or that the basis thereof shall be materially altered then the Index shall be such index as the Council shall reasonably specify.

**Intermediate Housing:** means Affordable Housing for sale as described in paragraph d) to the definition of 'Affordable Housing' in Annex 2:Glossary to the NPPF.

**Intermediate Housing Unit:** means an Affordable Housing Unit to be provided as Intermediate Housing in accordance with the Affordable Housing Scheme approved pursuant to paragraph 4.1 of Schedule 1 of this deed and **Intermediate Housing Units** shall be construed accordingly.

**Library Contribution:** means the sum derived by multiplying the Composition of the Development by £227.00 payable towards the costs of provisions of additional stock and shelving at West Malling Library.

**Management Company:** means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space.

**Management Plan:** means a scheme to be submitted to and approved in writing by the Council, which identifies:

- 1.1.1 the future management and maintenance requirements of the Open Space;
- 1.1.2 the proposed ongoing maintenance operations for the Open Space specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space;
- 1.1.3 the proposed means of funding the ongoing maintenance and management of the Open Space in accordance with the Management Plan by the Management Company;
- 1.1.4 a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan.

**Market Housing Units:** Residential Dwellings for sale on the open market and which are not Affordable Housing.

**NPPF:** the Communities and Local Government National Planning Policy Framework dated February 2019.

**Occupation:** the physical use of land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction or fitting out or occupation for marketing or display or occupation in relation to security operations and **Occupy, Occupied and Occupier** shall be construed accordingly.

**Open Space:** means the informal open space and landscaping including the Play Area and the Orchard for use by the general public to be provided on the Property in accordance with the Planning Permission and the Open Space Works Specification.

**Open Space Works Specification:** means a specification for the laying out of the Open Space to be agreed in writing between the Owner and the Council before the Commencement of Development.

**Orchard:** means the orchard provided on the Site in accordance with the Planning Permission required for the growing of fruit

**Outdoor Sports Facilities Contribution:** the sum derived by applying the formula  $(E \times 20.5) \times £41.66$

where E is the Residents Generated

payable towards the costs of enhancements to either West Malling or Kings Hill playing fields

**Owner:** together the First Owner and the Second Owner.

**Parks and Gardens Contribution:** the sum derived by applying the formula

$(E \times 25) \times £18.62$

where E is the Residents Generated

payable towards the costs of Leybourne Lakes Country Park Facility improvements or such other works as detailed in the Leybourne Lakes Management Plan or improvements to Manor Wood West Malling

**Party:** any of the parties to this deed and **Parties** shall be construed accordingly

**Plan:** the plan attached as Appendix 1.

**Planning Application:** the application for outline planning permission registered by the Council on 2 May 2018 under reference number TM/18/01013/OA.

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application subject to the conditions attached at Appendix 2.

**Play Area:** means a local equipped area for plan for use by the general public to be provided on the Property in accordance with the Planning Permission.

**Primary Education Contribution:** means the sum derived by applying the formula

$(A \times £1,134) + (B \times £4,535)$

Where

A is the number of Qualifying Flats and

B is the number of Qualifying Houses

payable towards the costs of the construction of Phase 2 of Kings Hill Primary School 3 (Valley Invicta).

**Property:** the land at east of Kings Hill, West Malling, Kent shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers K768873.

**Promotion Agreement:** a planning promotion agreement in respect of the Property dated 3 July 2018 made between (1) the Owner (2) the Promoter



**Protected Tenant:** any tenant who:

- (a) 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) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) has been granted a shared ownership lease by the Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Housing Unit.

**Public Open Space Contribution:** the aggregate of the Parks and Gardens Contribution and the Outdoor Sports Facilities Contribution.

**Qualifying Flats:** means the total number of Residential Dwellings that:

- (i) meet the definition of a Flat, and
- (ii) have more than one room that may by design be used as a bedroom, and
- (iii) have a gross internal area of more than 56 square metres.

**Qualifying Houses:** means the total number of Residential Dwellings that:

- (i) meet the definition of a House, and
- (ii) have more than one room that may by design be used as a bedroom, and
- (iii) have a gross internal area of more than 56 square metres.

**Registered Provider:** means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England or any other body who may lawfully provide or fund affordable housing from time to time.

**Residential Dwelling:** any dwelling, flat or other residential unit of accommodation including Affordable Housing within the Development.

**Residents Generated:** the number of residents generated by applying Table 1 to the Composition of the Development.

**Rights of Way Contribution:** the sum of £16,000 (sixteen thousand pounds) payable towards the costs of surfacing and other improvements to bridleway MR579 and/or footpath MR141 beyond the eastern boundary of the Property.

**Secondary Education Contribution:** means the sum derived by applying the formula  
 $(C \times £1,029) + (D \times £4,115)$

Where

C is the number of Qualifying Flats and

D is the number of Qualifying Houses

payable towards the costs of the Phase 1 expansion of The Malling School in East Malling.

**Social Care Contribution:** means the sum derived by multiplying the Composition of the Development by £55.90 payable towards the costs of the provision of additional services at the Angel Place Changing Places Facility, Kent.

**Social Rented Housing:** means Affordable Housing for rent as described in paragraph (a) to the definition of Affordable Housing in Annex 2:Glossary to the NPPF where the rent is set in accordance with the Government's rent policy for social rent.

**Specified Tenure Mix:** unless otherwise agreed in writing by the Council 60% Affordable Rented Housing and 40% Intermediate Housing.

**Table 1:** means the table attached as Appendix 3.

**TCPA 1990:** Town and Country Planning Act 1990(as amended).

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement and any additional replacement tax.

**Wheelchair Accessible Units:** a Residential Dwelling which is a wheelchair accessible unit in accordance with Building Regulations Part M4(2): Accessible and Adaptable Dwellings (or such replacement standard in force at the time of construction of the units) to meet the housing needs of those identified with mobility needs.

**Working Day:** a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Youth Services Contribution:** means the sums derived by multiplying the Composition of the Development by £13.47 payable towards the costs of additional equipment for the West Malling Community Activity Team Mobile Youth Service.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Council and the County Council the successors to its respective statutory functions.

- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the Parties, no such amendment, extension or re-enactment shall apply to this deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include faxes or e-mail.
- 1.11 A reference to "this deed" or to any other agreement or document referred to in this deed is a reference to this deed or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses, plans, schedules and appendices are to the clauses, plans, schedules and appendices of this deed.
- 1.13 An obligation in this deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.14 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.15 Where 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.

## 2 STATUTORY PROVISIONS

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council and the County Council in accordance with section 106 of the TCPA 1990.
- 2.4 This deed shall not be enforceable against owner-occupiers or tenants of Residential Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees, except in respect of:

- 2.4.1 Schedule 1 paragraph 4.5 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed; and
- 2.4.2 Schedule 1 paragraphs 5.8.1 and 5.8.2 which shall remain enforceable against the owner of a Residential Dwelling in so far as there is a breach of that provision in relation to the Residential Dwelling in which such person has an interest.
- 2.5 The obligations contained in this deed shall not be binding upon or enforceable against any statutory undertaker or other person who acquires any part of the Property or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport.
- 2.6 Any mortgagee shall be liable only for any breach of the provisions of this deed during such period as he is a mortgagee in possession of the Property.

### **3 CONDITIONALITY**

With the exception of clauses 2, 3, 11, 13, 20, 21 and 24 (which take effect immediately), this deed is conditional on the grant and issue of the Planning Permission and the obligations contained in Schedule One shall only come into effect on Commencement of the Development, save for those expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon completion of this deed.

### **4 COVENANTS TO THE COUNCIL AND THE COUNTY COUNCIL**

- 4.1 The Owner covenants with the Council to:
  - 4.1.1 observe and perform the covenants, restrictions and obligations contained in Schedule 1.
  - 4.1.2 give at least 14 Working Days written notice to the Council of the intended Commencement Date.
- 4.2 The Owner covenants with the County Council to:
  - 4.2.1 observe and perform the covenants, restrictions and obligations contained in Schedule 2.
  - 4.2.2 give at least 14 Working Days written notice to the County Council of the intended Commencement Date.

### **5 COVENANTS BY THE COUNCIL AND THE COUNTY COUNCIL**

- 5.1 The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 4.

- 5.2 The County Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 5.

## **6 PROMOTER'S CONSENT**

The Promoter acknowledges that this deed has been entered into with its consent and that the Property will be bound by the planning obligations contained in Schedules 1 and 2 and that the interest of the Promoter in the Property shall take effect subject to this deed.

## **7 INDEXATION**

- 7.1 Any sums to be paid to the Council under Schedule 2 or the County Council under Schedule 3 shall be increased in the same proportion as the percentage increase in the General Building Cost Index between the monthly index figure of October 2016 and the monthly index figure for the month of the date of actual payment.
- 7.2 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 Council or County Council (as relevant) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the relevant Council shall approve.

## **8 RELEASE**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

## **9 DETERMINATION OF DEED**

The obligations in this deed (with the exception of clause 11) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- 9.1.1 expires;
- 9.1.2 is varied or revoked other than at the request of the Owner; or
- 9.1.3 is quashed following a successful legal challenge.

## **10 LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Council.

## **11 COUNCIL'S AND COUNTY COUNCIL'S COSTS**

- 11.1 The Owner shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.
- 11.2 The Owner shall pay to the County Council on or before the date of this deed the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation and completion of this deed.

## **12 INTEREST ON LATE PAYMENT**

Where any sum or amount has not been paid to the Council or the County Council by the date on which it is due, the Owner shall pay the Council or the County Council (as applicable) interest at the Default Interest Rate on that amount for the period from the due date to and including the date of payment.

## **13 OWNERSHIP**

- 13.1 Until the covenants, restrictions and obligations in Schedule 1 and Schedule 2 have been complied with, the Owner will give to the Council and the County Council within 14 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:
- 13.1.1 the name and address of the person to whom the disposition was made; and
- 13.1.2 the nature and extent of the interest disposed of.

Provided that such information shall not be required upon the disposal of Residential Dwellings to individual owners.

## **14 REASONABLENESS**

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

## **15 CANCELLATION OF ENTRIES**

- 15.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge.
- 15.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 9 the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

## 16 DISPUTES

- 16.1 No party may elect to refer a dispute to the dispute resolution contained in clauses 16.2 to 16.7 unless they shall first have used reasonable endeavours for a period of not less than one month to mediate the dispute with the other party (or parties) to the dispute through appropriate senior representatives from within the respective organisations.
- 16.1 In the event of any dispute or difference arising between the parties arising out of this agreement such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.
- 16.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to clause 16.2 or as to the appropriate professional body, within ten working days after any party has given to the other parties to the dispute a written request to concur in the professional qualifications of the expert to be appointed pursuant to clause 16.2 then the question of the appropriate qualifications or professional body shall be referred to a solicitor appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding upon the parties 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 in equal measure.
- 16.3 The expert shall act as an expert and not as an arbitrator.
- 16.4 The expert shall be appointed subject to an express requirement that he reaches his determination and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 46 working days from the date of his appointment to act.
- 16.5 The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter-submissions within a further 15 Working Days. The expert's decision shall be given in writing within 20 Working Days from any counter-submission or in the event there are no counter-submissions within 21 Working Days of receipt of the written submissions, with reasons, and in the absence of manifest material error the expert's decision shall be final and binding upon the said parties.
- 16.6 The expert may award the costs of the dispute resolution in such proportions as he sees fit but in absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

**17 NO FETTER OF DISCRETION**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's or the County Council's statutory rights, powers, discretions and responsibilities.

**18 WAIVER**

No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants, restrictions or obligations of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions contained in this deed or acting on any subsequent breach or default of this deed.

**19 FUTURE PERMISSIONS**

19.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

19.2 Unless agreed otherwise in writing by the Council and the Owner in the event that the Owner (or any successor in title) obtains planning permission pursuant to an application under s.73 of TCPA 1990 to vary any condition of the Planning Permission then this Deed shall be binding upon any planning permission granted pursuant to such application as if it were the Planning Permission.

**20 NOTICES**

20.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post or by commercial courier to the Party upon whom it is to be given or as otherwise notified for the purpose of notice in writing.

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

20.2 A notice or communication shall be served or given:

20.3.1. on the Owner at the address set out above, or such other address as shall be notified in writing to the Council and the County Council from time to time;

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



20.3.3. on the Council at the address set out above or such other address as shall be notified in writing to the Parties from time to time marked for the attention of the Head of Planning;

20.3.4. on the County Council at the address set out above or such other address as shall be notified in writing to the Parties from time to time marked for the attention of the Office of the General Counsel.

20.3 Any notice or other communication shall be deemed to have been duly received:

20.3.1 if delivered personally, when left at the address and for the contact referred to in this clause;

20.3.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting; or

20.3.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

## 21 THIRD PARTY RIGHTS

No person other than a party to this deed and their respective successors and permitted assigns, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## 22 SEVERANCE

22.1 If any court or competent authority finds that any provision of this deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this deed shall not be affected.

22.2 If any invalid, unenforceable or illegal provision of this deed would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 23 VALUE ADDED TAX

23.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

23.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

**24 GOVERNING LAW**

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.

**25 INDEMNITY**

The Promoter (to the extent that the Owner has not been released from the planning obligations set out in this deed pursuant to clause 8) hereby indemnifies and shall keep indemnified the Owner during the term of the Promotion Agreement against all or any actions, judgements, penalties, damages, losses, costs, claims, expenses, liabilities and demands arising from the obligations of the Owner under this deed and any breach or non-performance of those obligations.

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

## Schedule 1 Covenants to the Council

1. **PROGRESS OF DEVELOPMENT**

The Owner shall notify the Council:

  - 1.1 upon the Commencement of Development, and
  - 1.2 upon Occupation of any part of the Development.
2. **HEALTHCARE CONTRIBUTION**
  - 2.1 The Owner shall not Commence Development until it has paid the Healthcare Contribution to the Council.
  - 2.2 In the event that the Composition of the Development on which the calculation of the Healthcare Contribution was based does not reflect the Composition of the Development as constructed the Owner shall pay to the Council as soon as the revised Composition of the Development becomes apparent the difference (if any) between the amount paid and the amount that would have been payable using the revised Composition of the Development.
3. **PUBLIC OPEN SPACE CONTRIBUTION**
  - 3.1 The Owner shall not cause or permit the Occupation of any Residential Dwelling until it has paid fifty percent (50%) of the Open Space Contribution to the Council.
  - 3.2 The Owner shall not cause or permit the Occupation of any more than 60 Residential Dwellings until it has paid any outstanding part of the Open Space Contribution to the Council.
  - 3.3 In the event that the Composition of the Development on which the calculation of the Residents Generated for the purposes of determining the amount of the Public Open Space Contribution was based does not reflect the Composition of the Development as constructed, the Owner shall pay to the Council as soon as the revised Composition of the Development and Residents Generated becomes apparent the difference (if any) between the amount paid and the amount that would have been payable using the revised Composition of the Development and the revised Residents Generated.
4. **AFFORDABLE HOUSING**
  - 4.1 Not to permit or allow the Commencement of Development until the Affordable Housing Scheme has been agreed in writing by the Council.
  - 4.2 No more than 50% of the Market Housing Units shall be Occupied until written notice has been given to the Council that 50% of the Affordable Housing Units have:

- 4.2.1 been constructed in accordance with the Planning Permission;
  - 4.2.2 been made ready for residential occupation;
  - 4.2.3 been transferred to the Registered Provider or in the case of Intermediate Housing Units that are not to be managed by a Registered Provider the Council has been provided with evidence that those Intermediate Housing Units have been transferred to an Occupier in accordance with the Affordable Housing Scheme approved pursuant to paragraph 4.1 above.
- 4.3 No more than 80% of the Market Housing Units shall be Occupied until written notice has been given to the Council that all of the Affordable Housing Units have:
- 4.3.1 been constructed in accordance with the Planning Permission;
  - 4.3.2 been made ready for residential occupation;
  - 4.3.3 been transferred to the Registered Provider (or in the case of Intermediate Housing Units that are not to be managed by a Registered Provider the Council has been provided with evidence that those Affordable Housing Units have been transferred to an Occupier in accordance with the Affordable Housing Scheme approved pursuant to paragraph 4.1 above).
- 4.4 The transfer of the Affordable Housing Units referred to at paragraphs 4.2.3 and 4.3.3 above shall include the following:
- 4.4.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
  - 4.4.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Land, all such services to be connected to the mains; and
  - 4.4.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.
- 4.5 From the Date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the approved Affordable Housing Scheme, save that this obligation shall not be binding on:
- 4.5.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or
  - 4.5.2 a mortgagee chargee or Receiver of a Registered Provider where paragraph 4.6.2 of this Schedule 2 of this deed applies, or
  - 4.5.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

4.6 The provisions of paragraph 4 of Schedule 1 of this deed shall not be binding on a mortgagee or chargee (or any receiver or manager (including an administrative Receiver) appointed by such mortgagee or chargee or any other person appointed under any securing 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 whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

4.6.1 such mortgagee, chargee or Receiver shall first given written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

4.6.2 if such disposal has not completed within the three month period, the mortgagee, chargee and Receiver shall be entitled to dispose of the Affordable Housing Unit(s) free from the provisions of paragraph 4 of Schedule 2 of this deed which provisions shall determine absolutely.

4.7 For the avoidance of doubt paragraph 4.6 of this Schedule 1 applies only to the mortgagee or chargee or Receiver of a Registered Provider.

#### 5. OPEN SPACE AND TRANSFER WORKS

5.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan.

5.2 Prior to Commencement of Development to submit to the Council evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space.

5.3 Not to permit or allow the Occupation of more than 75% of the Residential Dwellings until any Open Space has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.

5.4 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the Council of completion and to request that the Council inspects the Open Space within thirty Working Days of such notification.

5.5 If upon inspection of the Open Space the Council identifies any works which are necessary to bring the Open Space up to the standard required by the approved Open Space Works Specification to complete such works as soon as reasonably practicable.

- 5.6 To maintain the Open Space in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 5.7 below has been completed.
- 5.7 Not to permit the Occupation of more than 95% of the Residential Dwellings that form part of the Development until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 3.
- 5.8 To procure that the buyer of each Residential Dwelling comprised in the Development enters into the following covenants direct with the Management Company:
  - 5.8.1 to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the approved Management Plan; and
  - 5.8.2 that upon any subsequent sale of such Residential Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 5.8.1 and 5.8.2 of Schedule 1.
- 5.9 Not to amend the approved Management Plan without the Council's written consent.
- 5.10 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.

## Schedule 2 Covenants to the County Council

### 1. PROGRESS OF DEVELOPMENT

The Owner shall notify the County Council:

- 1.1 upon the Commencement of Development,
- 1.2 prior to first Occupation of any Residential Dwelling,
- 1.3 prior to first Occupation of 39 Residential Dwellings, and
- 1.4 prior to first Occupation of 79 Residential Dwellings.

### 2. PAYMENT OF CONTRIBUTIONS

- 2.1 To pay the Education Contribution to the County Council in the following instalments:
  - 2.1.1 33% prior to the first Occupation of the 1<sup>st</sup> Residential Dwelling,
  - 2.1.2 33% prior to the first Occupation of the 40<sup>th</sup> Residential Dwelling, and
  - 2.1.3 the balance prior to the first Occupation of the 80<sup>th</sup> Residential Dwelling.
- 2.2 The Owner shall not Occupy or permit Occupation of any Residential Dwellings until the payment referred to in paragraph 2.1.1. has been made.
- 2.3 The Owner shall not Occupy or permit Occupation of more than 39 Residential Dwellings until the payment referred to in paragraph 2.1.2 has been made.
- 2.4 The Owner shall not Occupy or permit the Occupation of more than 79 Residential Dwellings until the payment referred to in paragraph 2.1.3 has been made.
- 2.5 In the event that the number of Qualifying Flats and/or Qualifying Houses constructed on the Property does not match the number of Qualifying Flats and/or Qualifying Houses on which the Education Contribution as paid was based on the Owner shall pay to the County Council as soon as the revised number of Qualifying Flats and/or Qualifying Houses on the Development becomes apparent any additional amount pertaining to the amount paid and the amount that would have been payable using the revised number of Qualifying Flats and/or Qualifying Houses.
- 2.6 To pay the Community Learning Contribution, the Highway Works Contribution, the Library Contribution, the Social Care Contribution and the Youth Services Contribution in the following instalments:

- 2.6.1 50% prior to the first Occupation of the 1<sup>st</sup> Residential Dwelling, and
- 2.6.2 the balance prior to the first Occupation of the 60<sup>th</sup> Residential Dwelling.
- 2.7 The Owner shall not Occupy or permit Occupation of any Residential Dwellings until payment of 50% of the Community Learning Contribution, 50% of the Highway Works Contribution, 50% of the Library Contribution, 50% of the Social Care Contribution and 50% of the Youth Services Contribution referred to in paragraph 2.6.1 has been made.
- 2.8 The Owner shall not Occupy or permit Occupation of more than 59 Residential Dwellings until payment of the balance of the Community Learning Contribution, the Highway Works Contribution, the Library Contribution, the Social Care Contribution and the Youth Services Contribution has been made.
- 2.9 In the event that the Composition of the Development constructed on the Property does not match the Composition of the Development on which the Community Learning Contribution, the Library Contribution, the Social Care Contribution and the Youth Services Contribution as paid was based the Owner shall pay to the County Council as soon as the revised Composition of the Development becomes apparent any additional amount pertaining to the difference between the amount of the Community Learning Contribution, the Library Contribution, the Social Care Contribution and the Youth Services Contribution that would have been payable using the revised Composition of the Development.
- 2.10 To pay the Rights of Way Contribution to the County Council prior to the first Occupation of the 1<sup>st</sup> Residential Dwelling and not Occupy or permit Occupation of any Residential Dwelling until the Rights of Way Contribution has been paid.



**Schedule 3 Provisions relating to the transfer of the  
Open Space**

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

- i. be a transfer of the entire freehold interest of the Open Space
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity and the Orchard for any purpose other than the growing of fruit subject to the right of the Management Company to construct any buildings or other structures ancillary to such use
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space
- vii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Management Company together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant by the Management Company for the benefit of the Council to manage and maintain the Open Space in accordance with the approved Management Plan

## Schedule 4 Covenants by the Council

### 1. CONTRIBUTIONS

- 1.1 The Contributions referred to in this schedule are:-
  - (a) The Healthcare Contribution
  - (b) The Public Open Space Contribution
- 1.2 Not to use any part of any Contribution other than for the purposes for which it was paid.
- 1.3 From time to time upon the reasonable written request of the Owner to provide the Owner with a breakdown of the expenditure of the Contributions.
- 1.4 In the event that any Contribution has not been spent or committed for expenditure by the Council within five years following the date of receipt of the last instalment of that Contribution the Council shall refund to the Owner such part of that Contribution which has not been spent or committed for expenditure, together with any accrued interest.

## Schedule 5 Covenants by the County Council

### 1. CONTRIBUTIONS

- 1.1 The Contributions referred to in this schedule are:-
  - (a) The Community Learning Contribution
  - (b) The Education Contribution
  - (c) The Highway Works Contribution
  - (d) The Library Contribution
  - (e) The Rights of Way Contribution
  - (f) The Social Care Contribution
  - (g) The Youth Services Contribution
- 1.2 The County Council covenants to pay the Contributions into separately identified interest-bearing sections of the County Council's combined accounts as soon as reasonably practicable.
- 1.3 Not to use any part of any Contribution other than for the purposes for which it was paid.
- 1.4 From time to time upon the reasonable written request of the Owner to provide the Owner with a breakdown of the expenditure of the Contributions
- 1.5 In the event that any Contribution has not been spent or committed for expenditure by the County Council within ten years following the date of receipt of the last instalment of that Contribution the County Council shall refund to the Owner such part of that Contribution which has not been spent or committed for expenditure, together with any accrued interest.

**Appendix 1: Plan**



Appendix 2: Draft Planning Conditions

- 1 Details of the layout, scale and appearance of the development, and landscaping for the site, hereby permitted (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development is begun. The landscaping details shall include an implementation programme for all planting, seeding and turfing. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. The approved hard landscaping works shall be implemented prior to first occupation of those parts of the development to which they relate.

Reason: No such details have been submitted.

- 2 Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 3 The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 4 Applications for the approval of the reserved matters shall be in general conformity with the design principles described in the Design and Access Statement (April 2018) and the following plans:

- Development Framework – Drg.No.8233-L-02H
- Proposed Site Access Arrangement – Drg.No.2148-F01
- Potential Pedestrian/Cycle Link - DrgNo.2148-01 A

Reason: To ensure that the parameters of the development proposed are followed.

- 5 At or before the time of the first submission of Reserved Matters pursuant to Condition 1, a revised ecological impact assessment report shall be submitted to and approved by the Local Planning Authority. The report shall include updated bat, dormice and reptile surveys and a detailed mitigation strategy to safeguard protected species, their habitats and local biodiversity. The development shall be undertaken in strict accordance with the recommendations, mitigation and enhancements detailed in the approved revised ecological report.

Reason: In the interests of minimising the impacts of the development on the wildlife habitats on the site and to local biodiversity.

6 At or before the time of the first submission of Reserved Matters pursuant to Condition 1, the applicant, or their agents or successors in title, shall secure the implementation of:

- i archaeological field evaluation works and historic landscape survey works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
- ii following on from the evaluation and historic landscape assessment, any safeguarding measures (if required) to ensure preservation in situ of significant archaeological remains that are commensurate with a Scheduled Ancient Monument and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

Reason: To ensure that features of archaeological interest are properly examined and recorded and that due regard is had to the preservation in situ of important archaeological remains.

7 'The full details of the scheme of works for the pedestrian/cycle path linking the development to the A228/Tower View Roundabout as indicated on drg.no. 2148 01A shall be submitted to the Local Planning Authority for approval after consultation with Kent County Council. It shall be accompanied by a Stage 1 safety audit and shall detail any necessary associated works. The approved scheme shall be implemented prior to first occupation of the development and retained and maintained at all times thereafter'

Reason: To provide appropriate access and connectivity to the site and in the interests of highway safety.

8 No development above the ground shall take place until a plan showing the proposed finished floor level of the new dwellings and finished ground levels of the site in relation to the existing levels of the site and adjoining land have been submitted for the written approval of the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.

Reason: To ensure that the development does not harm the character of the area or visual amenity of the locality.

9 No development above ground shall commence until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the area or the visual amenity of the locality.

10 No development shall commence until a Construction Environmental Management Plan detailing how the woodland, habitats and hedgerows within



and surrounding the site will be protected during the construction phase. This shall also include details of appropriate fencing to restrict access into key ecological areas, information on any timing restrictions and measures to prevent damage to sensitive ecological habitats. The development shall be carried out in accordance with the approved Management Plan.

Reason: To safeguard protected species and protect the biodiversity of the local area.

- 11 The development shall be carried out in accordance with Section 5: Discussion and Recommendations outlined in the Ecological Appraisal (fpcr, March 2018), in conjunction with any revised ecological impact assessment report that has subsequently been approved by the Local Planning Authority.

Reason: To safeguard protected species and protect the biodiversity of the local area.

- 12 No development above ground shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of boundary treatments across the site.

Reason: To protect and enhance the appearance and character of the site and locality.

- 13 None of the dwellings shall be occupied until the areas approved as part of the Reserved Matters as turning and vehicle parking space have been provided, surfaced and drained to prevent the discharge of surface water onto the highway. Thereafter those areas shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown (other than the erection of a garage or garages) or in such a position as to preclude vehicular access to this reserved turning and parking space.

Reason: Development without adequate vehicle turning and parking provision is likely to lead to hazardous on-street parking.

- 14 Foul water shall be disposed of directly to the mains sewer.

Reason: To prevent pollution of groundwater.

- 15 No lighting shall be installed in relation to the development until details of a lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall be designed having regard to *Guidance Note 08/18 – Bats and artificial lighting in the UK, Bat Conservation Trust/Institution of Lighting Professionals*. The development shall be carried out in strict accordance with the approved scheme.

Reason: To protect the visual amenity and ecology of the site and local biodiversity.

- 16 Prior to the first occupation of the development hereby approved, details of facilities for charging plug in or other ultra-low emission vehicles shall be submitted to and approved by the Local Planning Authority. The approved facilities shall be provided in accordance with a program to be agreed in writing with the Local Planning Authority.

Reason: To provide for the use of low-emission vehicles.

- 17 No development above the ground shall take place until a scheme for the storage of refuse for the development has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be provided prior to occupation of the dwelling for which it relates and shall be retained at all times thereafter.

Reason: To facilitate the collection of refuse and preserve visual amenity.

- 18 Prior to the first occupation of any dwelling hereby approved, a scheme of acoustic mitigation shall be submitted and approved in writing by the Local Planning Authority. The scheme shall include details of acoustic fences and any ventilation or specific glazing requirements for specific dwellings. The approved details shall be implemented prior to the first occupation of each affected property and retained at all times thereafter.

Reason: To protect future occupants from road traffic noise from King Hill Road and the A228

- 19 No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

1. A preliminary risk assessment which has identified:
  - all previous uses;
  - potential contaminants associated with those uses;
  - a conceptual model of the site indicating sources, pathways and receptors; and
  - potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

If, in seeking to comply with the terms of this condition, reliance is made on studies or assessments prepared as part of the substantive application for planning permission, these documents should be clearly identified and cross-referenced in the submission of the details pursuant to this condition.

Reason: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution.

- 20 Prior to any part of the permitted development being occupied a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reasons: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete.

- 21 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reasons: To ensure that the development is not put at unacceptable risk from, or adversely affected by, unacceptable levels water pollution from previously unidentified contamination sources at the development site.

- 22 Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To protect controlled waters, including groundwater.

- 23 Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing

by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of as per the runoff rates presented in the FRA (enzygo Ltd, April 2018). The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

24 No building hereby permitted in any phase shall be occupied until an operation and maintenance manual for the proposed sustainable drainage scheme is submitted to (and approved in writing) by the local planning authority. The manual at a minimum shall include the following details:

- A description of the drainage system and its key components
- A general arrangement plan with the location of drainage measures and critical features clearly marked
- An approximate timetable for the implementation of the drainage system
- Details of the future maintenance requirements of each drainage or SuDS component, and the frequency of such inspections and maintenance activities
- Details of who will undertake inspections and maintenance activities, including the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime

Reason: To ensure that any measures to mitigate flood risk and protect water quality on/off the site are fully implemented and maintained (both during and after construction).

25 No dwelling on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable operation of the drainage system, for that dwelling, such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; and topographical survey of 'as constructed' features.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

## Informatives

- 1 During the demolition and construction phase, the hours of working (including deliveries) shall be restricted to Monday to Friday 07:30 hours - 18:30 hours. On Saturday 08:00 to 13:00 hours, with no work on Sundays or Public Holidays.
- 2 Tonbridge and Malling Borough Council operate a two wheeled bin and green box recycling refuse collection service from the boundary of the property. Bins/box should be stored within the boundary of the property and placed at the nearest point to the public highway on the relevant collection day.
- 3 The applicant should be aware that the disposal of demolition waste by incineration or use of bonfires on the site can lead to justified complaints from local residents and would be contrary to Waste Management Legislation.
- 4 The proposed development is within a road which has a formal street numbering scheme and it will be necessary for the Council to allocate postal addresses to the new properties, which are required to be approved by the Borough Council, and post codes. To discuss arrangements you are asked to write to Street Naming & Numbering, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or to e-mail to [addresses@tmbc.gov.uk](mailto:addresses@tmbc.gov.uk). To avoid difficulties for first occupiers, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation.
- 5 With regard to works within the limits of the highway, the applicant is asked to consult The Community Delivery Manager, Kent County Council, Kent Highway Services, Double Day House, St Michaels Close, Aylesford Tel: 03000 418181.
- 6 A formal application for connection to the public sewerage system is required in order to service the development, please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel.0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk).
- 7 The applicant should also liaise with Southern Water to ascertain the exact position of the public sewers and should ensure that no development or tree planting is located within 3m either side of the centre line of the main sewers and that no new soakaways are located within 5m of the public sewer. All existing infrastructure should also be protected during construction works.
- 8 With respect to any proposals for piling through made ground, please refer to the EA guidance document "Piling and Penetrative Ground Improvement Methods on Land Affected By Contamination: Guidance on Pollution Prevention". NGWCL Centre Project NC/99/73. Approval of piling methodology should be discussed with the EA when the guidance has been utilised to design appropriate piling regimes at the site.

- 9 The following points should be noted wherever soakaways or other infiltration systems are proposed at a site:
- Appropriate pollution prevention methods (such as trapped gullies or interceptors) should be used to prevent hydrocarbons draining to ground from roads, made ground, hardstandings and car parks. Clean uncontaminated roof water should drain directly to soakaways entering after any pollution prevention methods.
  - No soakaway should be sited in or allowed to discharge into land impacted by contamination or land previously identified as being contaminated.
  - There must be no direct discharge to groundwater, a controlled water. An unsaturated zone must be maintained throughout the year between the base of soakaways and the water table.
  - A series of shallow soakaways are preferable to deep bored soakaways, as deep bored soakaways can act as conduits for rapid transport of contaminants to groundwater
- 10 Please note that the use of soakaways in the Hythe Beds are not recommended as they can promote instability of the geology via washout of the sandier horizons, leading to the opening and enlargement of fissures within the Hythe Beds, and subsequent collapse.
- 11 Kent County Council recommends that all developers work with a telecommunication partner or subcontractor in the early stages of planning for any new development to make sure that Next Generation Access Broadband is a fundamental part of the project. Access to superfast broadband should be thought of as an essential utility for all new homes and businesses and given the same importance as water or power in any development design. Please liaise with a telecom provider to decide the appropriate solution for this development and the availability of the nearest connection point to high speed broadband. We understand that major telecommunication providers are now offering Next Generation Access Broadband connections free of charge to the developer. For advice on how to proceed with providing access to superfast broadband please contact [broadband@kent.gov.uk](mailto:broadband@kent.gov.uk)
- 12 The applicant should be aware of the location of milestones within the near vicinity of the site and take all reasonable measures to ensure their protection in liaison with nearby residents and the Parish Council where appropriate to do so.

Appendix 3: Table

DWELLING TYPE	NUMBER OF OCCUPIERS
1 Bed Flat	1.25
2 Bed Flat	1.64
3+ Bed Flat	2.17
1 Bed House	1.3
2 Bed House	2.11
3 Bed House	2.62
4+ Bed House	3.25



EXECUTED as a deed by  
affixing The COMMON  
SEAL of TONBRIDGE AND  
MALLING BOROUGH  
COUNCIL in the presence of:



*[Handwritten Signature]*  
.....  
Authorised Signatory

*Seal No 2131*

The COMMON SEAL of  
KENT COUNTY COUNCIL  
was affixed in the presence of:



*[Handwritten Signature]*  
.....  
Authorised Signatory

*894-2019*

SIGNED as a deed by ANTONIA  
RUTH HAMILTON POWELL  
in the presence of:

Antonia Powell

Signature of Witness *L.K.*

Name of Witness LLOYD KING

Address of Witness 4 EGYPT PLACE, THE STREET, BEARSTED, KENT  
ME14 4EN

Occupation of Witness CHARTERED SURVEYOR

SIGNED as a deed by POLLY  
AUGUSTA MARCHANT  
GRYLLS  
in the presence of:

Polly Augusta Marchant Grylls.

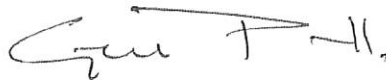
Signature of Witness *L.K.*

Name of Witness LLOYD KING

Address of Witness As above

Occupation of Witness As above

SIGNED as a deed by **GEORGE  
FAM POWELL**  
in the presence of:



Signature of Witness *C. King*

Name of Witness LLOYD KING

Address of Witness 4 EGYPT PLACE, THE STREET, BEARSTED, KENT  
ME14 4EN

Occupation of Witness CHARTERED SURVEYOR

SIGNED as a deed by **GEORGE  
PIPON FRANCIS**  
in the presence of:



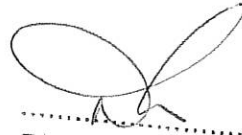
Signature of Witness *C. King*

Name of Witness LLOYD KING

Address of Witness AS ABOVE

Occupation of Witness AS ABOVE

EXECUTED as a deed by **GLADMAN DEVELOPMENTS LIMITED**  
acting by a director



Director

in the presence of:

Signature of Witness

*N. Baines*

Name of Witness

Address of Witness

Occupation of Witness

*SOLICITOR*

Name *NICOLA JANE BAINES*

Gladman Legal Department  
Gladman House Alexandria Way  
Congleton Cheshire CW12 1LB