

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

relating to  
the development of land known as Sites 5.2 and 5.3  
North and East of Jubilee Way,  
Kings Hill,  
West Malling

**(1) LIBERTY PROPERTY TRUST UK LIMITED**

and

**(2) TONBRIDGE AND MALLING BOROUGH COUNCIL**

and

**(3) THE KENT COUNTY COUNCIL**

**PINS REF: APP/H2265/W/19/3235166**

**LPA Reference: TM/18/03034/OAEA**

REF: JOT/RO50355.513/21238496.5

# DEED OF AGREEMENT

DATED:

17 December

2019

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 29 May 2019 the Application was refused.

D.3 The Appeal against the refusal of the Application was submitted by the Developer.

D.4 The Owner the Developer the Council the Highway Authority and the Education Authority 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.

## OPERATIVE PROVISIONS

### 1 Operative Powers

This agreement is entered into pursuant to section 106 and section 106A 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        | 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 housing prices and which:<br><br>(i) remains at an affordable price for future eligible householders subject to the provisions of this agreement;<br><br>(ii) comprises 40% of the total number of the Housing Units constructed pursuant to the Permission. |
| 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 Scheme | A plan to be submitted by the Developer for approval by the Council setting out where the Affordable Housing Units will be located and which also provides the type of Affordable Housing Units to be provided and to which amendments may be made from time to time by the Developer with the written approval of the Council PROVIDED ALWAYS that the Affordable Housing Scheme allocates 40% (forty percent) of the Housing Units within the Development as Affordable Housing.            |
| 2.1.5 | Affordable Housing Unit/s | 40% (rounded to the nearest whole number) of the Housing Units to be provided as Affordable Housing as set out in Schedule 1.   |
| 2.1.6 | 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 and "Affordable Rented Housing" shall be construed accordingly.  |
| 2.1.7 | Appeal                    | The planning appeal submitted by the Developer to the Secretary of State under reference number   |

		APP/H2265/W/19/3235166 against the Council's refusal of the Application.
2.1.8	Applicable Flat	A Housing Unit which is a flat or apartment but excluding one bed flats or apartments of less than 56sqm gross internal area.
2.1.9	Applicable House	A Housing Unit (other than flats or apartments) but excluding one bed Housing Units of less than 56sqm gross internal area.
2.1.10	Application	The planning application submitted by the Developer to the Council for outline planning permission for the Development and bearing LPA reference number TM/18/03034/OAEA.
2.1.11	CCG	The NHS West Kent Clinical Commissioning Group.
2.1.12	Community Learning Contribution	The sum of £32.57 (thirty two pounds and fifty seven pence) per Housing Unit granted Reserved Matters Approval to be used as a contribution towards the commissioning of community learning classes, arts and culture events at Kings Hill.
2.1.13	Design and Quality Standards	The following space standards <u>Flats</u> 1 bed 2 person 45-50m <sup>2</sup> 2 bed 3 person 62-70m <sup>2</sup> 2 bed 4 person 67-70m <sup>2</sup> <u>Houses</u> 2 bed 4 person 75-80m <sup>2</sup> 3 bed 5 person 85-90m <sup>2</sup> 4 bed 6 person 110-115m <sup>2</sup>
2.1.14	Development	Redevelopment of the Land to provide up to 210 Class C3 residential units, together with landscaping, open space and other associated works.
2.1.15	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.
2.1.16	Gibson Drive Junction Improvement Scheme	Improvements to capacity at the roundabout junction of the A228 Malling Road with Gibson Drive in order to reduce traffic delays and queue lengths either as shown for indicative purposes only on Plan

		3A or as shown for indicative purposes only on Plan 3B or any other improvements to similar effect.
2.1.17	Gibson Drive Junction Improvement Scheme Contribution	The sum of £122.61 per Housing Unit granted Reserved Matters Approval to be used as a contribution towards the Gibson Drive Junction Improvement Scheme.
2.1.18	Healthcare Contribution	The sum of £180,648.00 (one hundred and eighty thousand six hundred and forty eight pounds) to be forwarded by the Council to the CCG to be used as a contribution towards the refurbishment reconfiguration or extension at West Malling Group Practice and/or Wateringbury Surgery.
2.1.19	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.
2.1.20	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 temporary 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 "Implement" and "Implemented" shall be construed accordingly.
2.1.21	Implementation Date	The date the Permission is Implemented.
2.1.22	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.
2.1.23	Index Linked	Index linked in accordance with the Index and the provisions of clause 13.
2.1.24	Interest	Interest at 4 per cent above the base rate of the Bank of England from time to time.
2.1.25	Intermediate Affordable Housing	Housing for sale and/or rent provided at a cost above social rent but below market levels subject to the criteria in the Affordable Housing definition above which can include shared equity (Shared

		Ownership and equity loans) other low cost housing for sale and intermediate rent but not affordable rented housing or low cost market housing.
2.1.26	Kings Hill	The mixed use development known as Kings Hill West Malling Kent shown for identification purposes only edged in blue on Plan 2.
2.1.27	Land	North and East of Jubilee Way, Kings Hill, West Malling, Kent shown for identification purposes only edged red on Plan 1.
2.1.28	Libraries Contribution	The sum of £175.45 (one hundred and seventy five pounds and forty five pence) per Housing Unit granted Reserved Matters Approval to be used as a contribution towards community outreach library services at Kings Hill.
2.1.29	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).
2.1.30	Market Housing Units	Any Housing Unit which is not an Affordable Housing Unit.
2.1.31	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.
2.1.32	Outdoor Sports Contribution	The sum of £1,825.11 per Housing Unit granted Reserved Matters Approval to be used as a contribution towards facilities for outdoor sports within three miles of the Development.
2.1.33	Parks and Gardens Contribution	The sum of £363.53 per Housing Unit granted Reserved Matters Approval to be used as a contribution towards the provision of public parks and gardens within three miles of the Development.
2.1.34	Permission	Outline planning permission for the Development pursuant to the Application.
2.1.35	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 as varied by the Phase 2 Agreement (Highways) Phase 2 Agreement (Education) Phase 2 Agreement (Affordable Housing and Public Benefits) and the Phase 3 Agreement (as applicable).

2.1.36	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 and as varied by the Phase 3 Agreement.
2.1.37	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 and as varied by the Phase 3 Agreement.
2.1.38	Phase 2 Agreement (Affordable Housing and Public Benefits)	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 affordable housing and additional public benefits and facilities 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 the deed of variation under Section 106 of the Act between the same parties dated 8 June 2006 and the Phase 3 Agreement.
2.1.39	Phase 3 Agreement	The agreement pursuant to section 106 of the 1990 Act dated 28 August 2015 between Liberty Property Trust UK Limited Tonbridge and Malling Borough Council and The Kent County Council.
2.1.40	Plan 1	The attached plan marked 'Plan 1'
2.1.41	Plan 2	The attached plan marked 'Plan 2'
2.1.42	Plan 3A	The attached plan marked 'Plan 3A'
2.1.43	Plan 3B	The attached plan marked 'Plan 3B'
2.1.44	Primary Education Contribution	The sum of £4,535.00 (four thousand five hundred and thirty five pounds) per Applicable House granted Reserve Matters Approval and £1,134.00 (one thousand one hundred and thirty four pounds) per Applicable Flat granted Reserved Matters Approval to be used as a contribution towards the extension of Valley Invicta Primary School so that it can accommodate an additional form entry.

2.1.45	Registered Provider	A body registered with Homes England 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 Homes England and/or other body which is authorised to own and/or manage Affordable Housing.
2.1.46	Reserved Matters Application	A reserved matters application made pursuant to the Permission.
2.1.47	Reserved Matters Approval	A reserved matters approval granted pursuant to a Reserved Matters Application.
2.1.48	Secretary of State	The Secretary of State for Housing, 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 Housing, Communities and Local Government by the 1990 Act.
2.1.49	Secondary Education Contribution	The sum of £4,115.00 (four thousand one hundred and fifteen pounds) per Applicable House granted Reserved Matters Approval and £1,029.00 (one thousand and twenty nine pounds) per Applicable Flat granted Reserved Matters Approval to be used as a contribution towards the phase 2 extension of The Judd School, Tonbridge or towards the provision of a new secondary school within 10 miles of the Development.
2.1.50	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. A purchaser may buy the final share and own the whole home.
2.1.51	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 Homes England in line with the Government's national rent restructuring programme and "Social Rented Housing" shall be construed accordingly.
2.1.52	Social Services Contribution	The sum of £55.90 (fifty five pounds and ninety pence) per Housing Unit granted Reserved Matters Approval 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

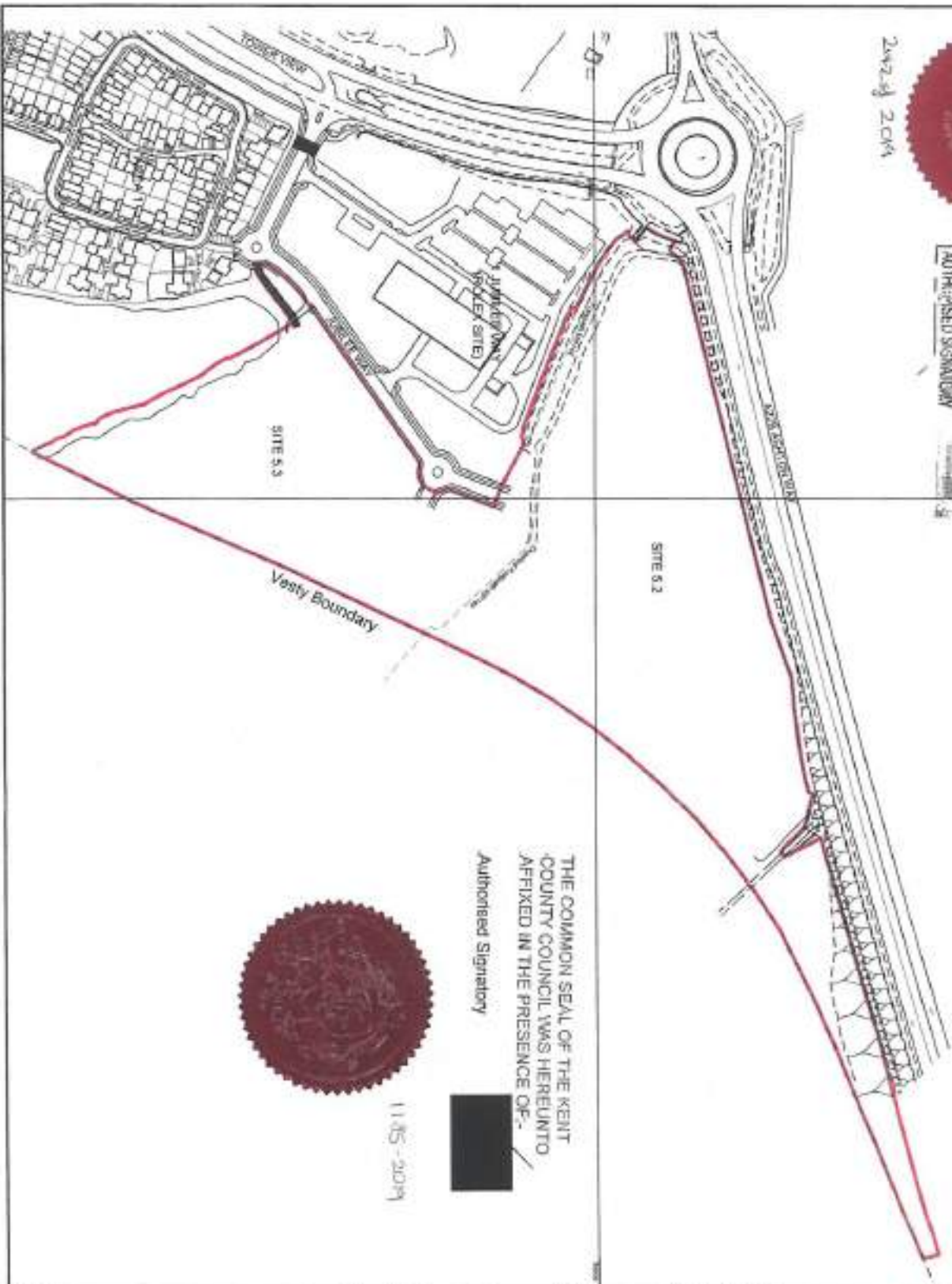




24/2/21 2:04

THE COMMON SEAL OF THE TONBRIDGE AND MALLING BOROUGH COUNCIL HAS BEEN AFFIXED IN THE PRESENCE OF:

Authorised Signatory



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

Authorised Signatory



11/05/2019

NOTES

Designated Information and Boundary Site taken from Client's drawings no. C24517/01B&2&3 rev 0 'Site Location Plan (Sites 5.2 & 5.3)'

(All origin and dimensions are related to Kings Hill site grid)



DATE	BY	CHK
19/11/18		
REVISIONS	DATE	BY
(B) (Sheet for information)	19/11/18	CH

CLIENT  
Liberty Property Trust UK Ltd

PROJECT TITLE  
Kings Hill, West Malling

TITLE  
Plan 1 (Sites 5.2 & 5.3)

STANDARD (Project)	DATE	SCALE (A3)
0/4	19/11/18	1:2500
DWG	0/4	19/11/18



**SITE ENGINEERING SURVEYS LTD**

16 Tiber Court  
Tiber Road  
London E14 8PX  
Tel: (020) 7538 0870  
Fax: (020) 7537 4355  
Email: office@sesd.co.uk

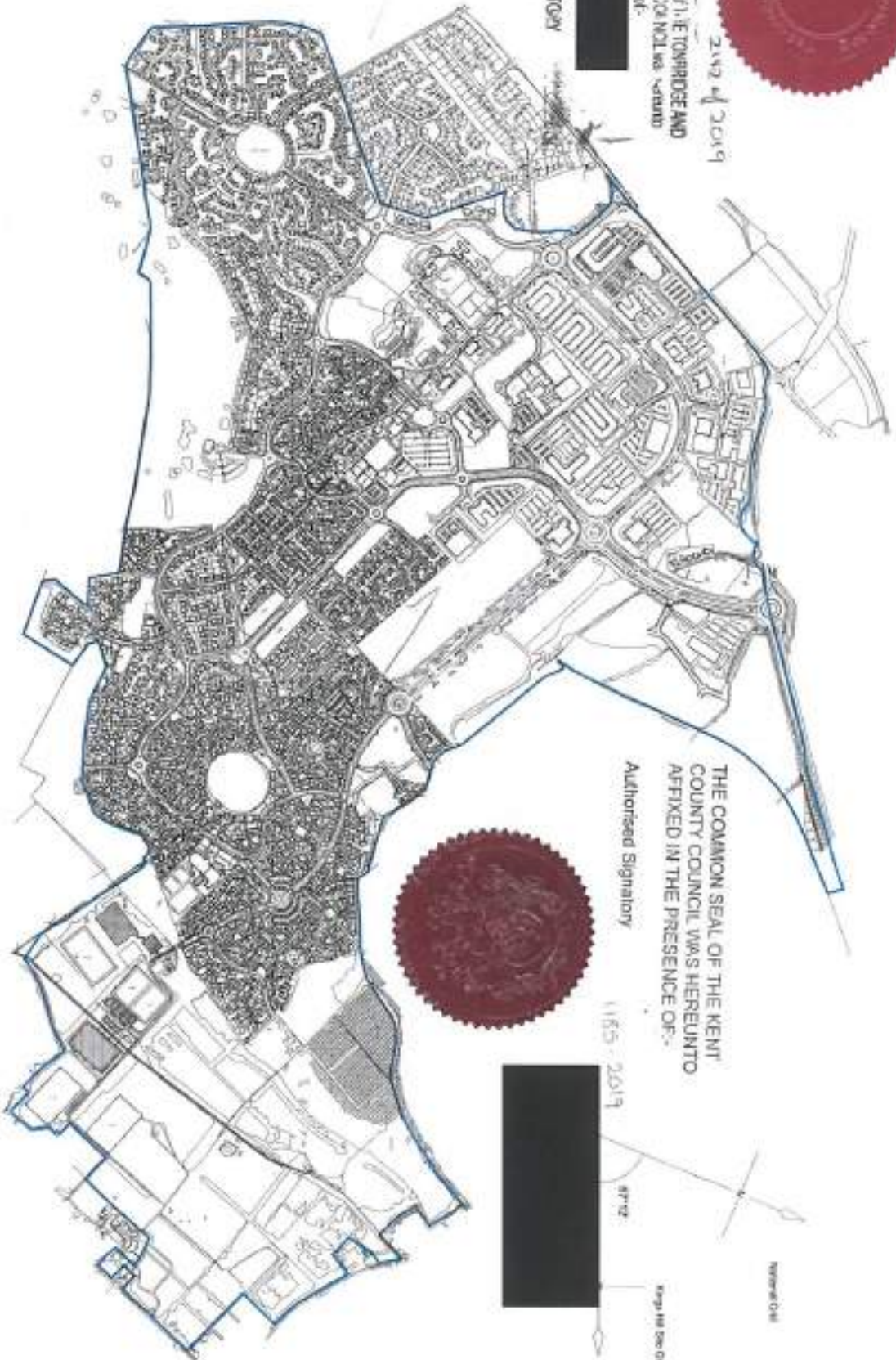
JOB No	DRAWING No	REV
10467	SES-10467-015	00



21st of 2019

THE COMMON SEAL OF THE TOWN OF MALLING BURROUGH OF THE COUNTY OF KENT WAS HERETO AFFIXED IN THE PRESENCE OF:-

AUTHORISED SIGNATORY



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



11th of 2019



Noted:  
Discussed information and the surveys for Kings Hill Site Services Ltd drawing No. CH0467/190 Plan 2 Phase 2 Separation Boundary, issue 2/06/2018.  
Grid signs and markers are indicated in Kings Hill site grid.

NO	REVISIONS	DATE	BY
01	Issued for reference	07/11/2018	GH

**SES**  
SITE ENGINEERING SERVICES LTD  
15 THE COVE, THE PINE  
LONDON, E14 6PW  
TEL: 0203 7324 987  
FAX: 0203 7327 433  
Email: info@ses-engineering.com

CLIENT  
**Liberty Property Trust UK Ltd**

ISSUED	DATE	BY	CHECKED	DATE	BY
02/11/2018	07/11/2018	GH	GH	07/11/2018	GH

PROJECT TITLE  
**Kings Hill, West Malling**

TITLE  
**Plan 2**

JOB NO: CH0467/190	REV
10467	01
SES-10467-012	

•Plan 3A



Source: Hill Woodover



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

Authorised Signatory



11.05 - 2019



20.02 of 2019

THE COMMON SEAL OF THE TOWN AND VILLAGE BOROUGH OF MIDDLEBOROUGH WAS HERETO AFFIXED IN THE PRESENCE OF:



Authorised Signatory



• Plan 3B



Source: Mark Waldorff



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

Authorised Signatory



1189 - 2019



2012 of 2019

THE COMMON SEAL OF ETON COLLEGE AND MALDEN BOROUGH COUNCIL WAS AFFIXED IN THE PRESENCE OF:-



AUTHORISED SIGNATORY



technology in Housing Units within the Development.

- 2.1.53 Staircased Out When the purchaser has purchased the final share of a Shared Ownership unit and owns the whole unit.
- 2.1.54 Statutory Undertaker Any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator.
- 2.1.55 Travel Plan The travel plan approved by the Highway Authority pursuant to Schedule 2 paragraph 9.
- 2.1.56 Wheelchair Accessible Unit An Affordable Housing Unit which is wheelchair accessible in accordance with Building Regulations 2010 Part M4(2) Category 2 Accessible and Adaptable Dwellings as supported by "Approved Document M: Access to and use of buildings Volume 1: Dwellings" (or such equivalent replacement standard in force at the time of construction of the units) to meet the housing needs of those identified with mobility needs.
- 2.1.57 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.
- 2.1.58 Youth Services Contribution The sum of £13.47 (thirteen pounds and forty seven pence) per Housing Unit granted Reserved Matters Approval to be used as a contribution towards providing additional sports and IT equipment and staff and storage for Kent Youth Services and their commissioned providers within 3 miles of the Development.

- 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 17 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 issued by the Secretary of State or his Inspector, 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.
- 3.12 If any of the obligations set out in this agreement are found by the planning inspector determining the Appeal not to be compliant with the Community Infrastructure Levy Regulations 2010 then such clauses shall cease to have legal effect.

#### **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 Council's 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.
- 5.2 The Council hereby covenants with the Owner and the Developer that the Council shall comply with its obligations set out in Schedule 3.

## **6 Light Rail System**

- 6.1 The parties to this agreement agree that from the date of this agreement in relation to the Land 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 in relation to the Land that:
  - 7.1.1 The definition of "Library Facility Contribution" and "Library Access Point" in Schedule 1 of the Phase 2 Agreement (Education) shall be deleted.
  - 7.1.2 Schedule 1 paragraph 1.4 of the Phase 2 Agreement (Education) shall be deleted 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 in relation to the Land that:
  - 8.1.1 The definition of "Youth and Community Contribution" and "Youth and Community Strategy" in Schedule 1 of the Phase 2 Agreement (Education) shall be deleted.
  - 8.1.2 Schedule 1 paragraph 1.3 of the Phase 2 Agreement (Education) shall be deleted and cease to have legal effect.

## **9 Public Transport Improvements Contribution**

- 9.1 The parties to this agreement agree that from the date of this agreement in relation to the Land that:
  - 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 Green Travel Plan**

- 10.1 The parties to this agreement agree that from the date of this agreement Schedule 1 Part 2 and Annexure 2 of the Phase 2 Agreement (Highways) shall be deleted and cease to have legal effect in relation to the Land.



**11 Nature Conservation Mitigation Strategy and Landscape and Nature Conservation Management Plan**

11.1 The parties to this agreement agree that from the date of this agreement Schedule 1 Part 2 paragraph 2.4 of the Phase 2 Agreement (Affordable Housing and Public Benefits) shall be deleted and cease to have legal effect in relation to the Land.

**12 Costs**

12.1 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.

**13 Indexation**

13.1 Any payment due under Schedule 2 paragraphs 2 to 7 shall be increased by an amount equivalent to the percentage increase in the Index of October 2016 (Index 328.3) until the date on which such sum is paid.

**14 Interest**

14.1 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.

**15 Land Charge**

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

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

15.2.1 issue written confirmation of compliance or discharge;

15.2.2 immediately cancel all entries made in the register of local land charges in respect of this agreement.

**16 Service Provisions**

16.1 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.

16.2 The address for any notice or other written communication shall only be within the United Kingdom and is:

16.2.1 for the Owner as specified above marked for the attention of the Office of the General Counsel PH/KEN002:000567;

16.2.2 for the Developer as specified above marked for the attention of the Managing Director;

- 16.2.3 for the Council as specified above marked for the attention of the Head of Planning quoting reference number TM/18/03034/OAEA;
- 16.2.4 for the Highway Authority or Education Authority as specified above marked for the attention of Office of the General Counsel quoting reference PH/KEN002:000567.
- 16.3 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.

## 17 Expert

- 17.1 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) 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.
- 17.2 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 17.1 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 17.1 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 or difference in equal shares.
- 17.3 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.
- 17.4 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 Not to Implement the Development unless and until an Affordable Housing Scheme has first been submitted to the Council for its approval and the Council has approved the Affordable Housing Scheme.
- 1.2 To undertake the Development in accordance with the approved Affordable Housing Scheme.
- 1.3 No more than 50% (rounded to the nearest whole number) of the Market Housing Units shall be Occupied until 50% (rounded to the nearest whole number) of the Affordable Housing Units have been constructed and completed so that such units are capable of beneficial occupation in accordance with an approved Reserved Matters Application.
- 1.4 No more than 80% (rounded to the nearest whole number) of the Market Housing Units shall be Occupied until all of the Affordable Housing Units have been constructed and completed so that such units are capable of beneficial occupation in accordance with an approved Reserved Matters Application.
- 1.5 A total of 40% (rounded to the nearest whole number) of the Housing Units to be constructed as part of the Development shall be Occupied as Affordable Housing Units of which 70% (rounded to the nearest whole number) shall be Affordable Rent and 30% (rounded to the nearest whole number) shall be Intermediate Affordable Housing 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 tenure mix for the whole Development then they may submit a revised 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 tenure mix.
- 1.6 Subject to the provisions of paragraph 1.11 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 Affordable Housing Land and Affordable Housing Units thereon shall be disposed of to a Registered Provider in accordance with the Affordable Housing Scheme under paragraphs 1.3 and 1.4 above and such disposal shall be by means of either a freehold transfer 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 (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator); or
  - 1.11.2 Any mortgagee or chargee of an owner of any Affordable Housing Unit (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator); 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.
- 1.12 Two of the Affordable Housing Units shall be Wheelchair Accessible Units.

## 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 10 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 10 Working Days of the Occupation of:
  - 1.2.1 the first Housing Unit to be Occupied; and
  - 1.2.2 50% of the Housing Units to be Occupied.

### **2 Primary Education Contribution**

- 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 50% of the Primary Education Contribution prior to the Occupation of the first Housing Unit to be Occupied;
  - 2.1.2 The remaining 50% of the Primary Education Contribution prior to the Occupation of 50% of the Housing Units to be Occupied.

### **3 Secondary Education Contribution**

- 3.1 The Developer will pay the Secondary Education Contribution to the Education Authority such payment to be made by the following instalments:
  - 3.1.1 50% of the Secondary Education Contribution prior to the date of Occupation of the first Housing Unit to be Occupied; and
  - 3.1.2 The remaining 50% of the Secondary Education Contribution prior to the Occupation of 50% of the Housing Units to be Occupied.

### **4 Community Learning Contribution**

- 4.1 The Developer will pay the Community Learning Contribution to the Education Authority such payment to be made prior to the Occupation of the first Housing Unit to be Occupied.

### **5 Libraries Contribution**

- 5.1 The Developer will pay the Libraries Contribution to the Education Authority such payment to be made prior to the Occupation of the first Housing Unit to be Occupied.

### **6 Youth Services Contribution**

- 6.1 The Developer will pay the Youth Services Contribution to the Education Authority such payment to be made prior to the Occupation of the first Housing Unit to be Occupied.

**7 Social Services Contribution**

7.1 The Developer will pay the Social Services Contribution to the Education Authority such payment to be made prior to the Occupation of the first Housing Unit to be Occupied.

**8 Healthcare Contribution**

8.1 The Developer will pay the Healthcare Contribution to the Council such payment to be made prior to the Occupation of the first Housing Unit to be Occupied.

**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.

9.3 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 the date five years from the date of the first Occupation of the first Housing Unit to be Occupied.

**10 Gibson Drive Junction Improvement Scheme Contribution**

10.1 The Developer will pay the Gibson Drive Junction Improvement Scheme Contribution to the Highway Authority such payment to be made prior to the Occupation of the first Housing Unit to be Occupied.

**11 Parks and Gardens Contribution**

11.1 The Developer will pay the Parks and Gardens Contribution to the Council such payment to be made by the following instalments:

11.1.1 50% of the Parks and Gardens Contribution prior to the Occupation of the first Housing Unit to be Occupied; and

11.1.2 The remaining 50% of the Parks and Gardens Contribution prior to the Occupation of 50% of the Housing Units to be Occupied.

**12 Outdoor Sports Contribution**

12.1 The Developer will pay the Outdoor Sports Contribution to the Council such payment to be made by the following instalments:

12.1.1 50% of the Outdoor Sports Contribution prior to the date of Occupation of the first Housing Unit to be Occupied; and

12.1.2 The remaining 50% of the Outdoor Sports Contribution prior to the Occupation of 50% of the Housing Units to be Occupied.

### SCHEDULE 3

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

- 1 **Application of Funds**
- 1.1 When the Council Highway Authority or Education Authority receives sums from the Developer pursuant to any obligations set out in Schedule 2 (save for the Healthcare Contribution) the Council Highway Authority or Education Authority (as appropriate) covenant:
  - 1.1.1 forthwith upon receipt to pay such sums into an interest bearing deposit account 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 Council 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 referred to in paragraph 1.1 of this Schedule have not been used for their respective purposes within ten years from the date of last instalment of a relevant sum where paid in instalments or within 10 (ten) years of payment where the sum is paid in one payment forthwith to repay such sum (or such part thereof) to the party that paid the sum 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.
- 1.3 The Council shall transfer the Healthcare Contribution to the CCG provided that the Council is satisfied that the CCG will spend the contribution for the purposes set out in clause 2.1.18.
- 1.4 If the Council are of the view that the Healthcare Contribution will not be spent by the CCG in accordance with paragraph 1.3 of this Schedule or otherwise such Healthcare Contribution (or any part thereof) has not been transferred to the CCG within one year of receipt from the Developer the Council shall repay such of the Healthcare Contribution as the Council is holding to the person who paid the contribution with accrued interest (if any).

## **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:

[Redacted signature]

Authorized signatory



2142 of 2019

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

\_\_\_\_\_

Authorized signatory

[Redacted signature]

~~Member of the Kent County Council~~



1185-2019

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

Sign here [Redacted] Director  
[Redacted] Secretary (or Director)

ELIZABETH ROCHE  
DIRECTOR

**Cripps Pemberton Greenish**  
[www.crippspg.co.uk](http://www.crippspg.co.uk)

**Tunbridge Wells**  
Number 22  
Mount Ephraim  
Tunbridge Wells  
Kent TN4 8AS

T +44 (0)1892 515 121  
DX 3954 Tunbridge Wells

**Kings Hill**  
23 Kings Hill Avenue  
West Malling  
Kent ME19 4UA

T +44 (0)1732 224 000  
DX 155770 West Malling 2

**London Chelsea**  
45 Cadogan Gardens  
London SW3 2AQ

T +44 (0)20 7591 3333  
DX 35113 Chelsea

**London Cannon Green**  
City Pavilion  
Cannon Green  
27 Bush Lane  
London EC4R 0AA

T +44 (0)20 7930 7879

Cripps Pemberton Greenish is a trading name of Cripps LLP