

DEED OF AGREEMENT
pursuant to Section 106
Town and Country Planning Act 1990
and Section 1 Localism Act 2011

relating to
the development of land known as Phase 3 at
Kings Hill
West Malling

(1) LIBERTY PROPERTY TRUST UK LIMITED

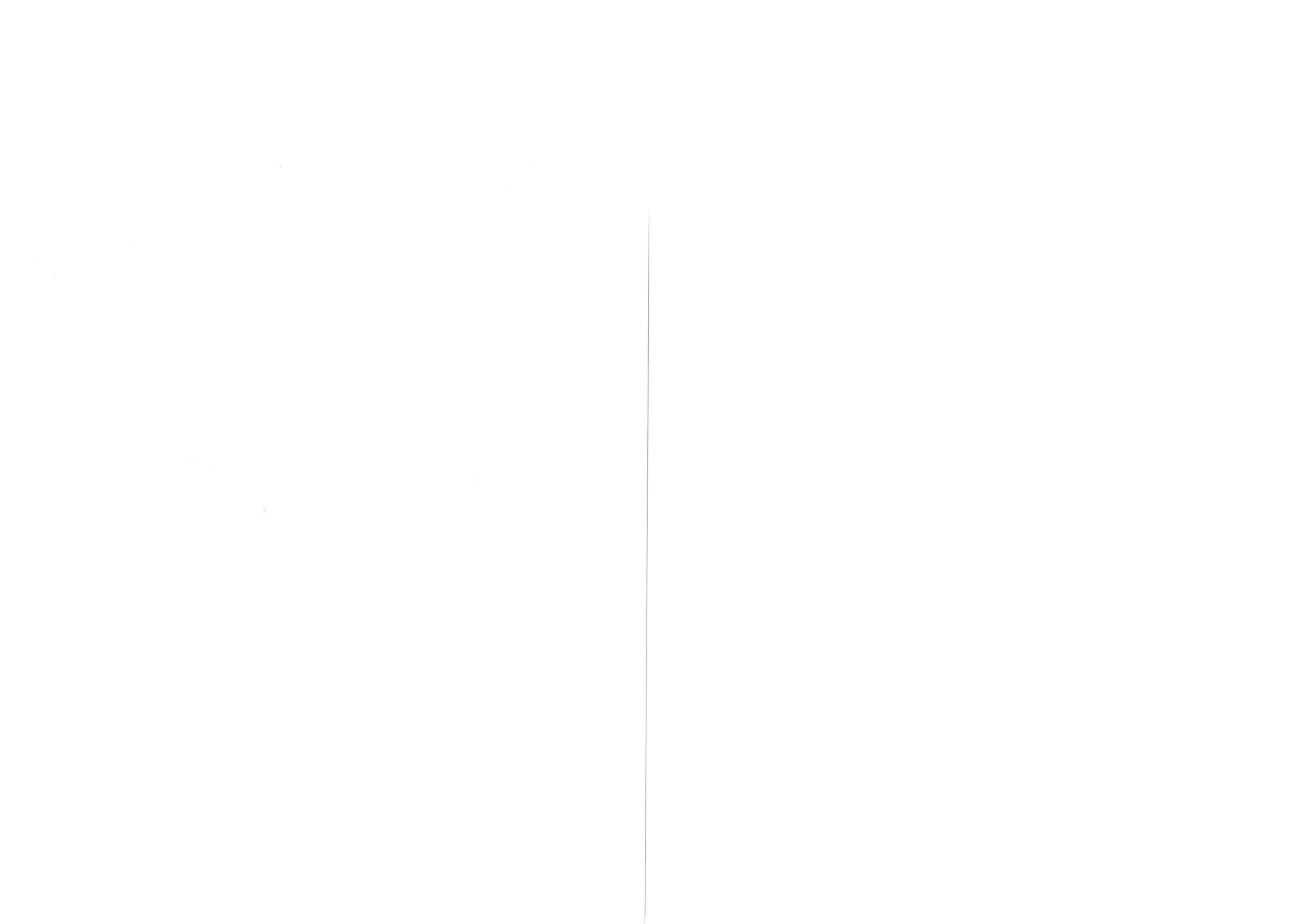
and

(2) TONBRIDGE AND MALLING BOROUGH COUNCIL

and

(3) THE KENT COUNTY COUNCIL

REF: JOT/RO50355.409



DEED OF AGREEMENT

DATED:

28th August

2015

BETWEEN:

- (1) **LIBERTY PROPERTY TRUST UK LIMITED** (company number 05340012) whose registered office is at The Control Tower 29 Liberty Square Kings Hill West Malling Kent ME19 4RG ("the Developer")
- (2) **TONBRIDGE AND MALLING BOROUGH COUNCIL** of Gibson Buildings Gibson Drive Kings Hill West Malling Kent ME19 4LZ ("the Council")
- (3) **THE KENT COUNTY COUNCIL** (as landowner highway authority and education authority as applicable) of County Hall Maidstone Kent ME14 1XQ (respectively "the Owner" or "the Highway Authority" or "the Education Authority" as applicable)

RECITALS

A Definitions

- A.1 Words and phrases used in this agreement are defined in clause 2.1.

B Interests in the Land

- B.1 The Owner and the Developer are together the persons interested in the Land as respective registered proprietors under title numbers K411925 (Kent County Council as freehold owner) and K693284 (the Developer as long leasehold owner of a part of the Land under a lease of 200 years commencing on 29 August 1990).

C Tonbridge and Malling Borough Council and The Kent County Council

- C.1 Tonbridge and Malling Borough Council is the local planning authority for the purposes of this agreement and for the wider area within which the Land is situated and is the appropriate statutory body to enforce the obligations contained in this agreement for the purposes of section 106 of the 1990 Act.
- C.2 The Kent County Council is the local highway and transport authority in respect of highways and transport in the County of Kent and for these purposes is referred to as "the Highway Authority" and is also the authority with responsibility for education libraries youth and social services matters in the County of Kent and for these purposes is referred to as "the Education Authority".

D Planning

- D.1 The Developer submitted the Application to the Council.
- D.2 At a meeting of the Council's Area 2 Planning Committee held on 14 October 2014 it was resolved that planning permission for the Development should be granted subject to the terms of the Permission and this agreement.
- D.3 The Owner the Developer and the Council agree the need for the planning obligations contained in this agreement both for the benefit of the Development and in the interests of proper planning of the area.

E Local Traffic Management and Calming Sum

E.1 The Highway Authority proposes to use the Local Traffic Management and Calming Sum paid in accordance with Schedule 1 Part 1 paragraph 1.5 of the Phase 2 Agreement (Highways) (as defined in clause 2.1 below) towards:

A scheme of off-site highway works at Kent Street Mereworth junction with the A228 designed to mitigate the impact of traffic arising from the Development (as defined in clause 2.1 below) and to enhance safety and conditions for local residents pedestrians and cyclists; and

A scheme of traffic management at Offham Village designed to mitigate the local impact of traffic arising from the Development and to enhance safety and conditions for local residents pedestrians and cyclists.

OPERATIVE PROVISIONS

1 Operative Powers

This agreement is entered into pursuant to section 106 of the 1990 Act and section 1 of the Localism Act 2011.

2 Interpretation

2.1 In this agreement the following expressions shall unless the context otherwise requires have the following meanings:

2.1.1	1990 Act	The Town and Country Planning Act 1990 (as amended).
2.1.2	Affordable Housing	Housing provided to persons whose needs are not met by the market and provided by way of Affordable Rent, Social Rent, or Shared Ownership.
2.1.3	Affordable Housing Land	The areas of the Land upon which the Affordable Housing Units are to be constructed.
2.1.4	Affordable Housing Unit/s	The 112 Housing Units of Affordable Housing to be provided as set out in Schedule 1.
2.1.5	Affordable Rent	Housing Units provided at rents subject to rent controls such that the rent does not exceed 80% (inclusive of service charge) of the Local Market Rent.
2.1.6	Additional Primary Education Contribution	The sum of £2,000,000 (two million pounds) to be used as a contribution towards the extension of the primary school to be built on the School Site so that it can accommodate three form entry.
2.1.7	Application	The planning application submitted by the Developer to the Council for outline planning permission for the Development and bearing LPA reference number TM/13/01535/OAEA.

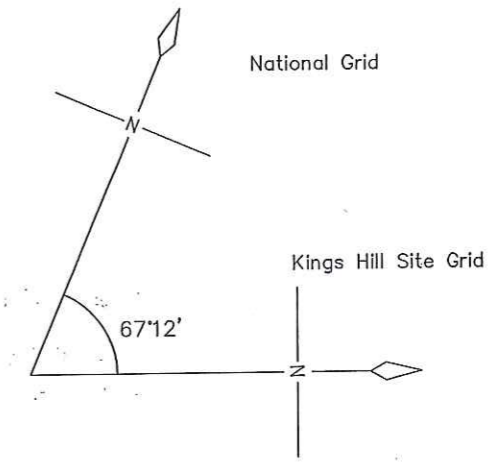
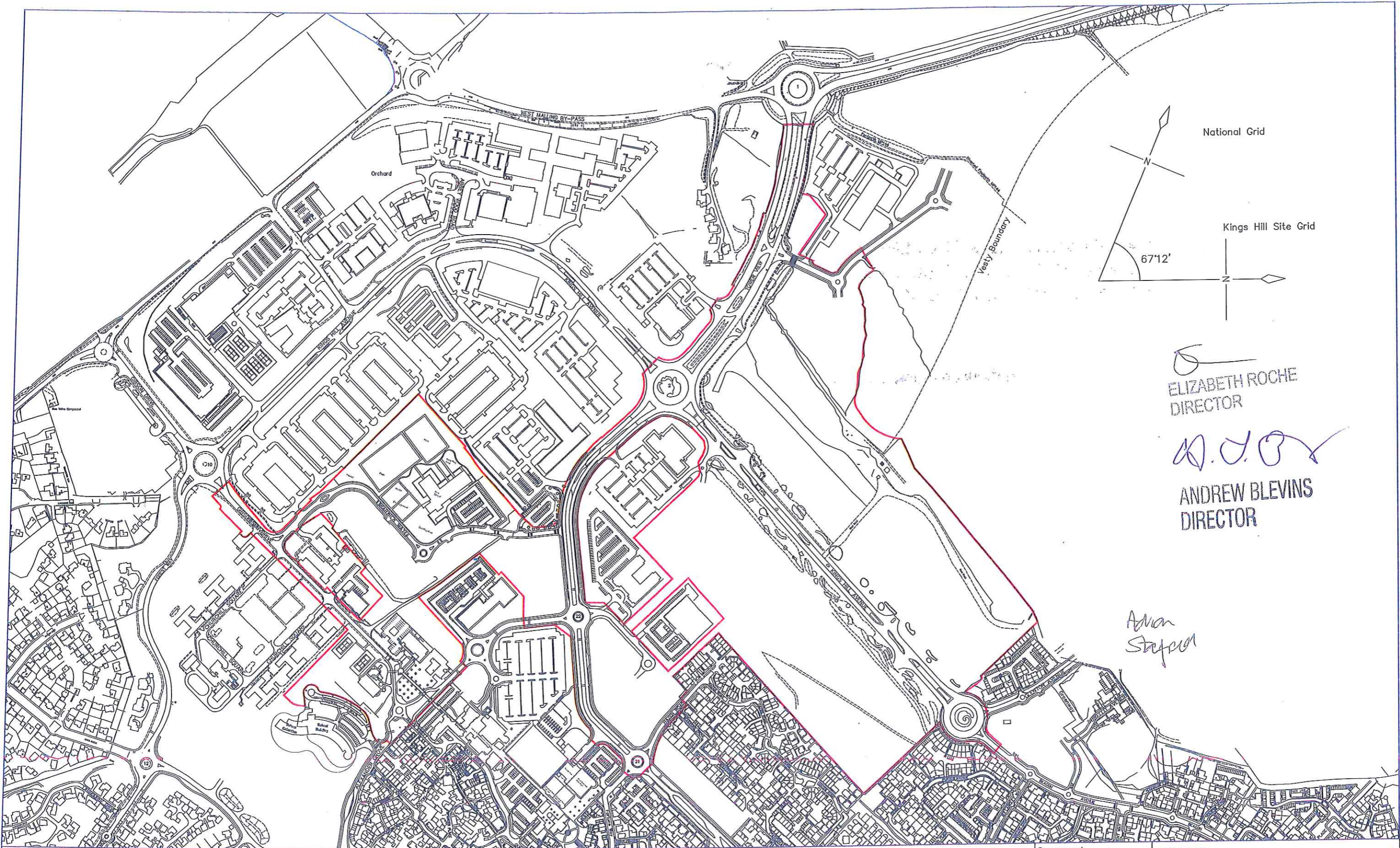
2.1.8	Bus Measures Contribution	The sum of £2,100,000 to be used towards measures to improve bus journey times on the A20 between the A20/A228 junction at Leybourne and the A20 Coldharbour Roundabout at Allington
2.1.9	Bus Service Upgrade Contribution	The sum of £1,700,000
2.1.10	Design and Quality Standards	<p>The following space standards</p> <p><u>Flats</u></p> <p>1 bed 2 person 45-50m2</p> <p>2 bed 3 person 62-70m2 (Shared Ownership Only)</p> <p>2 bed 4 person 67-70m2 (Affordable Rent and Social Rent Only)</p> <p><u>Houses</u></p> <p>2 bed 4 person 75-80m2</p> <p>3 bed 5 person 85-90m2</p> <p>4 bed 6 person 110-115m2</p>
2.1.11	Development	Development of the Land by the removal of a section of Kings Hill Avenue and erection of a residential development a multi-functional extension to the community centre a youth outdoor recreational facility formalisation of car parking areas at the community centre and adjacent to Crispin Way alterations to the highway network at Alexander Grove Gibson Drive and Queen Street and open space including a new linear park trim trails woodland paths and green spaces.
2.1.12	Eligible Households	Households accepted on the Council's housing register in accordance with the Council's adopted housing allocations scheme or any successor document that exists at such time.
2.1.13	ENA	The education needs assessment to be undertaken pursuant to Schedule 3 paragraph 2.2.1.
2.1.14	Housing Unit	Any housing unit to be erected on the Land pursuant to the Permission including for the avoidance of doubt any flats or apartments.
2.1.15	Implementation	The carrying out by the Developer on the Land of a material operation as defined in section 56(4) of the 1990 Act pursuant to the Permission but not otherwise save that for the purpose of this definition the carrying out of any demolition works

site clearance works ground investigation and site survey works construction of boundary fencing or hoardings construction of temporary accesses and/or highway works archaeological investigation site decontamination or remediation works landscaping works laying of sewers and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation and "Implemented" shall be construed accordingly.

2.1.16	Implementation Date	The date the Permission is Implemented.
2.1.17	Index	The General Building Costs Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or in the event that the BCIS Index shall be no longer published or the basis thereof be materially altered then the index shall be replaced by such replacement index as the Council shall reasonably specify.
2.1.18	Index Linked	Means index linked in accordance with the Index and the provisions of clause 11.
2.1.19	Interest	Means interest at 4 per cent above the base rate of the National Westminster Bank Plc from time to time
2.1.20	Kings Hill	The mixed use development known as Kings Hill West Malling Kent shown for identification purposes only edged in blue on Plan 2.
2.1.21	Land	All that land shown for identification purposes only edged red on Plan 1.
2.1.22	Libraries and Community Learning Contribution	The sum of £131,120.37 (one hundred and thirty one thousand one hundred and twenty pounds thirty seven pence) to be used as a contribution towards the commissioning of community learning classes arts and culture events or community outreach library services at Kings Hill.
2.1.23	Local Market Rent	The rent payable (including service charge) on the private rental market for a broadly equivalent unit in Kings Hill (such rent to be established in consultation with the Council).
2.1.24	Market Housing Units	Any Housing Unit which is not an Affordable Housing Unit.
2.1.25	Occupation	Beneficial occupation of a Housing Unit or other parts of the Development other than occupation for the purposes of construction fitting out security marketing or repair or car parking associated with any of them and 'Occupied' shall be construed

		accordingly.
2.1.26	Permission	Outline planning permission for the Development pursuant to the Application.
2.1.27	Phase 1 Agreement	The agreement pursuant to section 106 of the 1990 Act dated 30 June 1998 between Tonbridge and Malling Borough Council The Kent County Council and Rouse Kent Limited.
2.1.28	Phase 2 Agreement (Highways)	The agreement pursuant to section 106 of the 1990 Act dated 2 February 2004 between Tonbridge and Malling Borough Council The Kent County Council Rouse Kent Limited Rouse Kent (Residential) Limited and Fortis Bank NV containing highways and transport obligations as varied by the deed of variation and supplement under section 106 of the 1990 Act between the same parties dated 6 June 2005.
2.1.29	Phase 2 Agreement (Education)	The agreement pursuant to section 106 of the 1990 Act dated 2 February 2004 between Tonbridge and Malling Borough Council The Kent County Council Rouse Kent Limited Rouse Kent (Residential) Limited containing education youth and community and library facility obligations as varied by the deed of variation and supplement under section 106 of the 1990 Act between the same parties and Fortis Bank NV dated 6 June 2005.
2.1.30	Plan 1	The attached plan marked 'Plan 1'
2.1.31	Plan 2	The attached plan marked 'Plan 2'
2.1.32	Plan 3	The attached plan marked 'Plan 3'
2.1.33	Primary Education Contribution	The sum of £4,000,000 (four million pounds) to be used as a contribution towards the construction and fitting out costs of a two form entry primary school on the School Site.
2.1.34	Registered Provider	A body registered with the Homes and Communities Agency under the Housing and Regeneration Act 2008 as a registered provider of affordable housing but (in the event only of any statutory modification or change to such statutory requirement) shall include any provider of social housing whose status and functions are similar to a registered provider and/or a non-profit making body which is registered with the Homes and Communities Agency and/or other body which is authorised to own and/or manage Affordable Housing.
2.1.35	Reserved Matters	Means reserved matters application made

	Application	pursuant to the Permission.
2.1.36	School Site	An area of land shown for identification purposes only edged blue on Plan 3 to be used for construction of a two form entry primary school and with the ability to extend to three form entry if the need is established.
2.1.37	Secretary of State	The Secretary of State for Communities and Local Government or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Communities and Local Government by the 1990 Act.
2.1.38	Secondary Education Contribution	The sum of £1,321,488 (one million three hundred and twenty one thousand four hundred and eighty eight pounds) to be used as a contribution towards the extension of The Judd School, Tonbridge.
2.1.39	Shared Ownership	A form of shared equity under which the purchaser buys an initial share in a home from a Registered Provider who retains the remainder and may charge a rent. The purchaser may buy additional shares and this payment following repayment of any grant mortgage loan finance and other costs should be recycled for more affordable housing. A purchaser may buy the final share and own the whole home.
2.1.40	Social Rent	Rented housing to be provided to Eligible Households owned and managed by Registered Providers for which guideline target rents are determined through the national rent regime where rents do not exceed rent caps published by the Homes & Communities Agency in line with the Government's national rent restructuring programme.
2.1.41	Social Services Contribution	The sum of £35,496.50 (thirty five thousand four hundred and ninety six pounds fifty pence) to be used as a contribution towards providing new or adapted facilities for those with physical or learning disabilities at Kings Hill or West Malling and for the installation of assistive technology in Housing Units within the Development.
2.1.42	Staircased Out	When the purchaser has purchased the final share of a Shared Ownership unit and owns the whole unit.
2.1.43	Statutory Undertaker	Any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator.



[Signature]
 ELIZABETH ROCHE
 DIRECTOR

[Signature]
 ANDREW BLEVINS
 DIRECTOR

Adrian Stajera

ABBREVIATIONS

NOTES
 1 The grid is Kings Hill site grid.

Job Name: KINGS HILL, WEST MALLING.
 Title: PLAN 1 PHASE 3 APPLICATION BOUNDARY
 Client: LIBERTY PROPERTY TRUST UK LTD

DATA NOTE : This data has been surveyed to an accuracy commensurate with the scale of 1/500.

Dwg No: C9451/P3/4

Scale: 1/5000 (At A3)

Surveyed: GSL
 Drawn: GSL
 Checked:
 Date: 21/08/2015

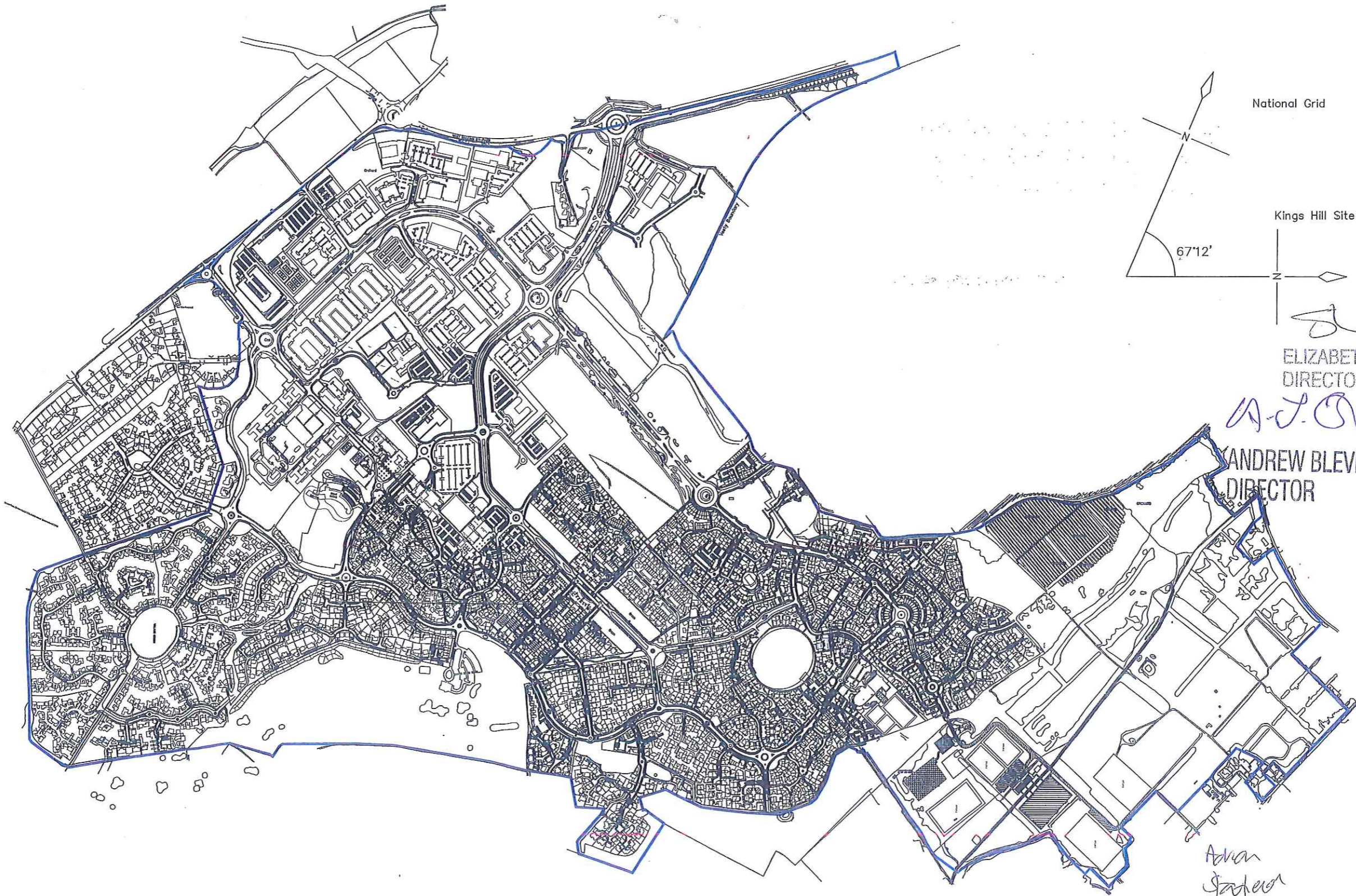
GLEN Glen Surveys Ltd
 Land & Engineering Surveyors
 SUITE 13, OLD STABLES, HAWLEY MANOR,
 HAWLEY ROAD, Nr DARTFORD, KENT. DA1 1PX.
 Tel: 01322 225 136 E-mail: mail@glen-surveys.co.uk
 Fax: 01322 285 263 Web Site: www.glen-surveys.co.uk



905-2015

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


Authorised Signatory



National Grid

Kings Hill Site Grid

67°12'

ELIZABETH ROCHE
DIRECTOR

A.J.B.S

ANDREW BLEVINS
DIRECTOR

*Adrian
Stapleton*

ABBREVIATIONS

Job Name:

KINGS HILL, WEST MALLING.

Surveyed: GSL

NOTES

1 The grid is Kings Hill site grid.

Title:

PLAN 2
PHASE 3 APPLICATION BOUNDARY

Client:

LIBERTY PROPERTY TRUST UK LTD

Drawn: GSL

Checked:

DATA NOTE : This data has been surveyed to an accuracy commensurate with the scale of 1/500.

Dwg No:
C9451/P3/5

Scale:
1/10,000 (At A3)

Date:
24/08/2015

GLEN **Glen Surveys Ltd**
Land & Engineering Surveyors

SUITE 13, OLD STABLES, HAWLEY MANOR,
HAWLEY ROAD, Nr DARTFORD, KENT. DA1 1PX.

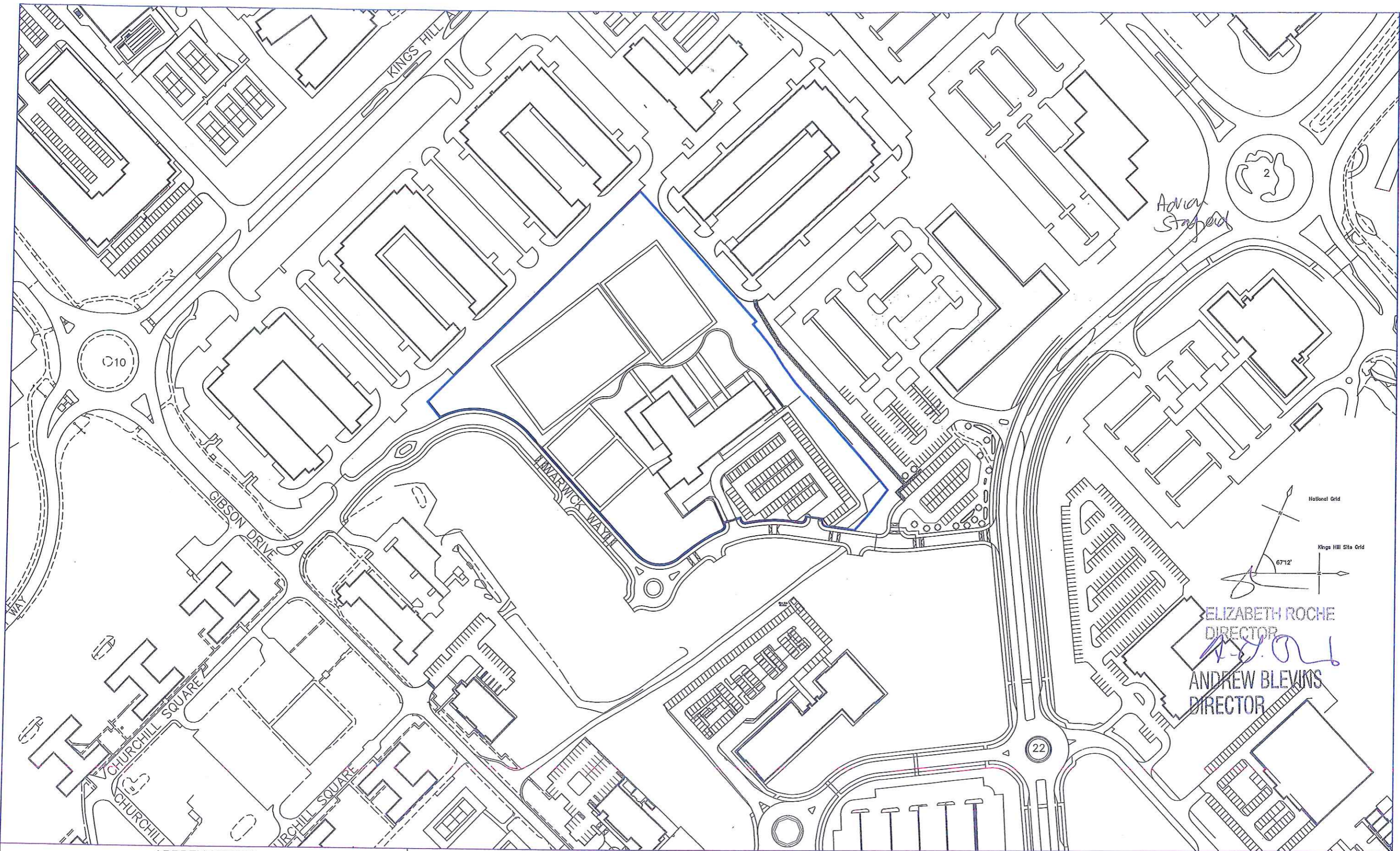
Tel: 01322 225 136 E-mail: mail@glen-surveys.co.uk
Fax: 01322 285 263 Web Site: www.glen-surveys.co.uk



405-7015

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


Authorized Signatory



ABBREVIATIONS

Job Name: **KINGS HILL, WEST MALLING.**

Surveyed: GSL



Title: **PLAN 3
SCHOOL SITE**

Client: **LIBERTY PROPERTY TRUST UK LTD**

Drawn: GSL

Checked:

SUITE 13, OLD STABLES, HAWLEY MANOR,
HAWLEY ROAD, Nr DARTFORD, KENT. DA1 1PX.

NOTES
1 The grid is Kings Hill site grid.

DATA NOTE : This data has been surveyed to an accuracy commensurate with the scale of 1/500.

Dwg No:
C9451/P3/6

Scale:
1/2000 (At A3)

Date:
24/08/2015

Tel: 01322 225 136 E-mail: mail@glen-surveys.co.uk
Fax: 01322 285 263 Web Site: www.glen-surveys.co.uk



905-2015

THE COMMON SEAL OF THE KENT
COUNTY COUNCIL WAS HEREUNTO
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Authorised Signatory

- 2.1.44 Travel Plan The travel plan approved by the Highway Authority pursuant to Schedule 2 paragraph 9
- 2.1.45 Working Day Any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year's Day.
- 2.1.46 Youth Services Contribution The sum of £8,507.64 (eight thousand five hundred and seven pounds sixty four pence) to be used as a contribution towards providing sports and IT equipment and storage for KCC commissioned youth services at Kings Hill.
- 2.2 Where in this agreement reference is made to a clause sub-clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule plan or recital of or (in the case of a plan) attached to this agreement.
- 2.3 Words denoting any one gender only shall include both genders and may be used interchangeably and words denoting natural persons include firms companies and corporations and vice versa.
- 2.4 Words importing the singular number only shall include the plural number and vice versa and where there is more than one covenantor the obligation of such covenantors shall be joint and several.
- 2.5 Any reference to a statute or statutory instrument (whether or not specifically named) includes any statute or statutory instrument amending consolidating or replacing them respectively and for the time being in force and references to a statute include all statutory instruments orders plans regulations byelaws permissions and directions for the time being made issued or given or deriving validity pursuant to them.
- 2.6 Where the agreement approval consent or an expression of satisfaction is required by the Owner or the Developer under the terms of this agreement from the Council the Highway Authority or the Education Authority that agreement approval consent or satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.
- 2.7 Save where the context otherwise requires references to any party shall include the successors in title of that party.
- 2.8 References in this agreement to the Council the Highway Authority or the Education Authority shall include references to their successors as local authorities.
- 3 Legal Effect**
- 3.1 This agreement is executed by the parties as a deed and will constitute a planning obligation for the purposes of section 106 of the 1990 Act to the extent that it shall bind the Owner and the Developer and their successors in title to each and every part of the Land.
- 3.2 This agreement shall be enforceable by the Council the Highway Authority and the Education Authority (as appropriate).
- 3.3 The Owner and the Developer shall upon parting with their respective interests in any part of the Land be released from all obligations rights and duties under the terms of this agreement insofar as they relate to such part of the Land (save in respect of liability for any

antecedent breach of the agreement) and shall upon parting with the entirety of their respective interests in the Land as a whole be released from all liability whatsoever under the terms of this agreement save insofar as it relates to an antecedent breach of this agreement.

- 3.4 This agreement (save for clauses 1 to 3 and 6 to 15 which shall take effect on the date hereof) shall not take effect until the following conditions precedent have been satisfied:
- 3.4.1 the Permission being granted by the Council; and
- 3.4.2 the Implementation of the Development.
- 3.5 Nothing in this agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Land in accordance with a planning permission (other than the Permission) granted by the Council or the Secretary of State on appeal or by reference to him after the date of this agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Implementation under the terms of this agreement.
- 3.6 Each clause sub-clause paragraph schedule or plan shall be separate distinct and severable from each other to the extent only that if any clause sub-clause paragraph schedule or plan becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause paragraph schedule or plan shall be held by the courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause paragraph schedule or plan be valid shall apply without prejudice to any other clause sub-clause paragraph schedule or plan contained therein.
- 3.7 If the Permission shall expire within the meaning of sections 91, 92 and 93 of the 1990 Act or be revoked modified or otherwise withdrawn by the Council or the Secretary of State then (if the Owner and the Developer so elect) this agreement shall cease to have further effect but in ceasing to have further effect shall not prejudice any express or implied rights accrued or accruing to the Owner and the Developer by virtue of anything done by the Council the Highway Authority or the Education Authority in connection with or arising from the terms of this agreement.
- 3.8 Except insofar as legally or equitably permitted nothing contained within this agreement shall fetter the Council the Highway Authority or the Education Authority in their future exercise of rights and powers under the 1990 Act and the Localism Act 2011 or any other statutory power.
- 3.9 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this agreement is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this agreement and their respective successors in title.
- 3.10 Nothing in this agreement shall be construed as imposing any obligation on persons who purchase or occupy completed Housing Units within the Development.
- 3.11 Nothing in this agreement shall be construed as imposing any obligation on any Statutory Undertaker who acquires an interest in the Land for the purpose of undertaking their statutory functions.

4 Obligations

- 4.1 The Owner covenants with the Council that the Owner will perform or procure the performance of the obligations set out in Schedules 1 and 2.
- 4.2 The Developer covenants with the Council to perform the obligations specified in Schedule 1.
- 4.3 The Developer covenants with the Council and separately with the Highway Authority or Education Authority (as appropriate) to perform the obligations specified in Schedule 2.
- 4.4 The obligations of the Owner and the Developer are joint and several and binding upon their respective interests in the Land as set out in Recital B.
- 4.5 Obligations set out in Schedules 1 and 2 which are expressed as obligations to pay sums of money or undertake works and which are given jointly and severally by the Owner and the Developer are intended between them to be obligations which will be fulfilled complied with and met in the first instance by the Developer. The Council and the Highway Authority/Education Authority (as appropriate) agree with the Owner and the Developer that primary liability accordingly rests with the Developer and only in circumstances of breach or default by the Developer insolvency or termination of the Developer's entitlement to proceed with the development of the Land will the Owner become primarily liable for the fulfilment and discharge of the several obligations set forth in Schedules 1 and 2.
- 4.6 Where pursuant to the provisions of clause 4.5 the Owner becomes primarily liable to perform obligations set forth in Schedules 1 and/or 2 the obligations will be owed to and enforceable by the Council in circumstances where the Owner would otherwise be committed to comply with an obligation enforceable by itself as Highway Authority or Education Authority. The Council will in such circumstances ensure compliance by the Owner with all of its obligations and hold in trust for the benefit of the Highway Authority or Education Authority (as appropriate) any sums and amounts which would otherwise become payable directly to the Highway Authority or Education Authority.

5 Highway Authority's and Education Authority's Obligations

- 5.1 The Highway Authority and Education Authority hereby covenant with the Council and separately with the Owner and the Developer that the Highway Authority and Education Authority shall comply with the obligations on their part set out in Schedule 3.

6 Light Rail System

- 6.1 The parties to this agreement agree that from the date of this agreement clause 4.12 of the Phase 1 Agreement shall be revoked and cease to have legal effect.

7 Library Facility Contribution

- 7.1 The parties to this agreement agree that from the date of this agreement schedule 1 paragraph 1.4 of the Phase 2 Agreement (Education) shall be revoked and cease to have legal effect.

8 Youth and Community Contribution

- 8.1 The parties to this agreement agree that from the date of this agreement that:

8.1.1 In the definition of "Youth and Community Contribution" in Schedule 1 of the Phase 2 Agreement (Education) the words "in 10 equal annual instalments each of £5,000" shall be deleted.

8.1.2 Schedule 1 paragraph 1.3.1 of the Phase 2 Agreement (Education) shall be deleted and replaced with the following paragraph:

"1.3.1 The Developer agrees to pay the Youth and Community Contribution to the Council prior to 30 September 2015 (the parties hereby acknowledging that as at 1 August 2015 £35,000 of the £50,000 total had been paid)".

8.1.3 Schedule 1 paragraphs 1.3.2 and 1.3.3 of the Phase 2 Agreement (Education) shall be deleted.

9 Public Transport Improvements Contribution

9.1 The parties to this agreement agree that from the date of this agreement:

9.1.1 Schedule 1 Part 1 paragraph 1.4 of the Phase 2 Agreement (Highways) shall be deleted and cease to have legal effect.

9.1.2 Recital E of Schedule 1 Part 1 of the Phase 2 Agreement (Highways) and the definition of "Public Transport Improvements Contribution" in the same agreement shall be deleted and cease to have legal effect.

10 Costs

10.1 The Developer covenants with the Council Highway Authority and the Education Authority to pay on demand their reasonable legal costs incurred in connection with the preparation and completion of this agreement.

11 Indexation

11.1 Any payment due under Schedule 2 paragraphs 2 to 4 shall be increased by an amount equivalent to the percentage increase in the Index from the date of this agreement until the date on which such sum is payable or is paid whichever is the earlier.

11.2 Any payment due under Schedule 2 paragraphs 5 to 7 shall be increased by 2.5% per annum from the date of this agreement until the date on which such sum is payable or is paid whichever is the earlier.

12 Interest

12.1 In the event of any delay in making payment required under this agreement Interest shall be payable on the amount payable from the date that the relevant payment falls due to the date of actual payment.

13 Land Charge

13.1 This agreement is a local land charge and is to be registered as such by the Council.

13.2 The Council (at the written request of the Owner and the Developer at any time after the Owner and the Developer have complied with or are discharged from their obligations in this agreement) is to:

- 13.2.1 issue written confirmation of compliance or discharge;
- 13.2.2 immediately cancel all entries made in the register of local land charges in respect of this agreement.

14 Service Provisions

- 14.1 Any notice or other written communication to be served upon or given by one party to any other under the terms of this agreement shall be in writing and shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 14.2 The address for any notice or other written communication shall only be within the United Kingdom and is:
 - 14.2.1 for the Owner as specified above marked for the attention of the Director of Governance & Law quoting reference LS/21/106957;
 - 14.2.2 for the Developer as specified above marked for the attention of the Managing Director;
 - 14.2.3 for the Council as specified above marked for the attention of the Head of Planning;
 - 14.2.4 for the Highway Authority or Education Authority as specified above marked for the attention of Director of Governance & Law quoting reference LS/21/106957;
- 14.3 Any other notice or other written communication to be given by the Council the Highway Authority or the Education Authority shall be deemed valid and effectual if on its face it is signed on behalf of the respective authority by an officer or duly authorised signatory.

15 Expert

- 15.1 Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing in any way arising out of or connected with this agreement (excluding the quantum of contributions to be paid to the Highway Authority and Education Authority other than the Additional Primary Education Contribution) will except as otherwise expressly provided be referred to the decision of a single independent and fit person holding appropriate professional qualifications experienced in the subject matter of the dispute to be agreed by the parties or failing agreement between them to be nominated by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.
- 15.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to Clause 15.1 above or as to the appropriate professional body within twenty one days after any party has given to the other party to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to clause 15.1 or as to the appropriate professional body above then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of

the Law Society of England and Wales on the application of any party to the dispute or difference and 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 on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute or difference in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute of difference in equal shares.

- 15.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty Working Days after he has received the final file or written representation.
- 15.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.

SCHEDULE 1

1 Affordable Housing

- 1.1 Prior to the approval of any Reserved Matters Application for the siting of any Affordable Housing Units in that application the Owner and the Developer shall submit to the Council for its approval details of the number and types of the Affordable Housing Units in that application including whether Social Rent Affordable Rented or Shared Ownership PROVIDED THAT the Owner and Developer may thereafter submit any amendments to such details to the Council for its approval.
- 1.2 No more than 150 of the Market Housing Units shall be Occupied until the Affordable Housing Land for the construction of at least 37 Affordable Housing Units, in a mix of tenures which has been subject of prior agreement with the Local Housing Authority, has been disposed of to a Registered Provider and such Affordable Housing Units have been constructed in accordance with the approved Reserved Matters Application.
- 1.3 No more than 300 of the Market Housing Units shall be Occupied until the Affordable Housing Land for the construction of at least a further 37 Affordable Housing Units, in a mix of tenures which has been subject of prior agreement with the Local Housing Authority, has been disposed of to a Registered Provider and such Affordable Housing Units have been constructed in accordance with the approved Reserved Matters Application.
- 1.4 No more than 450 of the Market Housing Units shall be Occupied until the Affordable Housing Land for the construction of at least a further 38 Affordable Housing Units, in a mix of tenures which has been subject of prior agreement with the Local Housing Authority, has been disposed of to a Registered Provider and such Affordable Housing Units have been constructed in accordance with the approved Reserved Matters Application.
- 1.5 A total of 112 Housing Units to be constructed as part of the Development shall be Occupied as Affordable Housing Units in the following unit and tenure mix:

Tenure/Unit Type	1 bed flats	2 bed flats	2 bed houses	3 bed houses	4 bed houses	Totals
Social Rent	11	6	7	10	5	39
Affordable Rent	18	10	11	0	0	39
Shared Ownership	0	20	0	14	0	34
Totals	29	36	18	24	5	112

Provided that if at any time the Owner and Developer are unable to contract or procure the provision of the Affordable Housing Units in accordance with the above unit and tenure mix for the whole Development then they may submit a revised unit and tenure mix to be approved by the Council (in consultation with the relevant Registered Provider) and thereafter the Development is to be built out in accordance with either the approved original or revised unit and tenure mix.

- 1.6 Subject to the provisions of paragraph 1.9 the Affordable Housing Units shall be retained as Affordable Housing in perpetuity.
- 1.7 The Affordable Housing Units shall be designed and constructed in all respects to conform at least with the Design & Quality Standards save as the Council may otherwise agree in writing.

- 1.8 Prior to the disposal of any Affordable Housing Land to a Registered Provider all necessary services for that Affordable Housing Land will be available and connected to the Affordable Housing Land at its boundary and access roads and ways serving that Affordable Housing Land shall be constructed to the boundary and surfaced (to at least base wearing course) to enable the Affordable Housing Land to be used and Occupied.
- 1.9 The disposals of the Affordable Housing Land under paragraph 1.2 to 1.4 above shall provide for the disposals of the Affordable Housing Land by means of either the freehold or the grant of leases of not less than 125 years:
- 1.9.1 With vacant possession;
 - 1.9.2 Free of financial charges and of any encumbrances which would prevent its use as Affordable Housing;
 - 1.9.3 With connections to such services as are necessary for the reasonable enjoyment of the Affordable Housing Units as such;
 - 1.9.4 On terms that the occupancy of any Affordable Housing Units (whether initially or as and when they fall vacant) shall be governed by such nominations arrangements as exist at the time between the Registered Provider and the Council;
 - 1.9.5 Together with the grant (and subject to the reservation) of such rights as may reasonably be necessary or desirable for the construction and future occupation of the Development as a whole;
 - 1.9.6 Subject to paragraph 1.11 the Affordable Housing Units shall not be Occupied for any purpose other than Affordable Housing; but
 - 1.9.7 Otherwise on such terms as may be negotiated with the Registered Provider.
- 1.10 Upon the disposal of any Affordable Housing Land to a Registered Provider:
- 1.10.1 The obligations imposed by this schedule in relation to those Affordable Housing Units shall be observed and performed by the Registered Provider;
 - 1.10.2 Where any obligation is expressed as an obligation on the Owner or Developer to procure any act on the part of the Registered Provider such obligation shall be construed as an obligation of the Registered Provider to perform the obligation in question itself; and
 - 1.10.3 The Owner and Developer shall be released from all obligations in relation to such Affordable Housing Land.
- 1.11 The restrictions contained in this schedule affecting the Affordable Housing Land and the Affordable Housing Units shall not be binding upon:
- 1.11.1 Any mortgagee or chargee of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to a Registered Provider; or
 - 1.11.2 Any mortgagee or chargee of an owner of any Affordable Housing Unit or any receiver or manager (including an administrative receiver) appointed pursuant to

the Law of Property Act 1925 or otherwise by a party who has provided loan facilities to such owner; or

- 1.11.3 Any owner of a Shared Ownership Unit where that owner has Staircased Out; or
- 1.11.4 A tenant or owner who has exercised a statutory right to buy or acquire an Affordable Housing Unit; or
- 1.11.5 The successors in title to the persons described in paragraphs 1.11.1 to 1.11.4 above.

SCHEDULE 2

1 Implementation and Occupation Notices

- 1.1 The Developer covenants with the Council the Education Authority and the Highway Authority that it will serve them within 15 Working Days with notices of the Implementation Date.
- 1.2 The Developer covenants with the Council the Education Authority and the Highway Authority to serve them with notice within 15 Working Days of the Occupation of:
- 1.2.1 the first Housing Unit to be Occupied; and
- 1.2.2 the 50th Housing Unit to be Occupied and thereafter on every subsequent 50 Housing Units to be Occupied.

2 Primary Education

- 2.1 The Developer will pay the Primary Education Contribution to the Education Authority such payment to be made by the following instalments:
- 2.1.1 £1,000,000 (one million pounds) prior to the Occupation of the 51st Housing Unit to be Occupied;
- 2.1.2 £1,000,000 (one million pounds) prior to the Occupation of the 101st Housing Unit to be Occupied;
- 2.1.3 £1,000,000 (one million pounds) prior to the Occupation of the 151st Housing Unit to be Occupied;
- 2.1.4 £1,000,000 (one million pounds) prior to the Occupation of the 201st Housing Unit to be Occupied.

3 Additional Primary Education Contribution

- 3.1 If the Education Authority provides the opinion under paragraph 2.2.2 of schedule 3 that the extension of the primary school is required the Developer or the Council may within 30 Working Days of receiving such opinion serve notice on the Education Authority disagreeing that the extension of the primary school is required in which case the determination of whether the Education Authority's opinion is correct will be referred to an Expert pursuant to clause 15.
- 3.2 If the Education Authority provides the opinion under paragraph 2.2.2 of schedule 3 that the extension of the primary school is required and neither the Developer nor the Council serve notice under paragraph 3.1 above or the Expert determines that the Education Authority's opinion is correct then the Developer will pay the Additional Primary Education Contribution to the Education Authority such payment to be made by the following instalments:
- 3.2.1 £1,000,000 (one million pounds) prior to the Occupation of the 476th Housing Unit to be Occupied; and
- 3.2.2 £1,000,000 (one million pounds) no later than the date 12 months from the date of the payment under paragraph 3.2.1 above.

4 Secondary Education Contribution

- 4.1 The Developer will pay the Secondary Education Contribution to the Education Authority such payment to be made by the following instalments:
- 4.1.1 £660,744 (six hundred and sixty thousand seven hundred and forty four pounds) prior to the date of Occupation of the 275th Housing Unit to be Occupied or 1 June 2018 whichever is the later; and
- 4.1.2 £660,744 (six hundred and sixty thousand seven hundred and forty four pounds) no later than the date 12 months from the date of payment under paragraph 4.1.1 above.

5 Libraries and Community Learning Contribution

- 5.1 The Developer will pay the Libraries and Community Learning Contribution to the Education Authority such payment to be made no later than the date 24 months from the Implementation Date.

6 Youth Services Contribution

- 6.1 The Developer will pay the Youth Services Contribution to the Education Authority such payment to be made no later than the date 24 months from the Implementation Date.

7 Social Services Contribution

- 7.1 The Developer will pay the Social Services Contribution to the Education Authority such payment to be made no later than the date 24 months from the Implementation Date.

8 Highways

- 8.1 Within seven days of the Implementation of the Development the Developer shall pay to the Highway Authority the Bus Service Upgrade Contribution.
- 8.2 Within seven days of the Implementation of the Development the Developer shall pay the Bus Measures Contribution to the Highway Authority.

9 Travel Plan

- 9.1 The Developer will submit within 3 months from Implementation to the Highway Authority for its approval a draft travel plan based on the principles set out in Schedule 4.
- 9.2 The Developer will arrange using best endeavours for the implementation of the Travel Plan from the date of Occupation of the first Housing Unit to be Occupied to the date the final Housing Unit to be Occupied is first Occupied.
- 9.3 The Developer shall carry out a travel survey based upon the principles set out in Schedule 4 on the Occupation of the 150th, 300th, and 450th Housing Unit.
- 9.4 The Developer shall appoint a Travel Plan co-ordinator whose appointment shall be prior approved by the Highway Authority before the first Occupation of the first Housing Unit to be Occupied and the term of the office of a Travel Plan co-ordinator must be until Occupation of the 600th Housing Unit takes place.

SCHEDULE 3

(The Highway Authority's and Education Authority's Obligations)

- 1 **Application of Funds**
 - 1.1 When the Highway Authority or Education Authority receives sums from the Developer pursuant to any obligations set out in Schedule 2 the Highway Authority or Education Authority (as appropriate) covenants:
 - 1.1.1 forthwith upon receipt to pay such sums into an interest bearing deposit account bearing a reasonable rate of interest on deposits and from which the relevant contribution together with its accrued interest can be identified from periodic statements until such time as such sums (or any part thereof) are required for the purposes identified in the relevant paragraph of Schedule 2 and clause 2;
 - 1.1.2 to apply such sums only for the purposes respectively for which the same were paid as specified in clause 2 and not to use any financial contributions contained in this agreement otherwise than for the purposes for which they are paid (Provided That for the avoidance of doubt the Highway Authority or Education Authority (as appropriate) shall be entitled to treat any accrued interest as if it were part of the principal sum paid by the Developer); and
 - 1.1.3 from time to time upon reasonable written request by the Developer (but not more frequently than once every six months) to provide the Developer with a breakdown of expenditure from the said contributions including a copy of relevant bank statements.
 - 1.2 In the event that any part or all of any such sums have not been used for their respective purposes within five years from the date of last instalment of a relevant sum where paid in instalments or within 5 (five) years (or 7 (seven) years in respect of the Bus Measures Contribution) of payment where the sum is paid in one payment forthwith to repay such sum (or such part thereof) to the Developer with all accrued interest unless a contract for such unspent sums has been entered into for a scheme or project pursuant to the relevant purposes.
- 2 **Primary School**
 - 2.1 The Education Authority covenants with the Council and the Developer to complete the construction of and commence the operation and use of a primary school accommodating two form entry on the School Site prior to the Occupation of the 351st Housing Unit to be Occupied.
 - 2.2 The Education Authority covenants with the Council and the Developer:
 - 2.2.1 to undertake an education needs assessment prior to Occupation of the 450th Housing Unit to be Occupied such assessment to be conducted in consultation with the Council;
 - 2.2.2 to serve the Council and Developer with notice within 20 Working Days of the completion of the ENA enclosing a copy of the ENA and the Education Authority's opinion of whether or not it requires the extension of the primary school at the School Site to a three form entry school;
 - 2.3 The Education Authority covenants with the Council and the Developer to complete construction of and commence the operation and use of an extension to the primary school

on the School Site so as to accommodate three form entry prior to 1st September following the date 24 months from the date of payment under schedule 2 paragraph 3.2.1.

3 **Highways**

- 3.1 The Highway Authority covenants with the Council and the Developer to apply the Bus Service Upgrade Contribution towards the provision (for a minimum of 5 years) of:
 - 3.1.1 A low emission express bus service Monday to Saturday (inclusive) between the Land and Maidstone town centre via West Malling Rail Station and the M20; and
 - 3.1.2 An additional school morning and afternoon low emission bus service between the Land and Tonbridge Rail Station.
- 3.2 The Highway Authority covenants with the Council and the Developer to apply the Bus Measures Contribution towards measures to improve bus journey times on the A20 between the A20/A228 junction at Leybourne and the A20 Coldharbour Roundabout at Allington.

SCHEDULE 4

Travel Plan

The Travel plan should include the following principles:

Identify appropriate measures to encourage sustainable travel to and from the Development by visitors residents and staff using transport

Encourage use of more sustainable forms of transport for journeys to and from the Development to shift from single occupant car use to car sharing, car pools, public transport, cycling and walking

"Moving in" sustainable transport information packs to be provided to each household on occupation. These information packs shall include the following:

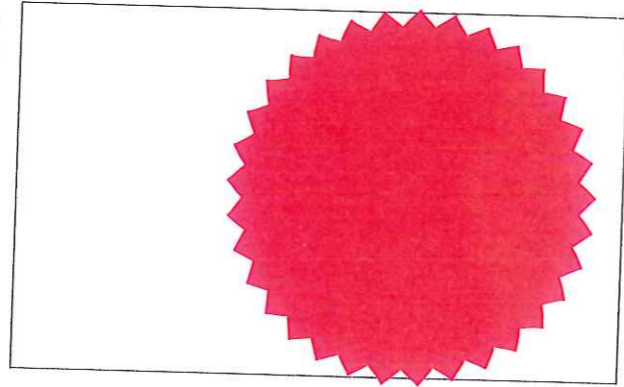
- Information on all local public transport facilities
- Information about car club schemes in the area of the development
- Information about car sharing and car-pooling schemes operating in the area of the development
- Information about local cycling which shall include routes, cycle schemes and initiatives
- Information about walking routes

EXECUTED and delivered as a deed on the date of this agreement

EXECUTED as a deed by affixing the common seal of **TONBRIDGE AND MALLING BOROUGH COUNCIL** in the presence of:

Adna Stephens

Authorised signatory



The common seal of **THE KENT COUNTY COUNCIL** was hereunto affixed in the presence of:

[Signature]

Authorised signatory



905-205

SIGNED as a deed by **LIBERTY PROPERTY TRUST UK LIMITED** acting by a director and its secretary (or two directors)

Sign here
[Signature] ELIZABETH ROCHE
DIRECTOR Director
[Signature] Secretary (or Director)

ANDREW BLEVINS
DIRECTOR

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