

DATED

17 July

2019

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE (acting as Landowner)
-and-
THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE (acting as Local Planning Authority)

MEMORANDUM OF UNDERSTANDING
FOR THE DEVELOPMENT OF
PRINCES PARADE PROMENADE, PRINCES PARADE HYTHE KENT
Planning Application Ref No Y17/1042/SH

Legal Services
The District Council of Folkestone and Hythe
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY



This Memorandum of Understanding made on the 17 day of July 2019

between

- 1) THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE (acting as Landowner) of The Civic Centre Castle Hill Avenue Folkestone Kent CT20 2QY (the "Applicant") and
- 2) THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE (acting as Local Planning Authority) of The Civic Centre Castle Hill Avenue Folkestone Kent CT20 2QY (the "Council")

(Jointly the "Parties") sets out the terms of understanding between the Parties to secure the delivery of planning obligations pursuant to the Application made by the Applicant for Development of its Land

RECITALS

- A. The Council is the local planning authority and local housing authority for the area within which the Land is situated
- B. The Application was made by the Applicant to the Council
- C. The Council by its Planning and Licensing Committee at its meeting held on 16 August 2018 resolved that planning permission be granted for the Development subject to conditions and making provision for *inter alia* planning obligations
- D. The Applicant is a person interested in the Land by virtue of being the freehold owner of the Land
- E. Ordinarily planning obligations are undertaken through the use of a deed pursuant to section 106 of the 1990 Act
- F. Both Parties are of the view that the planning obligations pursuant to s 106 in the deed are valid (and in the event that any individual planning obligations are found by a court to be invalid that does not affect the validity of the remaining planning obligations), however in an abundance of caution, the Parties have also entered into this MoU.
- G. As the Application relates to land in the ownership of the Council the Parties agree that a MoU between the Applicant and the Council sufficiently guarantees the carrying out of the planning obligations necessary to mitigate the impact of the Development

- H. The Parties agree that the obligations contained in this MoU are necessary to make the Development acceptable in planning terms, directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)
- I. The Applicant and the Council have agreed to enter into this MoU to regulate the Development and to give effect to the terms of the resolution of the Council's Planning Committee in the event that the s106 planning obligation is found to be invalid
- J. The Applicant is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this MoU will facilitate and be conducive to and be incidental to the Council's functions
- K. The Council is a Local Authority for the purposes of Section 111 of the Local Government Act 1972 and is satisfied that the arrangements made in this MoU will facilitate and be conducive to and be incidental to the Council's functions
- L. This MoU is made pursuant to the powers contained in section 111 of the Local Government Act 1972, section 12 of the Local Government Act 2003, section 1 of the Localism Act 2011 and all other powers so enabling and will secure such planning obligations that would otherwise have been secured through a deed of agreement pursuant to section 106 of the 1990 Act to make the proposed development acceptable in planning terms and the Council shall perform and observe the covenants, obligations, restrictions, and requirements contained within this MOU as if it were a deed made pursuant to Section 106 of the 1990 Act
- M. This MOU shall be appended to the Planning Permission and shall accordingly appear as a local land charge

OPERATIVE CLAUSES

IT IS AGREED as follows

1 DEFINITIONS

- 1.1 Unless the context otherwise requires where in this MoU the following defined terms and expressions are used they shall have the following respective meanings:-

"1990 Act" means the Town and Country Planning Act 1990 (as

amended)

“Affordable Housing”

means Affordable Housing as that term is described and/or defined in Annex 2 of the National Planning Policy Framework 2019 (or such other definition as may be provided in any updated NPPF after that date) and affordable in accordance with the Council’s housing policies as at the date hereof

“Affordable Housing Land”

means each area or areas of land upon which the Affordable Housing Units shall be constructed which shall be fully serviced sites in accordance with all necessary consents and permissions

“Affordable Housing Provider”

means any body or organisation that is permitted by law or other housing provider agreed by the Council and whose main function or aim is to provide and/or manage Affordable Housing including a housing association or housing company or trust registered as a provider with Homes England or its successor or an alternative provider of Affordable Housing or any company or other body approved by Homes England for receipt of Social Housing Grant in each case nominated by the Applicant and approved in writing by the Council

“Affordable Housing Units”

means all the Affordable Housing Units to be constructed on the Affordable Housing Land together with associated parking in accordance with this Deed

“Affordable Rent”

means housing up to 80% of the local open market rents including service charges where applicable.

“Application”

means the application for outline permission (with all matters reserved) and for full planning permission submitted by The District Council of Folkestone and Hythe

(Strategic Development Projects) to the Council to carry out the Development at the Land and given the registered reference number Y17/1042/SH

“Commencement of Development”

means s56(2) of the 1990 Act which provides that development shall be taken to have begun on the earliest date on which any material operation comprised in the Development beings to be carried out and the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words “Commence” and “Commence Development” shall be construed accordingly

“Council’s SPD”

means the Council’s Supplementary Planning Document on Affordable Housing (adopted September 2008)

“Corporate Director – Commercial Services”

means John Bunnett or such other officer as may be designated by the Council for the purpose of discharging the duties and functions of the Corporate Director – Commercial Services or any such replacement directorate

“Corporate Director – Organisational Change”

means Tim Madden or such other officer as may be designated by the Council for the purpose of discharging the duties and functions of the Corporate Director – Organisational Change or any such replacement directorate

“Development”

means the development of land at Princes Parade, comprising an outline application (with all matters reserved) for up to 150 residential dwellings (Use Class C3); up to 1,270sqm of commercial uses including hotel use (Use Class C1), retail uses (Use Class A1) and / or restaurant/cafe uses (Use Class A3); hard and soft landscaped open spaces, including children’s play facilities; surface parking for vehicles and bicycles; alterations to

existing vehicular and pedestrian access and highway layout; site levelling and groundworks; and all necessary supporting infrastructure and services. Full application for a 2,961sqm leisure centre (Use Class D2), including associated parking; open spaces; and children's play facility, and any development permitted under any subsequent planning permission granted under section 73 of the Act

- "Development Management Manager"** means Lisette Patching or such other officer as may be designated by the Council for the purpose of discharging the duties and functions of the Development Management Manager or other such replacement manager
- "Dwelling"** means any residential unit to be erected on the Land pursuant to the Planning Permission
- "Head of Finance"** means Charlotte Spendley or such other officer as may be designated by the Council for the purpose of discharging the duties and functions of the Head of Finance
- "Head of Strategic Development Projects "** means Andy Jarrett or such other officer as may be designated by the Council for the purpose of discharging the duties and functions of the Head of Strategic Development Projects or other such replacement head
- "Heads of Service"** means the Development Management Manager, Head of Finance and Head of Strategic Development Projects.
- "Health Care Contribution"** Means the sum of £151,200 (one hundred and fifty one thousand two hundred pounds) payable as a contribution towards the cost of improving the Oaklands Health Centre In Hythe required to mitigate the impact of the Development
- "Homes England"** means the government's housing accelerator executive non-departmental public body sponsored by the Ministry of

Housing, Communities and Local Government

“Index”	means the All Items Retail Price Index published by the Office for National Statistics or any successor organisation
“Index Linked”	means adjusted by reference to the relevant index pursuant to the provisions of Clause 15
“Interest Rate”	means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment
“Land”	means the land to which this MoU refers is detailed in Schedule 1 and shown for identification purposes only edged red on the Plan
“Management Company”	<p>means a company limited by guarantee</p> <p>(i) that includes within its objects the monitoring maintenance and management of a limited company established for the purposes of maintaining and managing the Open Space Land in accordance with the MMP;</p> <p>(ii) that is not permitted to distribute profits; and</p> <p>(iii) of which owners of the Dwellings (save for occupiers of the Affordable Housing) will be required to be members pursuant to paragraph 2.5(iv) 2.5 of part 2 of Schedule 2</p> <p>or such other organisation as may be approved in writing by the Council such approval not to be unreasonably withheld or delayed</p>
“MMP”	<p>means a Management and Maintenance Plan which shall as a minimum (and without limitation):-</p> <ul style="list-style-type: none">• identify and describe the long term aims and objectives of the management and maintenance of the areas identified in the plan and how this will be achieved.

- prepare and provide a work schedule (including an annual work plan capable of being rolled forward over a 5 year period).
- provide details of the body or organisation responsible for implementation of the MMP and associated works and include details of the legal and funding mechanisms by which the initial aftercare and long-term maintenance of the Open Space Land can be delivered and secured.
- provide for on-going monitoring and remedial measures of the Open Space Land.
- provide for the on-going maintenance of so much of the one metre high splash wall as is located on the Land and forms part of the Development.
- set out (where the aims and objectives of the MMP are not being met) how contingencies and/or remedial action and measures will be identified agreed and implemented so that that the Development still delivers the aims and objectives of the originally approved scheme.

“Monitoring Group”

means the monitoring group set up in accordance with clause 5.2 of this MoU

“MoU”

means this Memorandum of Understanding together with all Schedules and Appendices

“MoU Monitoring Officer”

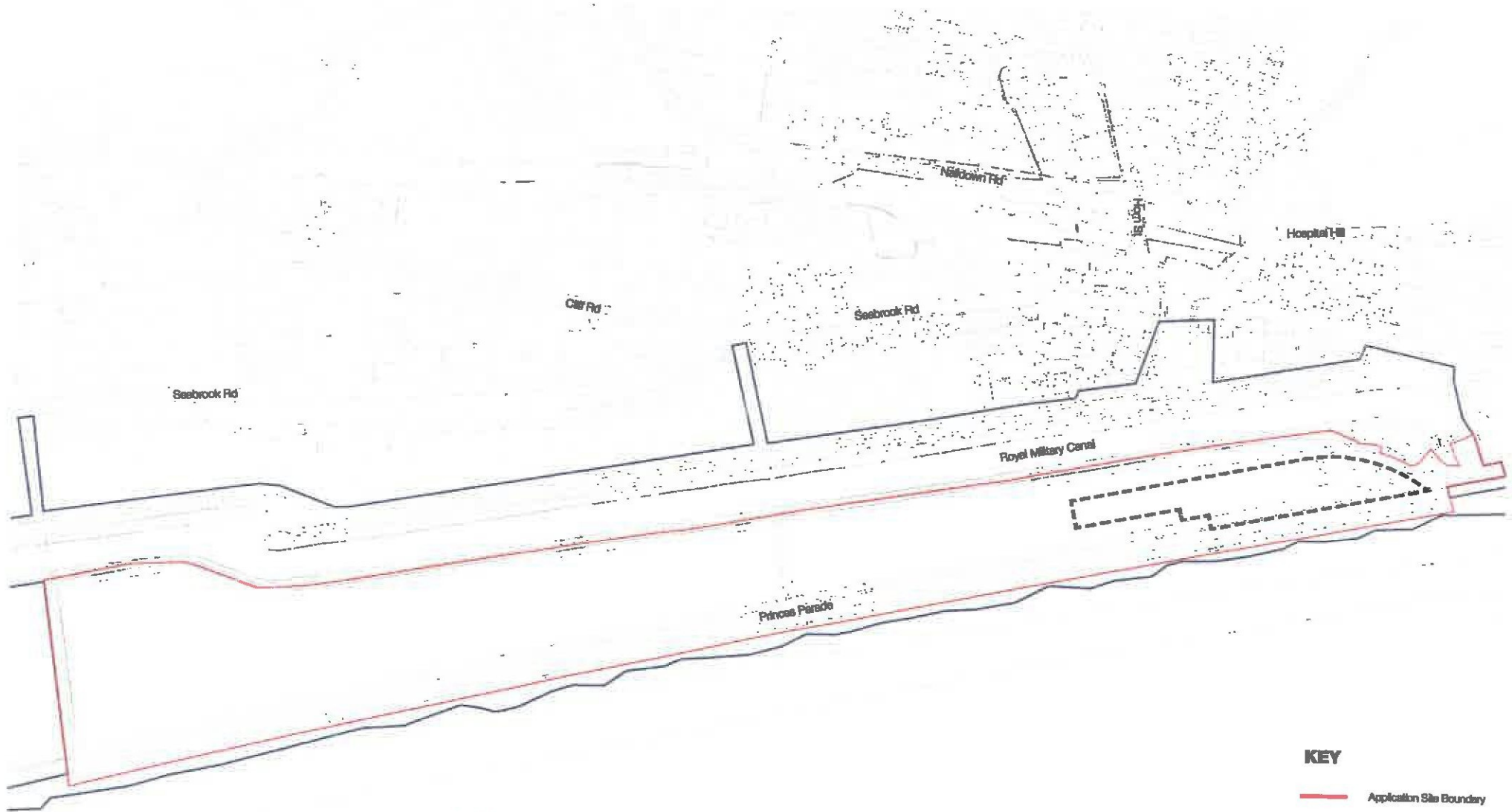
means the Council’s section 106 Monitoring Officer or such other officer as may be lawfully designated by the Council for the purposes of discharging such duties and functions

“Occupy”

means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by

personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed accordingly

- “Open Space Land”** means the land to be identified in the Reserved Matters Application which will be transferred to the Management Company and maintained in accordance with the MMP
- “Open Market Units”** means the units on the Land that are not Affordable Housing Units
- “Plan”** means the plan entitled **“Site Location Plan”** (Drawing PP – ASA - 001) prepared by Tibbalds Planning and Urban Design and dated 7th August 2017 annexed to this MOU
- “Planning Permission”** means outline permission (with all matters reserved) and full planning permission for the Development to be granted pursuant to the Application subject to conditions; and any subsequent planning permission granted under section 73 of the Act
- “Practical Completion”** means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to this MoU or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term **“Practically Complete”** shall be construed accordingly
- “Preparatory Operation”** means an operation or item of work of or connected with or ancillary to
- a) archaeological investigation
 - b) exploratory boreholes and trial pits
 - c) site clearance (including demolition of a building or



KEY

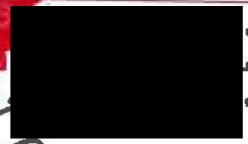
- Application Site Boundary
- Other Land in Ownership of Application
- - - Boundary of Detailed and Outline areas



Princes Parade
Site Location Plan



8924



8925

drawing no. LP 001a
scale 1:2,000 @ A2
date 07-08-2017



structure)

- d) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
- e) the erection of fences and hoardings around the Land and
- f) construction of temporary access and service roads

“Rented Affordable Housing Units”

means rented Affordable Housing owned and managed by an Affordable Housing Provider that has the same characteristics as Social Rented Housing except that it is provided at an Affordable Rent

“Reserved Matters Application”

means the approval of matters reserved under the conditions of the Planning Permission for subsequent approval in accordance with section 92(2) of the 1990 Act

“Section 106 Agreement”

means a deed of agreement made pursuant to section 106 of the 1990 Act to be entered into simultaneously with any future sale of the Land and substantially in the form annexed at Appendix 1 whose purpose is to ensure that all or any covenants obligations restrictions and requirements pursuant to this MoU that remain to be satisfied, or are of an ongoing nature, are so satisfied and or secured (as the case may be) (and more particularly where the obligations relate to the provision of and ongoing occupation restrictions in respect of any Affordable Housing)

“Social Rented Housing”

means Affordable Housing for rent, to be owned and managed by an Affordable Housing Provider for which guideline target rents are determined through the national rent regime

“Shared Ownership

means those Affordable Housing Units that are to be

Units	disposed of by Shared Ownership or other intermediate affordable housing as that term is defined in the National Planning Policy Framework 2019 (or such other definition as may be provided in any updated NPPF after that date) and approved by the Council as a form of Affordable Housing at the time of the submission of the Reserved Matters Application
“VAT”	means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)
“Working Day”	means a day which is not a Saturday, Sunday or bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

Interpretation

- 1.2 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this MoU
- 1.3 The headings in this MoU are for convenience only and shall not be deemed to be part of or taken into consideration in the interpretation of this MoU
- 1.4 Words importing the singular include the plural and vice versa
- 1.5 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 1.6 Words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner
- 1.7 Reference to any Party to this MoU shall include the successor in title to that Party and to any person deriving title through or under that Party and in the case of the Council shall include any successor to its statutory functions

- 1.8 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 1.9 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 1.10 References in this MoU to statutes, bye-laws, regulations, orders and delegated legislation shall include any statute, bye-law, regulation, order, delegated legislation, plans, regulations, permissions and directions amending, re-enacting, consolidating, replacing or made pursuant to the same as current and in force from time to time
- 1.11 In the event of any conflict between the terms conditions and provisions of this MoU and any document attached hereto or referred to herein the terms conditions and provisions of this MoU shall prevail
- 1.12 Any words following the terms including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms
- 1.13 Unless the context otherwise requires, where in this MoU any reference to Council shall mean Council acting through the Corporate Director – Commercial Services and/or Corporate Director – Organisational Change (as the case may be)

2 LEGAL BASIS

- 2.1 This MoU is made pursuant to the powers contained in section 111 of the Local Government Act 1972, section 12 of the Local Government Act 2003, section 1 of the Localism Act 2011 and all other powers so enabling
- 2.2 The covenants obligations restrictions and requirements agreed by the Parties by this MoU
- 2.2.1 are entered into at will
- 2.2.2 are planning obligations for the purposes of the Application
- 2.2.3 relate to the Land

3 CONDITIONALITY

This MoU shall take effect on the date hereof and shall remain in full force and effect unless and until the covenants obligations restrictions and requirements created by this MoU have been discharged to the Monitoring Group's satisfaction

4 COVENANTS AND OBLIGATIONS OF THE PARTIES

- 4.1 The Parties covenant to perform and observe the covenants, obligations, restrictions, and requirements contained herein
- 4.2 This MOU shall be identified as an Informative on the Planning Permission and shall be appended to the Planning Permission
- 4.3 The Applicant confirms that where the Land (or any part thereof) is disposed of (whether by sale or lease) the contract for such disposal shall be conditional upon the transferee or lessee completing such sale or lease simultaneously with the completion of a section 106 agreement pursuant to the 1990 Act for those obligations that remain to be satisfied or are of an ongoing nature at the time of the sale or lease **AND IN ANY EVENT** where the sale or lease involves the disposal of the Affordable Housing Units the terms of the section 106 agreement shall be substantially in the form set out in Appendix 1 to this MoU

5. MONITORING GROUP

- 5.1 As soon as possible following the completion of this MoU but in any event prior to Commencement of Development there shall be established the Monitoring Group and the Applicant shall not Commence Development unless and until the Monitoring Group has been established and has met at least once prior to the Commencement of Development in accordance with the terms of this Paragraph 5 (“**the First Meeting**”)

- 5.2 The Monitoring Group shall comprise as a minimum the following persons

- 5.2.1 the Chair of the Planning and Licencing Committee or in his absence the Vice Chair of the Planning Committee (who shall chair any meeting of the Monitoring Group)
- 5.2.2 a minimum of one ward member of the Council for the area of the Land that is defined in Schedule 1
- 5.2.3 an independent person who is neither an employee nor an elected Councillor of the Council to be appointed by the Council's Audit, Governance and Standards Committee (or its successor or successor to its functions)

5.2.4 the Development Management Manager or their delegate which shall at the very least be a team leader, principle planning officer or senior planning officer employed by or under a contract for services with the Council

5.2.5 the Head of Finance or their suitably qualified delegate which shall at the very least be a senior employee employed by or under a contract for services with the Council

The Monitoring Group's Terms of Reference and Meetings

5.3 The terms of reference of the Monitoring Group shall be

5.3.1 to monitor compliance with the terms of this MoU

5.3.2 to resolve any disputes or differences between the Parties or any of the Heads of Service (as the case may be) touching or concerning any matter arising out of this MoU (SAVE FOR the amount of any contribution payable pursuant to this MoU or the due date of payment) and for the avoidance of doubt the decision of the Monitoring Group shall be final and binding on the Parties or any of the Heads of Service (as the case may be) and

5.3.3 to confirm in writing the discharge of the planning obligations created by this MoU

5.4 The timetable for the meeting of the Monitoring Group shall be set at the First Meeting (save that the timetable shall be capable of amendment at the discretion of the Monitoring Group based on a majority agreeing such amendments) but which shall meet as a minimum prior to

5.4.1 Commencement of Development

5.4.2 Completion of the leisure centre and supporting infrastructure

5.4.3 Practical Completion of the Affordable Housing or the Development (as the case may be)

AND no phase of the Development shall Commence nor be first Occupied nor Completed (as the case may be) unless and until the Monitoring Group has met and approved such Commencement Occupation or Completion (as the case may be)

5.5 The meetings of the Monitoring Group shall not be deemed quorate unless there are at least 5 representatives present, one from each of the categories identified at Clause 5.2.1 to 5.2.5 above

- 5.6 The Council shall ensure that the Monitoring Group is operated on an on-going basis in accordance with the terms of reference set pursuant to Clause 5.3 unless and until the covenants, obligations, restrictions and requirements created by this MoU have been fulfilled or discharged to the Monitoring Group satisfaction **PROVIDED THAT** this shall not occur until the issue of the final Certificate of Practical Completion of the Development pursuant to Paragraph 9
- 5.7 Not less than 5 Working Days prior notice of each meeting of the Monitoring Group shall be given to the members comprising the Monitoring Group and to circulate the agenda to identify matters that are to be discussed and considered

Minutes

- 5.8 The Council shall
- 5.8.1 keep formal written minutes of meetings of the Monitoring Group which minutes shall be circulated to all persons in attendance at the relevant meeting for approval
 - 5.8.2 publish the approved minutes (which approval shall be confirmed at the next meeting of the group) on the Council's publicly accessible planning file under the Application
- 5.9 The Parties shall have due regard to any reasonable requirements and/or recommendations made by the Monitoring Group (as agreed by the majority) in relation to the Development as recorded in the approved minutes

6 FUNDING

As at the date of this MoU the administration of this MoU is considered to be cost neutral but this will be kept under review and reported to the Monitoring Group for a decision in the event of expenditure being incurred

7 MODIFICATION

This MoU is made at-will and may be modified by mutual consent of the authorised signatories **PROVIDED THAT** any modification shall be made in writing and processed by the Council as if it were an application made pursuant to section 106A(1)(b) of the 1990 Act and the agreed modified MoU shall be published on the publicly accessible planning file under the Application with a copy deposited with Local Land Charges

8 DETERMINATION OF THE PLANNING PERMISSION

- 8.1 This MoU shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires prior to Commencement of Development without the consent of the Applicant (such consent to be given by the Head of Strategic Development Projects)
- 8.2 Nothing in this MoU shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission or modification variation or amendment thereof) granted after the date of this MoU

9 NOTICES

- 9.1 Without prejudice to any other notice required to be given pursuant to the terms of this MoU the Applicant acting by the Head of Strategic Development Projects covenants that
- 9.1.1 It shall provide the Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Applicant shall not Commence Development or permit the Commencement of the Development unless and until this notice has been provided to the Council and
- 9.1.2 it shall notify the Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development and
- 9.1.3 it shall provide the Council with no less than 20 Working Days prior notice of the intended date of first Occupation of either the Open Market Units or the leisure centre of the Development and the Applicant shall not Occupy the Development nor permit any Occupation of the Development unless and until this notice has been provided to the Council
- 9.1.4 It shall notify the Council promptly and in any event within 5 Working Days of the actual date of first Occupation of either the Open Market Units or the leisure centre of the Development and
- 9.1.5 It shall provide the Council with no less than 20 Working Days prior notice of the Intended date of Practical Completion of the Affordable Housing and shall notify the Council promptly and in any event within 5 Working Days of the actual date of Practical Completion of the Affordable Housing
- 9.1.6 it shall provide the Council with the final Certificate of Practical Completion of the relevant phase of the Development

9.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this MoU must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications in which case those details shall be substituted for the details provided below

The Council

The Development Management Manager

Address

The District Council of Folkestone and Hythe
Civic Centre
Castle Hill Avenue
Folkestone
Kent CT20 2QY

Reference Ref No Y17/1042/SH Princes Parade
Hythe

With a copy in all cases to

The MoU Monitoring Officer

In the case of those obligations affecting the Council Contributions

The Head of Finance

In the case of those obligations affecting Affordable Housing

The Housing Strategy Manager

The Applicant

The Head of Strategic Development Projects

Address

The District Council of Folkestone and Hythe
Civic Centre

Castle Hill Avenue
Folkestone
Kent CT20 2QY

9.3 Any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction or other communication given pursuant to this MoU shall conclusively be deemed to have been received

9.3.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or

9.3.2 If sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting

9.4 Any notice or request by the Applicant for approval consent certificate direction authority agreement action expression of satisfaction or other communication required pursuant to this MoU shall cite the Clause or Paragraph of the relevant Schedule to this MoU to which such notice or request relates

9.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution

10 CONFIRMATION OF DISCHARGE OF OBLIGATIONS

Where in the opinion of the Applicant any of the provisions of this MoU have been satisfied the Applicant shall be entitled to apply to the Council to call for a meeting of the Monitoring Group to confirm that the relevant covenant obligation or restriction has been satisfied and the Council shall, upon the Monitoring Group being satisfied that the relevant obligation or covenant has been satisfied, as soon as reasonably practicable issue a written confirmation to such effect to the Applicant

11 POWERS OF THE COUNCIL

Nothing contained or implied in this MoU shall fetter prejudice restrict or affect the rights

discretions powers duties responsibilities and obligations of the Council under all and any legislative Instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority

12 SEVERABILITY

If any provision (or part thereof) of this MoU shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

13 CHANGE OF OWNERSHIP AND NEW INTEREST

13.1 The Applicant warrants that

13.1.1 It has full authority to enter into this MoU

13.1.2 it knows of no impediment to the validity of this MoU

13.1.3 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this MoU

13.1.4 it shall make good any loss to the Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so

13.2 The Applicant shall give to the Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this MoU have been discharged such notice to give

13.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and

13.2.2 the nature and extent of the interest disposed of by reference to a plan

13.3 Subject to Clause 4.3 in the event that the Applicant's existing interest in the Land shall be determined (whether by surrender merger forfeiture or otherwise) and the Applicant shall acquire another interest in the Land (written notice of which shall be given to the Council) and the Planning Permission shall have either been implemented or shall remain capable of implementation then the Applicant as the case may be will within twenty-eight (28) days from a written request from the Council execute or procure the execution of a

Memorandum of Understanding on terms mutatis mutandis to the terms of this MoU

14 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default or delay in performing or observing any of the covenants terms or conditions of this MoU shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

15 INDEXATION

15.1 All the financial contributions payable pursuant to this MoU shall be Index Linked

15.2 The Council Contributions payable pursuant to this MoU shall be increased in the same proportion as the percentage increase in the Index between the quarterly index figure immediately preceding the date of this MoU and the quarterly index figure for the quarter immediately preceding the date of actual payment

16 INTEREST

If any sum or amount due under this MoU has not been paid to the Council by the date it is due the Applicant shall pay the Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

17 VAT

17.1 Each amount stated to be payable by one Party to the other under or pursuant to this MoU is exclusive of VAT

17.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this MoU the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

18 AGREEMENTS AND DECLARATIONS

18.1 The Parties agree that

18.1.1 nothing in this MoU constitutes a planning permission or an obligation to grant planning permission and

18.1.2 nothing In this MoU grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

19 DELIVERY

This MoU is delivered on the date written at the start and the provisions of this MoU (other than this Clause which shall be of immediate effect) shall be of no effect until this MoU has been dated

IN WITNESS whereof the Parties hereto have executed this Memorandum of Understanding on the day and year first before written

The COMMON SEAL of THE)
DISTRICT COUNCIL OF)
FOLKESTONE AND HYTHE acting)
as Landowner was affixed to this)
Memorandum of Understanding In)
the presence of)



89 24

Authorised Signatory

The COMMON SEAL of THE)
DISTRICT COUNCIL OF)
FOLKESTONE AND HYTHE acting)
as Local Planning Authority was)
affixed to this Memorandum of)
Understanding in the presence of)



8925



Authorised Signatory

SCHEDULE 1: THE LAND

**The land against which this MoU relates comprises all that land to Princes Parade Promenade
Princes Parade Hythe Kent**

The Applicant is the registered proprietor of the Land with title absolute of all the freehold as the same is shown for the purposes of identification only edged red on the Plan and is registered at the Land Registry under title number **K640682 and **TT67389** subject to the matters in the Charges Registers but otherwise free from encumbrances**

SCHEDULE 2: AFFORDABLE HOUSING

The Applicant's Covenants with the Council

Part 1

AFFORDABLE HOUSING

- 1.** That the Affordable Housing Units on the Site shall comprise 30% of the total number of Dwellings and the Affordable Housing Units shall be transferred to the Affordable Housing Provider in accordance with paragraph 6 below
- 2.** That without public subsidy the Affordable Housing Units shall have a tenure mix of 60% Rented Affordable Housing Units and 40% Shared Ownership Units unless otherwise agreed as part of the Reserved Matters Approval
- 3.** To ensure integration of the Affordable Housing Units with the Open Market Units that the Affordable Housing Units shall be located as agreed in writing by the Council
- 4.** To provide for approval in writing by the Council (prior to the Commencement of Development)
 - 4.1** details of the location property type and size of the Affordable Housing Units within the Land
 - 4.2** details of the Intended Affordable Housing Provider for Affordable Housing Units and the intended mechanisms by which any Shared Ownership Units are to be made available as Affordable Housing (meaning the estimated current market value and consequential likely monthly costs of mortgage and any rent that the Intended Affordable Housing Provider would expect to charge to an occupier of such an Affordable Housing Unit)
- 5.**

5.1 Not to cause or permit the Occupation of more than 50% of the Open Market Units until 50% of the Affordable Housing Units have been completed and transferred to an Affordable Housing Provider on the terms set out in paragraph 6 below:

5.2 Not to cause or permit the occupation of more than 90% of the Open Market Units until 100% of the Affordable Housing Units have been completed and transferred to an Affordable Housing Provider on the terms set out in paragraph 6 below:

6. That each transfer of Affordable Housing Units shall :

6.1 be at a cost that will ensure that the Rented Affordable Housing Units will be let at Affordable Rents and that the Shared Ownership Units will be let at a level that is affordable in accordance with the Council's SPD

6.2 provide a vehicular access, foul and surface water sewers and water, gas, electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense and the transfer shall include all necessary easements to use and maintain the same

7. To deduce a good and marketable freehold title to the Affordable Housing Land and to transfer the Affordable Housing Land with full title guarantee and with vacant possession free of any registered charges

8. The rent for any Rented Affordable Housing Units shall be restricted to a level which does not exceed affordable rents for properties of that size in that location

- 9. The Affordable Housing Units may not be occupied otherwise than by a person who is in need of Affordable Housing as defined by the Council**
- 10. No service charge will apply to the Affordable Housing Units unless all elements of the service charge are eligible for housing benefit or equivalent and the service charge has been approved in writing in advance by the Council**
- 11. The restrictions affecting the Affordable Housing Units shall not apply to:**
 - 11.1 Any mortgagee of an Affordable Housing Unit; or**
 - 11.2 Any owner of a Shared Ownership Unit where that owner has purchased 100% of the equity in that unit; or**
 - 11.3 Any other owner of an Affordable Housing Unit who has exercised a right to buy that unit or their successors in title.**

12. To use reasonable endeavours to secure that any mortgagee of the Affordable Housing Land shall, prior to seeking to dispose of its interest in the Affordable Housing Land pursuant to any default under the terms of its mortgage or charge, give not less than 2 months' prior notice to the Council of its intention to dispose and:

- (a) In the event that the Council responds within 1 month from receipt of the notice indicating that arrangements for the transfer or assignment of the Affordable Housing Land can be made in such a way as to safeguard them as Affordable Housing and to protect the interest of the mortgagee in respect of moneys outstanding under the charge or mortgage then the mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer or assignment;**
- (b) if the Council does not serve a response in the terms described in Sub-Paragraph (a) within 1 month then the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule;**
- (c) if the Council or any other person cannot within 2 months of the date of service of its response under Sub-Paragraph (a) secure such transfer or assignment then provided that the mortgagee shall have complied with its obligations under**

this Paragraph 14 the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule.

Part 2

1 Health Care Contribution

- 1.1 To pay the Health Care Contribution to the Council prior to the Commencement of the Development of the Open Market Units
- 1.2 Not to Commence Development of the Open Market Units without first paying to the Council the Health Care Contribution

2 Management and Maintenance Plan

- 2.1 The Applicant shall submit to the Council for written approval, prior to the Occupation of the first Dwelling, the MMP. The MMP will include a 1:1250 plan showing the location of the Open Space Land.
- 2.2 The Applicant shall manage monitor and maintain (including where necessary carry out such remedial works and measures as may be necessary) in accordance with the provisions of the MMP or any subsequent revision or amendment as may be approved by the Council.

Review of the MMP

- 2.3 The Applicant shall be entitled to submit a replacement or a revised MMP to the Council for approval by the Council (and following such approval the MMP shall take effect as replaced or revised).
- 2.4 On approval the Applicant shall implement the new or revised MMP as approved by the Council.

Disposal or Transfer

- 2.5 The Applicant shall:
 - (i) not transfer the freehold of (or grant a leasehold interest) of any Open Market Units unless the transferee or lessee is under an obligation to the relevant Management Company to become a member of such Management Company and to make a contribution by way of an annual

levy to the cost of long term monitoring maintenance and management of the Open Space Land;

- (ii) ensure that the percentage contributions to such costs payable by transferees or lessees of such Open Market Units once all such Open Market Units have been transferred or leases add up to 100%;
 - (iii) ensure that such annual levy shall be set (and thereafter maintained) at a level that allows the Management Company to pay for the monitoring management and maintenance requirements pursuant to the MMP through the levy charged;
 - (iv) shall ensure that for future transfers of the Open Market Units the transfer documentation shall include a requirements that on transfer the transferee shall be required to become a member of the Management Company in place of the transferor and pay a service charge pursuant to the terms of this paragraph:
- (b) No Open Market Unit shall be first Occupied unless and until the first payment of the annual levy referred to above (or a pro-rata payment in respect of a period of less than a year) has been made to the Management Company in respect of such Open Market Unit.
 - (c) The Applicant shall transfer the freehold interest in the Open Space Land to the Management Company identified in the MMP as being responsible for the long term monitoring maintenance and management of such the area of the Open Space Land prior to Occupation of 50% of the Open Market Units and the Applicant further covenants that no more than 50% of the Open Market Units shall be Occupied unless and until the requirements of this paragraph have been complied with.
 - (d) FOR THE AVOIDANCE OF DOUBT (but subject to the terms of this Deed) on the transfer of all or part of the Open Space Land to a Management Company such Management Company will be responsible for the long-term monitoring maintenance and management of such the area of the Open Space Land in accordance with the terms of this Deed and the approved MMP.

Enforcement of the MMP

2.6 Without prejudice to the Council's powers where there is a breach or non-compliance by the Applicant with any term of the approved MMP for the time being in force or any obligations contained in this schedule the Council may

- (a) (and the Applicant hereby grants authority for the Council and its authorised employees and agents) enter the Open Space Land with staff and contractors plant and equipment and carry out such steps measures or operations on the Land as the Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with and/or to remedy any non-compliance with the approved MMP and
- (b) recover from the Applicant the costs and expenses reasonably incurred by the Council in remedying such non-compliance (which shall be paid within 10 Working Days of the date of notification for payment from the Council and may be charged on the Applicant's interest in the land)

PROVIDED THAT the Council shall (unless otherwise agreed by the Council) give the Applicant not less than 20 Working Days prior notice of its intention to remedy such non-compliance to allow the Applicant an opportunity to remedy the same themselves.

General

- 2.7 The Applicant shall have due regard to any requirements and/or recommendations made by the Council in relation to the drafting and operation of the MMP submitted pursuant to the terms of this Deed and/or any subsequent review or amendment thereto
- 2.8 Any MMP approved pursuant to this Schedule shall be deemed to be incorporated within this Deed and enforceable by Council as part of this Deed.

APPENDIX 1 – S106 AGREEMENT

DATED

201X

THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE

-and –

[Owner]

-and-

[Mortgagee]

DEED OF AGREEMENT

pursuant to

SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

RELATING TO

Princes Parade Promenade Princes Parade Hythe Kent

Planning Application Ref No: Ref No Y17/1042/SH

Legal Services
The District Council of Folkestone and Hythe
Civic Centre
Castle Hill Avenue
Folkestone
Kent
CT20 2QY



THIS DEED OF AGREEMENT is dated the day of

BETWEEN

- 1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of The Civic Centre Castle Hill Avenue Folkestone Kent CT20 (the **"Council"**) and
- 2) • (Company Registration No •) whose registered office is at • (the **"Owner"**) and
- 3) • (Company Registration No •) whose registered office is at • (the **"Mortgagee"**)

(jointly the **"Parties"**) sets out the terms of understanding between the Parties to secure the delivery of planning obligations pursuant to the Application made by the Applicant for Development of its Land

RECITALS

- A. The Council is the local planning authority for the area within which the Land is situated
- B. The Council is the current freehold owner of the Land
- C. The Council as landowner is now desirous of selling the Land and requires the prospective purchaser to enter into this Deed simultaneously with the Land purchase transaction. The land transaction is to be completed before the completion of this Deed
- D. The Owner is a person interested in the Land by virtue of being the purchaser of the freehold **OR** leasehold title of the Land as set out in Schedule 1
- E. [The Mortgagee is a person interested in the Land by virtue of being the proprietor of a registered charge on the Land as set out in Schedule 1]
- F. The Parties agree that the obligations contained in this Deed are necessary to make the Development acceptable in planning terms directly relate to the development and fairly and reasonably relate in scale and kind to the Development in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010
- G. The Owner and the Mortgagee have agreed to enter into this Deed to regulate the Development and to give effect to the terms of the resolution of the Council's Planning Committee to provide for that part of the Development that is to be occupied as Affordable Housing
- H. The Council is a Local Authority for the purposes of Section 111 of the Local Government

Act 1972 and is satisfied that the arrangements made in this Deed will facilitate and be conducive to and be incidental to the Council's functions

- I. This Deed is made pursuant to Section 106 of the 1990 Act and to the extent that any obligations contained in this Deed are not planning obligations for the purposes of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of the Local Government Act 1972 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and all other powers so enabling

IT IS AGREED as follows

1 DEFINITIONS

- 1.1 Unless the context otherwise requires where in this Deed the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by the interpretation provisions contained in Paragraphs 1.1 to the relevant Schedule

"1990 Act" means the Town and Country Planning Act 1990 (as amended)

"Affordable Housing" means Affordable Housing as that term is described and/or defined in Annex 2 of the National Planning Policy Framework 2019 (or such other definition as may be provided in any updated NPPF after that date) and affordable in accordance with the Council's housing policies as at the date hereof

"Affordable Housing Land" means each area or areas of land upon which the Affordable Housing Units shall be constructed which shall be fully serviced sites in accordance with all necessary consents and permissions

"Affordable Housing Provider" means any body or organisation that is permitted by law or other housing provider agreed by the Council and whose main function or aim is to provide and/or manage

Affordable Housing including a housing association or housing company or trust registered as a provider with Homes England or its successor or an alternative provider of Affordable Housing or any company or other body approved by Homes England for receipt of Social Housing Grant in each case nominated by the Owner and approved in writing by the Council

“Affordable Housing Units”

means all the Affordable Housing Units to be constructed on the Affordable Housing Land together with associated parking in accordance with this Deed

“Affordable Rent”

means housing up to 80% of the local open market rents including service charge where applicable.

“Application”

means the application for full planning permission submitted by The District Council of Folkestone and Hythe (Strategic Development Projects) to the Council to carry out the Development at the Land and given the registered reference number 17/1042/SH

“Commencement of Development”

means s56(2) of the 1990 Act which provides that development shall be taken to have begun on the earliest date on which any material operation comprised in the Development begins to be carried out and means the carrying out of a material operation as defined in section 56(4) of the 1990 Act which is not a Preparatory Operation and the words “Commence” and “Commence Development” shall be construed accordingly

“Council's SPD”

means the Council's Supplementary Planning Document on Affordable Housing

“Development”

means the development of land at Princes Parade, comprising an outline application (with all matters reserved)

for up to 150 residential dwellings (Use Class C3); up to 1,270sqm of commercial uses including hotel use (Use Class C1), retail uses (Use Class A1) and / or restaurant/cafe uses (Use Class A3); hard and soft landscaped open spaces, including children's play facilities; surface parking for vehicles and bicycles; alterations to existing vehicular and pedestrian access and highway layout; site levelling and groundworks; and all necessary supporting Infrastructure and services. Full application for a 2,961sqm leisure centre (Use Class D2), including associated parking; open spaces; and children's play facility

"Dwelling"	means any residential unit to be erected on the Land pursuant to the Planning Permission
"Health Care Contribution"	Means the sum of £151,200 (one hundred and fifty one thousand two hundred pounds) payable as a contribution towards the cost of Improving the Oaklands Health Centre in Hythe required to mitigate the impact of the Development
"Homes England"	means the government's housing accelerator executive non-departmental public body sponsored by the Ministry of Housing, Communities and Local Government
"Index"	means the All Items Retail Price Index published by the Office for National Statistics or any successor organisation
"Index Linked"	means adjusted by reference to the relevant index pursuant to the provisions of Clause 18
"Interest Rate"	means 4% per annum above the base lending rate of Lloyds Bank PLC from time to time applicable at the actual date of payment
"Land"	means the land to which this Deed refers is detailed in

Schedule 1 and shown for identification purposes only edged red on the Plan

“Management Company”

means a company limited by guarantee

(i) that includes within its objects the monitoring maintenance and management of a limited company established for the purposes of maintaining and managing the Open Space Land in accordance with the Management Plan;

(ii) that is not permitted to distribute profits; and

(iii) of which owners of the Dwellings (save for occupiers of the Affordable Housing) will be required to be members pursuant to paragraph 2.5 of part 2 of Schedule 2

or such other organisation as may be approved in writing by the Council such approval not to be unreasonably withheld or delayed

“MMP”

means a Management and Maintenance Plan which shall as a minimum (and without limitation):-

- Identify and describe the long term aims and objectives of management and maintenance of the areas identified on the plan and how this will be achieved.
- prepare and provide a work schedule (including an annual work plan capable of being rolled forward over a 5 year period).
- provide details of the body or organisation responsible for implementation of the MMP and associated works and include details of the legal and funding mechanisms by which the initial aftercare and long-term maintenance of the Open Space Land can be delivered and secured.

- provide for on-going monitoring and remedial measures of the Open Space Land.
- provide for the on-going maintenance of so much of the one meter splash wall as is located on the Land and forms part of the Development.
- set out (where the aims and objectives of the MMP are not being met) how contingencies and/or remedial action and measures will be identified agreed and implemented so that that the Development still delivers the aims and objectives of the originally approved scheme.

“Occupy”

means taking beneficial occupation of a building forming part of the Development for any purpose authorised by the Planning Permission but not including occupation by personnel engaged in construction fitting out finishing or decoration of that building nor occupation in relation to site and building security operations and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed accordingly

“Open Space Land”

means the land to be identified at the Reserve Matters stage which will be transferred to the Management Company and maintained in accordance with the MMP

“Open Market Units”

means the units on the Land that are not Affordable Housing Units

“Plan”

means the plan entitled **“Site Location Plan”** (Drawing PP – ASA - 001) prepared by Tibbalds Planning and Urban Design and dated 7th August 2017 annexed to this Deed

“Planning Permission”

means planning permission for the Development to be granted pursuant to the Application subject to conditions

- “Practical Completion”** means the proper issue of one or more certificate(s) of practical completion of any works carried out pursuant to this Deed or as the context may allow any part section or phase thereof by an independent architect civil engineer chartered surveyor or other certifying professional (as the case may be) and the term **“Practically Complete”** shall be construed accordingly
- “Preparatory Operation”** means an operation or item of work of or connected with or ancillary to
- a) archaeological investigation
 - b) exploratory boreholes and trial pits
 - c) site clearance (including demolition of a building or structure)
 - d) diversion decommissioning and/or laying of services for the supply or carriage of water sewerage gas electricity telecommunications or other media or utilities
 - e) the erection of fences and hoardings around the Land and
 - f) construction of temporary access and service roads
- “Rented Affordable Housing Units”** means rented Affordable Housing owned and managed by an Affordable Housing Provider that has the same characteristics as Social Rented Housing except that it is provided at an Affordable Rent
- “Reserved Matters Application”** means the approval of matters reserved under the conditions of the Planning Permission for subsequent approval in accordance with section 92(2) of the 1990 Act
- “Social Rented Housing”** means Affordable Housing for rent to be owned and managed by an Affordable Housing Provider for which guideline target rents are determined through the national

rent regime

“Shared Ownership Units”

means those Affordable Housing Units that are to be disposed of by Shared Ownership or other intermediate affordable housing as that term is defined in the National Planning Policy Framework 2018 (or such other definition as may be provided in any updated NPPF after that date) and approved by the Council as a form of Affordable Housing at the time of the submission of any Reserved Matters Application

“VAT”

means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it)

“Working Day”

means a day which is not a Saturday Sunday bank holiday in England (as defined in paragraph 1 of Schedule 1 to the Banking and Financial Dealings Act 1971) or other public holiday

2 INTERPRETATION

- 2.1 A reference to any Clause Plan Paragraph Schedule Appendix or Recital such reference is a reference to a Clause Plan Paragraph Schedule Appendix or Recital in (or in the case of plans attached to) this Deed
- 2.2 The headings in this Deed are for convenience only and shall not be deemed to be part of or taken into consideration in the Interpretation of this Deed
- 2.3 Words importing the singular include the plural and vice versa
- 2.4 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.5 Words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.6 Reference to any Party to this Deed shall include the successors in title to that Party and

to any person deriving title through or under that Party and in the case of the Council shall include any successor to its statutory functions

- 2.7 Wherever there is more than one person named as a Party and where more than one Party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individual severally
- 2.8 Words denoting an obligation on a Party to do any act matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 2.9 References in this Deed to statutes bye-laws regulations orders and delegated legislation shall include any statute bye-law regulation order delegated legislation plans regulations permissions and directions amending re-enacting consolidating replacing or made pursuant to the same as current and in force from time to time
- 2.10 In the event of any conflict between the terms conditions and provisions of this Deed and any document attached hereto or referred to herein the terms conditions and provisions of this Deed shall prevail
- 2.11 Any words following the terms including include in particular for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act section 111 of the Local Government Act 1972 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 sections 12 and 93 of the Local Government Act 2003 section 1 of the Localism Act 2011 and any other enabling powers
- 3.2 The covenants obligations restrictions and requirements imposed upon the Parties by this Deed
 - 3.2.1 are entered into pursuant to the provisions of section 106 of the 1990 Act
 - 3.2.2 are planning obligations for the purposes of section 106 of the 1990 Act
 - 3.2.3 relate to the Land
 - 3.2.4 are entered into with intent to bind the Owners and the Mortgagee's Interest(s) in the Land as set out in Schedule 1 and each and every part thereof

into whosoever hands the same may come

3.2.5 are enforceable by the Council as local planning authority

3.2.6 are executed by the respective Parties as a Deed

3.3 To the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into by the Council pursuant to the powers contained in section 111 of Local Government Act 1972 section 33 of the Local Government (Miscellaneous Provisions) Act 1982 sections 12 and 93 of the Local Government Act 2003 Section 1 of the Localism Act 2011 and all other powers so enabling

4 LEGAL EFFECT

This Deed takes effect on the date hereof

5 COVENANTS AND OBLIGATIONS OF THE OWNER

5.1 The Owner covenants with the Council to perform and observe the covenants obligations restrictions and requirements contained herein

5.2 The Owner shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Land at all reasonable times for the purposes of verifying whether or not any planning obligations arising under this Deed have been performed or observed **SUBJECT TO** compliance by the Council and its authorised employees and agents at all times with the Owner's site regulations and requirements and health and safety law and good practice

5.3 The Owner covenants to pay before completion of this Deed the Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed whether or not this Deed is delivered in accordance with Clause 23

6 COVENANTS AND OBLIGATIONS OF THE COUNCIL

The Council covenants with the Owner that subject to the Owner carrying out and observing the Owner's covenants obligations restrictions and requirements herein it will perform the Council's covenants as set out herein

7 MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Deed has been entered into by the

Owner with its consent and that the Land shall be bound by the obligations contained in this Deed and that the security of its charge over the Land shall take effect subject to this Deed **PROVIDED THAT** the Mortgagee shall have no liability under this Deed unless it takes possession of the Land or any part of the Land in which case the Mortgagee shall be bound by the provisions of this Deed as a person deriving title from the Owner

8 RELEASE AND EXCLUSIONS

No person shall be liable for breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to the rights of the Council in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest

9 DISPUTES AND EXPERT DETERMINATION

- 9.1 In the event of any dispute or difference between the Parties touching or concerning any matter arising out of this Deed (SAVE FOR the amount of any contribution payable pursuant to this Deed or the due date of payment) such dispute or difference shall be referred to an expert ("the Expert") to be appointed on the application of the Parties by the President (or equivalent person) for the time being of the professional body in England chiefly relevant to such dispute or difference
- 9.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 9.1 within ten (10) Working Days after a written request by one Party to the others to agree to the appointment of an Expert then the question of the appropriate Expert or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of a Party and such a solicitor shall act as an expert and his decision as to the Expert or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne in equal shares
- 9.3 The Expert shall act as an expert and save in case of manifest error his decision shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares

9.4 The Expert shall be required to give notice to each of the Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other Party will be entitled to make a counter written submission within a further ten (10) Working Days in respect of any such submission and supporting material

9.5 Any expert howsoever appointed shall be subject to the express requirement that a decision shall be in writing (and give reasons for his decision) and shall be reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received the last submission or written representation

9.6 Nothing in this Clause 9 shall be taken to fetter or limit the ability of the Council to carry out its functions and duties nor to limit the ability of any of the Parties to refer a dispute to the Courts of England and Wales

10 LOCAL LAND CHARGE

This Deed is a local land charge and shall be registered as such

11 SUCCESSORS IN TITLE

The Owner enters into the obligations set out in this Deed for itself and its successors in title for the benefit of the Council to the intent that the obligations in this Deed shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Land or any part thereof

12 NOTICES

12.1 Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Owner covenants that

12.1.1 it shall provide the Council with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner shall not Commence Development or permit the Commencement of the Development unless and until this notice has been provided to the Council and

12.1.2 It shall notify the Council promptly and in any event within 5 Working Days of the

actual date of Commencement of Development and

- 12.1.3 it shall provide the Council with no less than 20 Working Days prior notice of the intended date of first Occupation of either the Open Market Units or the leisure centre of the Development Occupation of the Development and the Owner shall not Occupy the Development nor permit any Occupation of the Development unless and until this notice has been provided to the Council
- 12.1.4 It shall notify the Council promptly and in any event within 5 Working Days of the actual date of first Occupation of either the Open Market Units or the leisure centre of the Development
- 12.1.5 it shall provide the Council with no less than 20 Working Days prior notice of the intended date of Practical Completion of the Affordable Housing and shall notify the Council promptly and in any event within 5 Working Days of the actual date of Practical Completion of the Affordable Housing
- 12.1.6 it shall provide the Council with the final Certificate of Practical Completion of the relevant phase of the Development
- 12.2 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication to be given under this Deed must be in writing and shall be delivered by hand or sent by pre-paid first class post or other next Working Day delivery service marked for the attention of the person and copied to the person(s) (as the case may be) identified below **SAVE THAT** any of the Parties may by written notice notify the other Parties of an alternative address (which address must be based in England and Wales) for the service of subsequent notices or other written communications In which case those details shall be substituted for the details provided below

**The Council
Address**

The Development Management Manager
The District Council of Folkestone and Hythe
Civic Centre
Castle Hill Avenue
Folkestone
Kent CT20 2QY

Reference Ref No Y17/1042/SH Princes Parade
Hythe

**The Owner
Address**

[]

12.3 Any notice approval consent certificate direction authority agreement action expression of satisfaction or other communication given pursuant to this Deed shall conclusively be deemed to have been received

12.3.1 if delivered by hand on signature of a delivery receipt provided that if delivery occurs before 09h00 on a Working Day the notice will be deemed to have been received at 09h00 on that day and if delivery occurs after 17h00 on a Working Day or on a day which is not a Working Day the notice will be deemed to have been received at 09h00 on the next Working Day or

12.3.2 if sent by pre-paid first class post or other next Working Day delivery service within the United Kingdom at 09h00 on the day 2 Working Days after the date of posting

12.4 Any notice or request by the Owner for approval consent certificate direction authority agreement action expression of satisfaction or other communication required pursuant to this Deed shall cite the Clause or Paragraph of the relevant Schedule to this Deed to which such notice or request relates

12.5 This Clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution

13 POWERS OF THE COUNCIL

Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Council under all and any legislative instrument including statutes by-laws statutory instruments orders and regulations for the time being in force in the exercise of its function as a local authority

14 SEVERABILITY

If any provision (or part thereof) of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions (or such part of the provisions as is still enforceable) shall not in any way be deemed thereby to be affected impaired or called into question

15 RIGHTS OF THIRD PARTIES

The Parties intend that no terms of this Deed may be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Deed

save for the successors in title to the Parties and in the case of the Council the successor to its statutory functions

16 CHANGE OF OWNERSHIP AND NEW INTEREST

15.1 The Owner warrants that

16.1.1 they have full authority to enter into this Deed

16.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land

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

16.1.4 there is no subsisting breach of the terms of any mortgage or legal charges secured on the Land and that (if applicable) all payments due to any mortgagee or chargee are paid as at the date of this Deed

16.1.5 they shall make good any loss to the Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so

16.2 The Owner shall give the Council immediate written notice of any conveyance transfer lease assignment mortgage or other disposition entered into in respect of all or any part of the Land or change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged such notice to give

16.2.1 the name and address of the person to whom the disposition was made (and in the case of a company the full name and registered office address) and

16.2.2 the nature and extent of the interest disposed of by reference to a plan

16.3 In the event that the Owner's existing interest in the Land shall be determined (whether by surrender merger forfeiture or otherwise) and the Owner shall acquire another interest in the Land (written notice of which shall be given to the Council) and the Planning Permission shall have either been implemented or shall remain capable of implementation then the Owner as the case may be will within twenty-eight (28) days from a written request from the Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed

16.4 Subject to Clause 7 the Parties agree that a mortgagee of the Land shall have no liability under this Deed UNLESS it takes possession of the Land or any part of the Land in which case the mortgagee shall be bound by the provisions of this Deed as a person deriving

title from the Owner and the security of its charge over the Land shall take effect subject to this Deed

17 WAIVER

No waiver (whether expressed or implied) by the Council of any breach or default or delay in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or acting upon any subsequent breach or default and no single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

18 INDEXATION

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

18.2 The Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the Index between the quarterly index figure immediately preceding the date of this Deed and the quarterly index figure for the quarter immediately preceding the date of actual payment

19 INTEREST

If any sum or amount due under this Deed has not been paid to the Council by the date it is due the Owner shall pay the Council interest on that amount at the Interest Rate with such interest accruing on a daily basis for the period from the date payment is due to and including the date of payment

20 VAT

20.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT

20.2 If any VAT is at any time chargeable on any supply made by any Party under or pursuant to this Deed the Party making the payment shall pay the other an amount equal to that VAT as additional consideration subject to receipt of a valid VAT invoice

21 AGREEMENTS AND DECLARATIONS

21.1 The Parties agree that

21.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and

21.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function

22 JURISDICTIONThis Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

22.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales

23 DELIVERY

This Deed is delivered on the date written at the start and the provisions of this Deed shall be of no effect until this Deed has been dated

SCHEDULE 1: THE LAND

**The land against which this Deed relates comprises all that land to Princes Parade Promenade
Princes Parade Hythe Kent**

The Owner is the registered proprietor of the Land with title absolute of all the freehold as the same is shown for the purposes of identification only edged red on the Plan and is registered at the Land Registry under title numbers K640682 and TT67389 subject to the matters in the Charges Registers but otherwise free from encumbrances

SCHEDULE 2: AFFORDABLE HOUSING

The Owner's Covenants with the Council

Part 1

AFFORDABLE HOUSING

- 1.** That the Affordable Housing Units on the Site shall comprise 30% of the total number of Dwellings and the Affordable Housing Units shall be transferred to the Affordable Housing Provider in accordance with paragraph 6 below
- 2.** That without public subsidy the Affordable Housing Units shall have a tenure mix of 60% Rented Affordable Housing Units and 40% Shared Ownership Units unless otherwise agreed as part of the Reserved Matters Approval
- 3.** To ensure integration of the Affordable Housing Units with the Open Market Units that the Affordable Housing Units shall be located as agreed in writing by the Council
- 4.** To provide for approval in writing by the Council (prior to the Commencement of Development)
 - 4.1** details of the location property type and size of the Affordable Housing Units within the Land
 - 4.2** details of the Intended Affordable Housing Provider for Affordable Housing Units and the Intended mechanisms by which any Shared Ownership Units are to be made available as Affordable Housing (meaning the estimated current market value and consequential likely monthly costs of mortgage and any rent that the intended Affordable Housing Provider would expect to charge to an occupier of such an Affordable Housing Unit)
- 5.**

5.1 Not to cause or permit the Occupation of more than 50% of the Open Market Units until 50% of the Affordable Housing Units have been completed and transferred to an Affordable Housing Provider on the terms set out in paragraph 6 below:

5.2 Not to cause or permit the occupation of more than 90% of the Open Market Units until 100% of the Affordable Housing Units have been completed and transferred to an Affordable Housing Provider on the terms set out in paragraph 6 below:

6. That each transfer of Affordable Housing Units shall :

6.1 be at a cost that will ensure that the Rented Affordable Housing Units will be let at Affordable Rents and that the Shared Ownership Units will be let at a level that is affordable in accordance with the Council's SPD

6.2 provide a vehicular access foul and surface water sewers and water gas electricity and telecommunications services and all other services necessary for the occupation of each Affordable Housing Unit linking in each case to estate roads sewers and services systems to be constructed and laid as part of the remainder of the Site and connected ultimately to highways and sewers maintainable at public expense and the transfer shall include all necessary easements to use and maintain the same

7. To deduce a good and marketable freehold title to the Affordable Housing Land and to transfer the Affordable Housing Land with full title guarantee and with vacant possession free of any registered charges

8. The rent for any Rented Affordable Housing Units shall be restricted to a level which does not exceed affordable rents for properties of that size in that location

- 9.** The Affordable Housing Units may not be occupied otherwise than by a person who is in need of Affordable Housing as defined by the Council
- 10.** No service charge will apply to the Affordable Housing Units unless all elements of the service charge are eligible for housing benefit or equivalent and the service charge has been approved in writing in advance by the Council
- 11.** The restrictions affecting the Affordable Housing Units shall not apply to:
 - 11.1** Any mortgagee of an Affordable Housing Unit; or
 - 11.2** Any owner of a Shared Ownership Unit where that owner has purchased 100% of the equity in that unit; or
 - 11.3** Any other owner of an Affordable Housing Unit who has exercised a right to buy that unit or their successors in title.
- 12.** To use reasonable endeavours to secure that any mortgagee of the Affordable Housing Land shall prior to seeking to dispose of its interest in the Affordable Housing Land pursuant to any default under the terms of its mortgage or charge give not less than 2 months' prior notice to the Council of its intention to dispose and:
 - (a)** in the event that the Council responds within 1 month from receipt of the notice indicating that arrangements for the transfer or assignment of the Affordable Housing Land can be made in such a way as to safeguard them as Affordable Housing and to protect the interest of the mortgagee in respect of moneys outstanding under the charge or mortgage then the mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer or assignment;
 - (b)** if the Council does not serve a response in the terms described in Sub-Paragraph (a) within 1 month then the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule;
 - (c)** if the Council or any other person cannot within 2 months of the date of service of its response under Sub-Paragraph (a) secure such transfer or assignment then provided that the mortgagee shall have complied with its obligations under

this Paragraph 14 the mortgagee shall be entitled to dispose free of the restrictions set out in this Schedule.

Part 2

1 Health Care Contribution

- 1.1 To pay the Health Care Contribution to the Council prior to the Commencement of the Development of the Open Market Units
- 1.2 Not to Commence Development of the Open Market Units without first paying to the Council the Health Care Contribution

2 Management and Maintenance Plan

- 2.1 The Owner shall submit to the Council for written approval prior to the Occupation of the first Dwelling the MMP. The MMP will include a 1:1250 plan showing the precise location of the Open Space Land.
- 2.2 The Owner shall manage monitor and maintain (including where necessary carry out such remedial works and measures as may be necessary) in accordance with the provisions of the MMP or any subsequent revision or amendment as may be approved by the Council.

Review of the MMP

- 2.3 The Owner shall be entitled to submit a replacement or a revised MMP to the Council for approval by the Council (and following such approval the MMP shall take effect as replaced or revised).
- 2.4 On approval the Owner shall implement the new or revised MMP as approved by the Council.

Disposal or Transfer

- 2.5 The Owner shall:
 - (i) not transfer the freehold of (or grant a leasehold interest) of any Open Market Units unless the transferee or lessee is under an obligation to the relevant Management Company to become a member of such Management Company and to make a contribution by way of an annual

levy to the cost of long term monitoring maintenance and management of the Open Space Land;

- (ii) ensure that the percentage contributions to such costs payable by transferees or lessees of such Open Market Units once all such Open Market Units have been transferred or leases add up to 100%;
 - (iii) ensure that such annual levy shall be set (and thereafter maintained) at a level that allows the Management Company to pay for the monitoring management and maintenance requirements pursuant to the MMP through the levy charged;
 - (iv) shall ensure that for future transfers of the Open Market Units the transfer documentation shall include a requirements that on transfer the transferee shall be required to become a member of the Management Company in place of the transferor and pay a service charge pursuant to the terms of this paragraph:
- (b) No Open Market Unit shall be first Occupied unless and until the first payment of the annual levy referred to above (or a pro-rata payment in respect of a period of less than a year) has been made to the Management Company in respect of such Open Market Unit.
 - (c) The Owner shall transfer the freehold interest in the Open Space Land to the Management Company identified in the MMP as being responsible for the long term monitoring maintenance and management of such the area of the Open Space Land prior to Occupation of 50% of the Open Market Units and the Owner further covenants that no more than 50% of the Open Market Units shall be Occupied unless and until the requirements of this paragraph have been complied with.
 - (d) FOR THE AVOIDANCE OF DOUBT (but subject to the terms of this Deed) on the transfer of all or part of the Open Space Land to a Management Company such Management Company will be responsible for the long-term monitoring maintenance and management of such the area of the Open Space Land in accordance with the terms of this Deed and the approved MMP.

Enforcement of the MMP

2.6 Without prejudice to the Council's powers where there is a breach or non-compliance by the Owner with any term of the approved MMP for the time being in force or any obligations contained in this schedule the Council may

- (a) (and the Owner hereby grants authority for the Council and its authorised employees and agents) enter the Open Space Land with staff and contractors plant and equipment and carry out such steps measures or operations on the Land as the Council considers to be necessary to (without prejudice to the generality of the provision) ensure compliance with and/or to remedy any non-compliance with the approved MMP and
- (b) recover from the Owner the costs and expenses reasonably incurred by the Council in remedying such non-compliance (which shall be paid within 10 Working Days of the date of notification for payment from the Council and may be charged on the Owners interest in the land)

PROVIDED THAT the Council shall (unless otherwise agreed by the Council) give the Owner not less than 20 Working Days prior notice of its intention to remedy such non-compliance to allow the Owner an opportunity to remedy the same themselves.

General

2.7 The Owner shall have due regard to any requirements and/or recommendations made by the Council in relation to the drafting and operation of the MMP submitted pursuant to the terms of this Deed and/or any subsequent review or amendment thereto

2.8 Any MMP approved pursuant to this Schedule shall be deemed to be incorporated within this Deed and enforceable by Council as part of this Deed.

IN WITNESS whereof the Parties hereto have executed this Deed on the day and year first before written

The COMMON SEAL of THE)
DISTRICT COUNCIL OF)
FOLKESTONE AND HYTHE was)
affixed to this Deed in the presence)
of

Authorised Signatory

Signed as a DEED by  in the)
presence of)

Signature

Signature of witness

Name (IN BLOCK CAPITALS)

Address

Executed as a deed by **• LIMITED**)
acting by two directors or a director)
and its secretary])

Director

Director/Company Secretary
(Delete as necessary)

