

DATED

22nd March 2021

TUNBRIDGE WELLS BOROUGH COUNCIL

-and –

THE KENT COUNTY COUNCIL

-and –

OFFICIAL CUSTODIAN FOR CHARITIES

-and-

THE TRUSTEES OF THE BENENDEN ALMSHOUSE CHARITIES

DEED OF AGREEMENT PURSUANT TO
SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990
RELATING TO THE DEVELOPMENT OF
LAND ADJACENT ROTHERMERE CLOSE WALKHURST ROAD BENENDEN
CRANBROOK KENT

Planning Application Ref No19/00822/HYBRID

Mid Kent Legal Services
Tunbridge Wells Borough Council
Mount Pleasant Road
Royal Tunbridge Wells
Kent
TN1 1RS
Ref.:T012905



CONTENTS

CONTENTS	2
RECITALS	4
OPERATIVE PROVISIONS	6
1. Definitions	6
2. Interpretation	10
3. Legal Basis	11
4. Conditionality	12
5. Covenants and Obligations of the Owner	12
6. Covenants and Obligations of the Borough Council and the County Council	13
7. Mortgagee's Consent	13
8. Release and Exclusions	13
9. Determination of the Planning Permission	14
10. Disputes and Expert Determination	14
11. Notices	16
12. Local Land Charge	17
13. Successors in Title	18
14. Powers of the Borough Council	18
15. Severability	18
16. Rights of Third Parties	18
17. Change of Ownership and New Interest	18
18. Waiver	20
19. Indexation	20
20. Interest	21
21. VAT	21
22. Agreements and Declarations	21
23. Jurisdiction	22
24. Delivery	22

Schedule 1: The Land.....	25
Schedule 2: Notices.....	26
Schedule 3: Financial Contributions Payable to the Borough Council.....	28
Schedule 4: Financial Contributions Payable to the County Council.....	31
Schedule 5: Almshouse Dwellings.....	37
Appendix 1: Plan.....	43
Appendix 2: Almshouse Scheme.....	45
Appendix 2.1 Letter of Appointment - model licence.....	47
Appendix 2.2 Drawing 23240C/12.....	49
Appendix 2.3 Drawing 23240C/24 and 23240C/100.....	51
Appendix 3: Charity Scheme.....	53

THIS DEED OF AGREEMENT is dated the 22nd day of March 2021

BETWEEN

- 1) **TUNBRIDGE WELLS BOROUGH COUNCIL** of Mount Pleasant Road Royal Tunbridge Wells Kent TN1 1RS (the "**Borough Council**") and
- 2) **THE KENT COUNTY COUNCIL** of Sessions House County Hall Maidstone Kent ME14 1XQ (the "**County Council**") and
- 3) **OFFICIAL CUSTODIAN FOR CHARITIES** on behalf of **BENENDEN ALMHOUSE CHARITIES** (Charity Number 232743) of The Old Vicarage The Green Benenden Kent TN17 4DL ("**the Owner**")
- 4) **ROBIN DALTON HOLMES** of The Old Vicarage The Green Benenden TN17 4DL, **JANET BEATTIE** of Middle Standen Benenden TN17 4LA, **MARY CRUISE** of 2 Walkhurst Cottages Walkhurst Road Benenden TN17 4DE **JOHN WILLIAM BURBAGE** of Scullsgate Cottage Hinksden Road Benenden TN17 4LD, **COLIN HAYMAN** of Lower Standen Bungalow Standen Street Benenden TN17 4LA, **ARIANWEN NEVE** of Cogger Walkhurst Road Benenden TN17 4AP **ARTHUR BLAIR GULLAND** of Gullands Solicitors 16 Mill Street Maidstone ME 15 6XT and **REV DAVID JAMES COMMANDER** of The Rectory The Green Benenden TN17 4DL being the Trustees of Benenden Almshouse Charities (Charity No. 232743) of The Old Vicarage The Green Benenden Kent TN17 4DL ("**the Trustees**")

RECITALS

- A. The Borough Council is the local planning authority and local housing authority for the area within which the Land is situated and the appropriate statutory body to enforce this Deed for the purposes of Section 106 of the 1990 Act
- B. The County Council is a local planning authority for the purposes of the 1990 Act and is a principal council within the meaning of section 270(1) of the Local Government Act 1972 and is the statutory authority responsible for education local highways libraries youth services community learning and adult social care for the area within which the Land is situated

- C. The Application was made to the Borough Council
- D. The Borough Council by its Planning Committee at its meeting held on 9 September 2020 resolved that planning permission be granted for the Development subject to conditions and the prior completion of this Deed (without which planning permission would have been refused)
- E. The Owner is a person interested in the Land by virtue of being the registered proprietor with freehold title absolute of the Land as set out in Schedule 1 and holds the Land in trust for the Benenden Almshouse Charities

- F. The Trustees are the trustees for the time being of Benenden Almshouse Charities (Charity No. 232743) and under the provisions establishing the Charity and relating to its purposes and administration have the power to enter into covenants on behalf of the Owner and to bind the Owner's freehold interest in the Land in accordance with S106 of the Town and Country Planning Act
- G. The Trustees in the name of and on behalf of the Owner have agreed to enter into this Deed to bind the Land and regulate the Development and to give effect to the terms of the resolution of the Borough Council's Planning Committee hereinbefore recited which Deed may also secure other planning benefits
- H. 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 Regulations 2010
- I. The Borough 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 be conducive to and be incidental to the Borough Council's functions
- J. 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 Borough 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

OPERATIVE PROVISIONS

IT IS AGREED as follows

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 definitions contained in Paragraphs 1.1 to the relevant Schedule(s)

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

“All in Tender Price Index” means the All in Tender Price Index published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors

“Application” means the hybrid planning application submitted to the Borough Council to carry out the Development at the Land and given the registered reference number TW/19/00822/HYBRID

“Borough Council Contribution” means the financial contribution payable to the Borough Council pursuant to Schedule 3 namely the NHS Healthcare Contribution

“Commencement of Development” 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

“County Council Contributions” means the financial contributions payable to the County Council pursuant to Schedule 4 comprising

- a) the Libraries Contribution
- b) the Primary Education Contribution
- c) the Sustainable Transport Contribution

“Deed” means this deed of agreement together with all Schedules and Appendices

“Development” means the erection of 13 dwellings (access not reserved) - and erection of 12 Almshouses (together with accesses, parking, landscaping and drainage) on the Land as set out in the Application pursuant to the Planning Permission

“Dwelling” means any residential unit to be erected on the Land pursuant to the Planning Permission (and approved pursuant to the Reserved Matters Approval) including for the avoidance of doubt the Open Market Dwellings and Affordable Dwellings

“General Building Cost Index” means the General Building Cost Index as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors

“Index Linked” means adjusted by reference to the relevant index pursuant to the provisions of Clause 19

“Interest Rate (Borough Council)” means interest at 4% per annum above the base lending rate of the Bank of England from time to time applicable at the actual date of payment

“Interest Rate (County Council)” means interest at 4% per annum above the base lending rate of the Bank of England from time to time applicable at the actual date of payment

“Land” means the land against which this Deed may be enforced

as detailed in Schedule 1 and shown edged red on the Plan

- “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 for the avoidance of doubt the sale of a any Dwelling shall constitute permitting its occupation and **“Occupation”** **“Occupier”** or **“Occupied”** shall be construed accordingly
- “Owner’s Covenants”** means the Covenants in this Deed made for and on behalf of the Owner by the Trustees which bind the Land and each and every part thereof into whosoever’s hands the same may come
- “Open Market Dwellings”** means those Dwellings for sale on the open market and which are not Almshouse Dwellings
- “Parties”** means the Owner (through the Trustees), the Trustees the Borough Council and the County Council as the context so requires and **“Party”** means any one of them
- “Plan”** means the plan entitled “Site Location Plan” (Drawing No 23240A/0/A) and dated February 2019 annexed as Appendix 1
- “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 (but excluding 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

“Reserved Matters Application” means an application for approval of reserved matters in accordance with the Planning Permission

“Reserved Matters Approval” means an approval given by the Borough Council of a Reserved Matters Application

“Retail Price Index” means the Retail Price Index published by the Office for National Statistics

- “Statutory Undertakers”** means any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator
- “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

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 The Land is owned by the Official Custodian for Charities and held on trust for the Benenden Almhouse Charities and the Owner’s Covenants made in this Deed are made by the Trustees in the name of and on behalf of the Official Custodian for Charities as Owner
- 2.7 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 for the avoidance of doubt the covenants of the Trustees made in this deed on behalf of the Owner shall bind the Owner’s freehold interest in the Land and be enforceable against the

Trustees or where appropriate against the successors in title to the Owner's interest in the Land and any person deriving title to the Land or part thereof and in the case of the Borough Council and the County Council shall include any successor to their respective statutory functions

- 2.8 Reference to any officer of the Borough Council means such officer or such other officer as may be lawfully designated by the Borough Council for the purposes of discharging such duties and functions
- 2.9 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
- 2.10 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
- 2.11 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
- 2.12 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

LEGAL BASIS

- 3.1 This Deed is made pursuant to section 106 of the 1990 Act 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 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 Owner's interest 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 Borough Council and the County Council (as the case may be) 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 Borough Council and the County Council (as the case may be) pursuant to the powers contained in section 111 of 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

CONDITIONALITY

- 4.1 With the exception of this Clause 4 and Clauses 1 2 3 5.2 5.3 and 7 to 24 inclusive (which take effect immediately on the date of this Deed) this Deed is conditional on the grant and issue of the Planning Permission

COVENANTS AND OBLIGATIONS OF THE OWNER

- 5.1 The Trustees for and on behalf of the Owner covenants with the Borough Council and the County Council respectively (as the case may be) to perform and observe the covenants obligations restrictions and requirements contained within this Deed
- 5.2 The Trustees for and on behalf of the Owner covenant to permit the Borough 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 Borough Council and its authorised employees and agents at all times with the site regulations and requirements and health and safety law and good practice
- 5.3 The Trustees on behalf of the Owner covenant to pay before completion of this Deed
 - 5.3.1 the Borough Council's reasonable legal and administrative costs and disbursements in connection with the negotiation preparation and execution of this Deed

5.3.2 the County Council's reasonable legal and administrative costs in connection with the negotiation and execution of this Deed

whether or not this Deed is delivered in accordance with Clause 24

COVENANTS AND OBLIGATIONS OF THE BOROUGH COUNCIL AND THE COUNTY COUNCIL

- 6.1 The Borough Council covenants with the Trustees for and on behalf of the Owner that subject to the carrying out and observance of the Owner's Covenants obligations restrictions and requirements herein it will perform the Borough Council's covenants as set out herein
- 6.2 The County Council covenants with the Trustees for and on behalf of the Owner that subject to the carrying out and observance of the Owner's Covenants obligations restrictions and requirements herein it will perform the County Council's covenants as set out herein

MORTGAGEE'S CONSENT

- 7.1 A mortgagee of 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

RELEASE AND EXCLUSIONS

- 8.1 Save for Clause 5.2 no planning obligations contained in this Deed shall be binding on any Statutory Undertaker with any existing interest in any part of the Land or who acquires an interest in any part of the Land for the purpose of the supply of electricity gas water or sewerage drainage or public telecommunication services
- 8.2 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 Borough Council in relation to any subsisting or any antecedent breach non-performance or non-observance arising prior to parting with such interest

DETERMINATION OF THE PLANNING PERMISSION

- 9.1 Save for Clause 5.3 this Deed 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 Trustees on behalf of the Owner or the successors in title to the Owner
- 9.2 Nothing in this Deed 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 Deed
- 9.3 If the Borough Council agrees following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and apply in equal terms to the new planning permission **UNLESS** the Borough Council in determining the application for the new planning permission (or the Secretary of State determining the section 78 appeal in relation to that application) indicates that consequential amendments are required to this Deed to reflect the impact of the section 73 application in which circumstances a separate deed under section 106 or s.106A of the 1990 Act (as the case may be) will be required to secure relevant planning obligations or other planning benefits relating to the new planning permission **BUT** nothing in this Deed shall in any way fetter the Borough Council's discretion in relation to the section 73 application or the determination thereof

DISPUTES AND EXPERT DETERMINATION

- 10.1 Without prejudice to the rights of the Borough Council or the County Council (as the case may be) to take immediate alternative action 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

- 10.2 In the absence of agreement as to whom to appoint as the Expert or as to the appropriate professional body referred to in Clause 10.1 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
- 10.3 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
- 10.4 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
- 10.5 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
- 10.6 Nothing in this Clause 10 shall be taken to fetter or limit the ability of the Borough 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

NOTICES

11.1 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 Borough Council Tunbridge Wells Borough Council

Address **The Head of Planning Services**
Mount Pleasant Road
Royal Tunbridge Wells
Kent
TN1 1RS

Reference 19/00822/HYBRID

With a copy to **The Section 106 Monitoring Officer**

Where required **The Head of Housing, Health & Environment**

The County Council **The Kent County Council**

Address **Head of Paid Service/Corporate Director of Strategic and Corporate Services**
County Hall
Maidstone
Kent
ME14 1XQ

Reference PH/KEN002:000790

The Owner C/o Robin Dalton Holmes

Address The Old Vicarage The Green Benenden Cranbrook Kent
TN17 4DL

Address

- 11.2 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
- 11.2.1 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
- 11.2.2 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
- 11.3 Any notice or request 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
- 11.4 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

LOCAL LAND CHARGE

- 12.1 This Deed is a local land charge and shall be registered as such
- 12.2 Where any of the provisions of this Deed have been satisfied application may be made to the Borough Council for confirmation to that effect and (subject to the payment of the Borough Council's reasonable costs and charges in connection therewith) upon the Borough Council being satisfied that the relevant obligation or covenant (as the case may be) has been satisfied the Borough Council shall as soon as is reasonably practicable issue a written confirmation to such effect
- 12.3 The Borough Council shall upon written request (and subject to the payment of the

Borough Council's reasonable costs and charges in connection therewith) at any time after all the obligations of the Owner under this Deed have been performed or otherwise discharged and the Borough Council being satisfied that this Deed no longer serves a useful purpose as soon as is reasonably practicable cancel all entries made in the local land charges register in respect of this Deed

SUCCESSORS IN TITLE

13.1 The Trustees for and on behalf of the Owner enter into the obligations set out in this Deed for the benefit of the Borough Council and the County Council to the intent that ~~the obligations in this Deed shall be enforceable not only against the Trustees on behalf of the Owner but also against the successors in title of the Owner and any person claiming through or under the Trustees or the Owner an interest or estate in the Land or any part thereof~~

POWERS OF THE BOROUGH COUNCIL

14.1 Nothing contained or implied in this Deed shall fetter prejudice restrict or affect the rights discretions powers duties responsibilities and obligations of the Borough Council or the County Council (as the case may be) 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

SEVERABILITY

15.1 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

RIGHTS OF THIRD PARTIES

16.1 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

CHANGE OF OWNERSHIP AND NEW INTEREST

17.1 The Trustees on behalf of the Owner warrant that

- 17.1.1 they have full authority to enter into this Deed and to bind the Owner and the Owner's interest in the Land
 - 17.1.2 no person other than the persons identified in Schedule 1 has any legal or equitable interest in the Land and that (save for the legal charge in favour of the Mortgagee) it has not leased mortgaged charged or otherwise created any interest in the Land at the date of this Deed
 - 17.1.3 they know of no impediment to the validity of this Deed
 - 17.1.4 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
 - 17.1.5 they shall make good any loss to the Borough Council as a result of a breach of this warranty within ten (10) Working Days of a request to do so
- 17.2 The Trustees for and on behalf of the Owner covenant that the Borough Council shall be given 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
- 17.2.1 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
 - 17.2.2 the nature and extent of the interest disposed of by reference to a plan
- 17.3 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 Borough Council) and the Planning Permission shall have either been Implemented or shall remain capable of Implementation then the Trustees on behalf of the Owner as the case may be will within twenty-eight (28) days from a written request from the Borough Council execute or procure the execution of another Deed on the same terms mutatis mutandis as this Deed
- 17.4 In the event of the Borough Council considering it appropriate to note the provisions of this Deed against the title to the Land at H M Land Registry the Owner (and

Mortgagee) hereby consents

WAIVER

- 18.1 No waiver (whether expressed or implied) by the Borough Council or the County Council (as the case may be) 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 Borough Council or the County Council (as the case may be) 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

INDEXATION

- 19.1 All the financial contributions payable pursuant to this Deed shall be Index Linked
- 19.2 The Borough Council Contribution payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index between the quarterly index figure immediately proceeding the Committee Resolution of 9 September 2020 and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due
- 19.3 The following County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the General Building Cost Index from October 2016 (Index 328.3) and the monthly index figure for the month of the date of the payment becoming due
- 19.3.1 the Libraries Contribution
- 19.3.2 the Primary Education Contribution
- 19.4 The following County Council Contributions payable pursuant to this Deed shall be increased in the same proportion as the percentage increase in the All in Tender Price Index from October 2016 (Index 328.3) and the quarterly index figure for the quarter immediately preceding the date of the payment becoming due
- 19.4.1 the Sustainable Transport Contribution
- 19.5 Where reference is made to any index in this Deed and that index ceases to exist or

is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) issued or caused to be issued from time to time by the Building Costs Information Service Royal Institution of Chartered Surveyors or other appropriate body and as may commonly be used in place of that index and as approved by the Borough Council or the County Council (as the case may be) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the Borough Council or the County Council (as the case may be) shall approve

INTEREST

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

VAT

- 21.1 Each amount stated to be payable by one Party to the other under or pursuant to this Deed is exclusive of VAT
- 21.2 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

AGREEMENTS AND DECLARATIONS

- 22.1 The Parties agree that
- 22.1.1 nothing in this Deed constitutes a planning permission or an obligation to grant planning permission and
- 22.1.2 nothing in this Deed grants planning permission or any other approval consent or permission required from the Borough Council or the County

Council (as the case may be) in the exercise of any other statutory function

JURISDICTION

- 23.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England
- 23.2 It is hereby agreed that the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales
- ~~23.3 The Trustees of behalf of the Owner irrevocably authorise Robin Dalton Holmes to accept service of all legal process arising out of or connected with this Deed and service on the said Robin Dalton Holmes shall be deemed to be good service on the Owner~~

DELIVERY

- 24.1 This Deed is delivered on the date written at the start and the provisions of this Deed (other than this Clause and Clause 5.3 which shall be of immediate effect) shall be of no effect until this Deed has been dated

CHARITIES ACT

- 25.1 The Land is held in trust for Benenden Almshouse Charities, a non-exempt charity, and this Deed is not one falling within Section 117(3) of the Charities Act 2011 so that the restrictions on dispositions imposed by Sections 117-121 of the Charities Act apply
- 25.2 The Trustees being the persons who have the general conduct and management of its administration certify that:-
- 25.2.1 They have power under the provisions establishing the Charity and regulating its purposes and administration to effect this Deed; and
- 25.2.2 They have complied with this provisions of Sections 117-121 of the Charities Act 2011 so far as applicable
- 25.2.3 They have authority to bind the Owner's interest in the Land in accordance with S106(6) of the 1990 Act so that the obligations pass

to successor's in title to the Owner's interest in the Land or any part thereof

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

The COMMON SEAL of)
TUNBRIDGE WELLS BOROUGH)
COUNCIL was affixed to this Deed)
in the presence of)



Charlotte Valmond

No. 390

Authorised Signatory

The COMMON SEAL of **THE KENT**)
COUNTY COUNCIL was affixed to)
this Deed in the presence of)
TRISTAN GOFFREY)



Tristan Goffrey

197-2021

Authorised Signatory

Signed as a DEED on behalf of the)
Trustees of Benenden Almshouse)
Charities in the name of and on)
behalf of The Official Custodian for)
Charities by)
ROBIN DALTON HOLDIES

one of their number under an authority conferred pursuant to Section 333 of the Charities Act 2001 in the presence of

Robin Dalton Holdies

Signature

Merlyn Wootton

Signature of witness

Name (IN BLOCK CAPITALS)

MERLYN WOOTTON
Address

15 GUNTER CLOSE
HANKHURST
CRANBROOK
KENT. TN18 4FE.

)
)
)

Signed as a DEED on behalf of the)
Trustees of Benenden Almshouse)
Charities in the name of and on
behalf of The Official Custodian for
Charities by

JOHN WILLIAM BURBAGE

one of their number under an
authority conferred pursuant to
Section 333 of the Charities Act
2001 in the presence of

Signature

C.W.E. Hume

Signature of witness

Name (IN BLOCK CAPITALS) CHARLES WILLIAM EDWARD HUME

Address

UPPER SCULSGATE COTTAGE
HINKSDEN ROAD,
BENENDEN,
KENT TN17 4LE

)
)
)

SCHEDULE 1: THE LAND

The land against which this Deed is enforceable comprises all that land and premises adjacent to Feoffee Cottages, Walkhurst Road, Benenden, Cranbrook TN17 4DR outlined in red on the Plan of which the Owner is the registered proprietor of the freehold registered at the Land Registry under title number K978026 held in trust on behalf of the Trustees

SCHEDULE 2: NOTICES

Without prejudice to any other notice required to be given pursuant to the terms of this Deed the Trustees for and on behalf of the Owner covenant :

Commencement Notification

- 1 that the Borough Council shall be provided with no less than 20 Working Days prior notice of the intended date of Commencement of Development and the Owner (or Trustees on behalf of the Owner) shall
 - 1.1 not Commence Development unless and until this notice has been provided to the Borough Council and
 - 1.2 notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Commencement of Development

Occupation Notification

- 2 to provide the Borough Council and County Council with no less than 10 Working Days prior notice of the intended date of Occupation of the Development and
 - 2.1 not to Occupy the Development unless and until this notice has been provided to the Borough Council
 - 2.2 to notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of the Development
 - 2.3 to provide the Borough Council and County Council with no less than 10 Working Days prior notice of the intended date of Occupation of more than fifty percent (50%) of the Open Market Dwellings on the Development and
 - 2.4 not to Occupy more than fifty percent (50%) of the Open Market Dwellings unless and until this notice has been provided to the Borough Council
 - 2.5 to notify the Borough Council promptly and in any event within 5 Working Days of the actual date of Occupation of more than fifty percent (50%) of the Open Market Dwellings

Completion Notification

- 3 to provide the Borough Council with the final Certificate of Practical Completion of

the Development

SCHEDULE 3: FINANCIAL CONTRIBUTIONS PAYABLE TO THE BOROUGH COUNCIL

1 Interpretation of this Schedule

1.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

“NHS Healthcare Contribution” means a contribution in the sum of £360 per person where the total contribution shall be calculated in accordance with the following formula

$$(D1 + D2 + D3 + D4 + D5) \times £360 = \text{£NHS Index Linked}$$

WHERE (AS APPLICABLE)

D1 is the total number of 1 bed Dwellings be provided pursuant to the Planning Permission and Reserved Matters Approval multiplied by 1.4 persons (being the NHS predicted occupancy rate for a 1 bed unit)

D2 is the total number of 2 bed Dwellings to be provided pursuant to the Planning Permission and Reserved Matters Approval multiplied by 2 persons (being the NHS predicted occupancy rate for a 2 bed unit)

D3 is the total number of 3 bed Dwellings to be provided pursuant to the Planning Permission and Reserved Matters Approval multiplied by 2.8 persons (being the NHS predicted occupancy rate for a 3 bed unit)

D4 is the total number of 4 bed Dwellings to be provided pursuant to the Planning Permission and Reserved Matters Approval multiplied by 3.5 persons (being the NHS predicted occupancy rate for a 4 bed unit)

D5 is the total number of 5 (or more) Dwellings to be provided pursuant to the Planning Permission and

Reserved Matters Approval multiplied by 4.8 persons
(being the NHS predicted occupancy rate for a 5 (or
more) bed unit)

AND

£NHS Index Linked is the NHS Healthcare
Contribution (Index Linked) payable

**“NHS Kent and Medway
CCG”** means the NHS Kent and Medway Clinical
Commissioning Group Kent House 81 Station Road
Ashford Kent TN23 1PP which is a statutory body
established under the Health and Social Care Act 2012
which have the function of commissioning services for
the purposes of the health service in England and are
treated as NHS bodies for the purposes of the National
Health Service Act 2006 or its successor in title or
successor to its statutory functions

**“NHS Healthcare
Facilities”** means use towards the relocation of the three existing
general medical practices in Cranbrook, being Orchard
End Surgery, Crane Park Surgery and Old School
Surgery to a sustainable relocated medical practice
serving Cranbrook (which for the avoidance of doubt
may include professional and other fees and
investigative works and studies reasonably incurred
and/or undertaken by NHS Kent and Medway CCG)

AND in the event that any of the above beneficiaries
cease to exist or have merged practices into a primary
healthcare facility then that primary healthcare facility
shall take the benefit of the NHS Healthcare
Contribution provided that the primary healthcare
facility services some or all of the healthcare

requirements of the occupiers of the Development

2 NHS Healthcare Contribution

- 2.1 The Trustees for and on behalf of the Owner covenant to pay to the Borough Council fifty percent (50%) of the NHS Healthcare Contribution before occupation of the Open Market Dwellings
- 2.2 The Trustees for and on behalf of the Owner covenant not to Occupy the Open Market Dwellings unless and until fifty percent (50%) of the NHS Healthcare Contribution has been paid to the Borough Council
- 2.3 The Trustees for and on behalf of the Owner covenant to pay to the Borough Council the remaining fifty percent (50%) of the NHS Healthcare Contribution before occupation of more than fifty percent (50%) of the Open Market Dwellings
- 2.4 The Trustees for and on behalf of the Owner covenant not to Occupy more than fifty percent (50%) of the Open Market Dwellings unless and until the full NHS Healthcare Contribution has been received by the Borough Council
- 2.5 The Borough Council shall not transfer the NHS Healthcare Contribution (or any part thereof) to NHS Kent and Medway CCG unless the Borough Council is satisfied that NHS Kent and Medway CCG will spend the contribution on the NHS Healthcare Facilities
- 2.6 If the Borough Council are of the view that the NHS Healthcare Contribution will not be spent in accordance with Paragraph 2.5 the Borough Council shall repay such of the NHS Healthcare Contribution as the Borough Council is holding after a period of ten years from the date of receipt of the Notification of Practical Completion of the Development pursuant to paragraph 3 of Schedule 2 to the person who paid the contribution with accrued interest (if any) but less any tax that may be payable thereon and the Borough Council's administrative expenses

SCHEDULE 4: FINANCIAL CONTRIBUTIONS PAYABLE TO THE COUNTY COUNCIL

3 Interpretation of this Schedule

3.1 Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

“Applicable Flat” means those Dwellings comprising flats but excluding Applicable Houses and those flats (if any) of less than 56sqm GIA and excluding sheltered accommodation

“Applicable House” means all Dwellings but excluding Applicable Flats and those Dwellings (if any) of less than 56sqm GIA and excluding sheltered accommodation

“GIA” means Gross Internal Area as measured in accordance with the ‘International Property Measurement Standards: Residential Buildings (IPMS 2 – Residential (Internal))’ (September 2016) or any amendment update or variation thereto or any subsequent replacement thereof or such other standard as may be approved by the Royal Institution of Chartered Surveyors (RICS)

“Libraries Contribution ” means a contribution in the sum of £354.12 per Dwelling where the total contribution shall be calculated in accordance with the following formula

$$D \times \text{£}354.12 = \text{£LC Index Linked}$$

WHERE

al
D is the number of Dwellings to be provided pursuant to the Reserved Matters Approval ^{Planning Permission and the}

£LC Index Linked is the Libraries Contribution (Index

Linked) payable

“Library Facilities”

means additional space and library books at Cranbrook Cultural Hub to meet the additional demand to borrow books generated by the people who will reside in the Dwellings

“Primary Education Contribution”

means the sum of

a) £3324.00 per Applicable House and

b) £831.00 per Applicable Flat

(as the case may be) where the total contribution [shall be calculated in accordance with the following formula

$$(AH \times \pounds 3324.00) + (AF \times \pounds 831.00) = \pounds PEC \text{ Index Linked}$$

WHERE

W

AH is the number of Applicable Houses to be provided pursuant to the ^{Planning Permission and the} Reserved Matters Approval

W

AF is the number of Applicable Flats to be provided pursuant to the ^{Planning Permission and the} Reserved Matters Approval

£PEC Index Linked is the Primary Education Contribution (Index Linked) payable

“Primary Education Facilities”

means expansion at Benenden Primary School in order to accommodate the additional Primary school pupils arising from the occupation of the Dwellings (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

“Sustainable Transport Contribution”

means a contribution in the sum of £1000 per Dwelling where the total contribution shall be calculated in

accordance with the following formula

$$D \times \text{£}1000 = \text{£HC Index Linked}$$

WHERE

W **D** is the number of Dwellings to be provided pursuant to the ^{Planning Permission and the} Reserved Matters Approval

£HC Index Linked is the Highways Contribution (Index Linked) payable

“Sustainable Transport Contribution Purpose”

means improvement of public transport services by improving the bus services to larger villages such as Cranbrook (which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council)

1 Libraries Contribution

- 1.1 The Trustees for and on behalf of the Owner covenant to pay to the County Council fifty percent of the Libraries Contribution before Occupation of the Open Market Dwellings
- 1.2 The Trustees for and on behalf of the Owner covenant not to Occupy the Open Market Dwellings unless and until
 - 1.2.1 the first fifty percent (50%) of the Libraries Contribution has been paid to the County Council and
 - 1.2.2 the Borough Council has been notified of this payment
- 1.3 The Trustees for and on behalf of the Owner covenant to pay to the County Council the final fifty percent (50%) of the Libraries Contribution before Occupation of more than fifty percent (50%) of the Open Market Housing Dwellings

- 1.4 The Trustees for and on behalf of the Owner covenant not to Occupy more than fifty percent (50%) of the Open Market Housing Dwellings unless and until
- 1.4.1 the final fifty percent (50%) of the Libraries Contribution has been paid to the County Council
- 1.4.2 The Borough Council has been notified of the final payment
- 1.5 The County Council covenants with the Trustees for and on behalf of the Owner that it shall apply the Libraries Contribution as a contribution towards the Library Facilities and not to use the Libraries Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.2 of the Deed as if it were part of the principal sum paid
- 1.6 In the event that all or any part of the Libraries Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within ten (10) years from the date of Practical Completion of the Development as a whole (as notified to the County Council pursuant to Paragraph 3 of Schedule 2 to this Deed) the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

2 Primary Education Contribution

- 2.1 The Trustees for and on behalf of the Owner covenant to pay to the County Council fifty percent (50%) of the Primary Education Contribution before Occupation of the Open Market Dwellings
- 2.2 The Trustees for and on behalf of the Owner covenant not to Occupy the Open Market Dwellings unless and until
- 2.2.1 fifty percent (50%) of the Primary Education Contribution has been paid to the County Council and
- 2.2.2 the Borough Council has been notified of this payment

- 2.3 The Trustees for and on behalf of the Owner covenant not to Occupy more than fifty percent (50%) of the Open Market Dwellings unless and until
- 2.3.1 The final fifty percent (50%) of the Primary Education Contribution has been paid to the County Council and
- 2.3.2 the Borough Council has been notified of this payment
- 2.4 ~~it shall apply the Primary Education Contribution as a contribution towards the~~ The County Council covenants with the Trustees for and on behalf of the Owner that Primary Education Facilities and not to use the Primary Education Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.2 of the Deed as if it were part of the principal sum paid by the Owner
- 2.5 In the event that all or any part of the Primary Education Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within ten (10) years from the date of Practical Completion of the Development as a whole (as notified to the County Council pursuant to Paragraph 3 of Schedule 2 to this Deed) the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

3 Sustainable Transport Contribution

- 3.1 The Trustees for and on behalf of the Owner covenant to pay to the County Council the Sustainable Transport Contribution before the Commencement of Development. The Trustees for and on behalf of the Owner covenants that it shall not Commence Development unless and until:
- 3.1.1 the Sustainable Transport Contribution has been paid to the County Council; and
- 3.1.2 the Trustees for and on behalf of the Owner has notified the Borough Council

of this payment.

- 3.2 The County Council covenants with the Trustees for and on behalf of the Owner that it shall apply the Sustainable Transport Contribution as a contribution towards the Sustainable Transport Contribution Purpose or for such other purposes for the benefit of the Development as the Owner and the County Council may (in consultation with the Borough Council) otherwise agree in writing and not to use the Sustainable Transport Contribution otherwise than for the purposes for which it was paid **PROVIDED THAT** for the avoidance of doubt the County Council shall be entitled to treat any accrued interest (if any) or any interest payable under Clause 20.2 of the Deed as if it were part of the principal sum paid by the Owner
- 3.3 In the event that all or any part of the Sustainable Transport Contribution remains unspent or has not been allocated or committed or used for the purpose for which it was paid within ten (10) years from the date of Practical Completion of the Development as a whole (as notified to the County Council pursuant to Paragraph 3 of Schedule 2 to this Deed) and the County Council covenants on written request from the person that made such payment to repay such sum or amount (or such part thereof) to the person who paid the contribution together with any accrued interest (if any) but less any tax that may be payable thereon and the County Council's administration expenses

SCHEDULE 5: ALMSHOUSE DWELLINGS

1. Interpretation of this Schedule

1.1. Unless the context otherwise requires where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings and (where applicable) be supplemented by Clause 1.1 and Paragraph 1.1 of the other relevant Schedules

- “Almshouse Dwellings”** means the 12 Almshouses to be built on the Almshouse Land and to be owned and managed by the Charity in accordance with the Charity Scheme and permanently available to local qualifying persons in accordance with the Charity Scheme
- “ Affordable Housing”** Housing for sale or rent available to persons in Housing Need and which are to be made permanently available to such persons nominated by the Borough Council
- “Almshouse Land”** means those plots on the Land as identified in the Almshouse Scheme on which the Almshouse Dwellings will be constructed and provided
- “Almshouse Scheme”** means the scheme for the provision of the Almshouse Dwellings provided by the Trustees on behalf of the Owner and attached at APPENDIX 2 which includes
- Appendix 2.1-The model licence entitled “Letter of Appointment” to be completed with the persons who are to occupy the Affordable Dwellings together with the associated example model tenant handbook
 - Appendix 2.2-Drawing 23240C/12 Revision A showing the location, type and size of each of the

Alms House Dwellings on the Land

- Appendix 2.3 Drawing 23240C/24 and 23240C /100 showing the two (one bedroom) Almshouse Dwellings that are to be built to fully wheelchair accessible standards

“Allocations Scheme”	means the Borough Council’s published scheme of allocations presently contained in the Borough Council’s document entitled “Housing Allocations Policy 2013”) (Amended March 2016) or any amendment update or variation thereto or any subsequent replacement thereof
“Charity”	means the Benenden Almshouse Charities as defined in the Charity Scheme
“Charity Scheme”	means the scheme regulating the Benenden Almshouse Charity as lawfully applied a copy of which is attached at Appendix 3 and any subsequent update or replacement thereof
“Housing Register and Development Manager”	means the Council’s Housing Register and Development Manager or such other officer as may be lawfully designated by the Council for the purposes of discharging his duties and functions
“Housing Need”	means the requirement by a person for social housing allocation in accordance with the Borough Council’s Allocations Scheme
“Part M4(2)”	means Part M4(2) Category 2: Accessible and adaptable dwellings of Schedule 1 to the Building

Regulations 2010 as supported by "Approved Document M: Access to and use of buildings, volume 1: Dwellings" as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

"Part M4(3)"

means Part M4(3) Category 2: Wheelchair user dwellings of Schedule 1 to the Building Regulations 2010 as supported by "Approved Document M: Access to and use of buildings, volume 1: Dwellings" as such approved document may be amended updated or replaced from time to time or such other equivalent standard as approved by the Council

"Registered Provider"

means any person body or entity which is registered with the HE as a provider of social housing in accordance with section 80(2) and chapter 3 of the Housing and Regeneration Act 2008 (including its successors and assigns from time to time)

2. General Provisions

- 2.1. The Trustees for and on behalf of the Owner covenant to construct and deliver the Almshouse Dwellings on the Almshouse Land in accordance with the Almshouse Scheme and the other provisions of this Schedule
- 2.2. The Trustees for and on behalf of the Owner acknowledge and covenant that the Almshouse Dwellings are provided on the Land in lieu of the Council's usual affordable housing policy requirement
- 2.3. The Trustees for and on behalf of the Owner covenant that
 - 2.3.1. the Almshouse Dwellings are to be constructed and delivered to Part M4(2) standards except that;
 - 2.3.2. for the Almshouse Dwellings identified in the Almshouse Scheme as fully wheelchair accessible which shall be constructed and delivered by the Owner in accordance with Part M4(3)
- 2.4. The Trustees for and on behalf of the Owner covenant that the Almshouse Dwellings shall be Practically Completed within 24 calendar months of the date of Commencement of the Development

- 2.5. The Trustees for and on behalf of the Owner covenant that the Almshouse Dwellings shall not be Occupied or used for any other purpose other than as Almshouses in accordance with the Charity Scheme except as provided for in paragraph 2.6 below.
- 2.6. The Charity shall remain the Owner of each of the Almshouse Dwellings and shall not transfer, lease, or assign the Almshouse Dwellings or the Almshouse Land unless the Council provides its written consent to a transfer, lease or assignment to a Registered Provider for the provision of Affordable Housing to those in Housing Need with nomination rights granted to the Borough Council in accordance with the Borough Council's published Allocations Scheme and a deed of modification to this deed is completed
-

3. Delivery of the Affordable Dwellings

- 3.1. Prior to Occupation of any of the Open Market Dwellings the Trustees for and on behalf of the Owner shall ensure that

3.1.1 all of the Almshouse Dwellings have been constructed on the Land and Practically Completed in accordance with the Planning Permission and covenants and obligations in this Schedule (a copy of the Certificate of Practical Completion shall be provided to the Strategic Housing and Health Manager with a copy to the Section 106 Monitoring Officer) **AND** the Trustees for and on behalf of the Owner covenant that no Open Market Dwellings shall be Occupied unless and until the provisions of this Paragraph have been complied with

3.1.2 The Trustees for and on behalf of the Owner has granted to the Borough Council the right to nominate suitable households to the Almshouse Dwellings in accordance with the Borough Council's published Allocations Scheme and the provisions of this Deed

4. Notice of Vacancies

- 4.1 The Trustees for and on behalf of the Owner shall provide the Housing Register and Development Manger with 10 working days notice of any vacancies and the Trustees will consider the nominations for occupation of the Alms Houses along with any other

applicants in accordance with the Charity Scheme

5. Miscellaneous Provisions

5.1 The Trustees for and on behalf of the Owner covenant that prior to Practical Completion of the Affordable Dwellings

5.1.1 all public highways (if any) and public sewerage and drainage serving the Affordable Dwellings shall be in place and shall meet all statutory requirements for such public sewerage and drainage including any build over consents or agreements that might be required

5.1.2 all private roads footways and footpaths (if any) serving the Affordable Dwellings shall be in place and constructed to an adoptable standard

5.1.3 all private sewage and drainage pipes channels and gutters and all mains water gas and electricity pipes and cables serving the Affordable Dwellings shall be constructed laid connected operational and serviceable

