

DATED

2014

(1) GRAVESHAM BOROUGH COUNCIL

(2) QUEENRIDGE PROPERTIES LIMITED

(3) ANGLO IRISH ASSET FINANCE PLC

AGREEMENT

made pursuant to Section 106 of the Town & Country Planning Act 1990 Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 relating to land between West Street, Bath Street, Royal Pier Road and Queen Street, Gravesend, Kent

SHOOSMITHS

3 Hardman Street
Spinningfields
Manchester
M3 3HF
(Ref. jumpk.236170.2)

THIS DEED is made the _____ day of _____ Two thousand and fourteen

BETWEEN

1. **GRAVESHAM BOROUGH COUNCIL** of Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU (the "**Council**"); and
2. **QUEENRIDGE PROPERTIES LIMITED** of 4th Floor, Adam House, 1 Fitzroy Square, London W1T 5HE (the "**Developer**"); and
3. **ANGLO IRISH ASSET FINANCE PLC** of 10 Old Jewry, London EC2R 8DN (the "**Chargee**")

WHEREAS

- (1) The Developer is registered as having long leasehold title of the Developer Land
- (2) By a charge dated 29 January 2007 (and registered at HM Land Registry on 9 March 2007) the Chargee has the benefit of a charge in respect of the Developer Land
- (3) The Council is the local planning authority for the purposes of the Act for the area within which the Site is situated
- (4) By a development agreement dated 2 February 2007 (as varied by a Deed of Variation dated 22 October 2009), as between: (1) the Council (in its capacity as owner of the relevant part of the Site); (2) the Developer; and (3) Edinburgh House Estates Limited, the Council and the Developer has agreed to the redevelopment of the Site subject to the obtaining of planning consent
- (5) Edinburgh House Estates Limited has applied for the Planning Permission
- (6) The parties have agreed to enter into this Agreement in the manner hereinafter appearing and the Council is satisfied that subject thereto the Planning Permission may be granted
- (7) The covenants herein contained are planning obligations for the purposes of Section 106 of the Act

NOW THIS AGREEMENT WITNESSES as follows:-

- 1 In this Agreement, the following words and expressions shall where the context so admits have the following meaning:-

"Act"	the Town and Country Planning Act 1990
"Active Elderly Units"	Affordable Housing being Affordable Rent Units and/or Social Rent Units which are let by local authorities or Affordable Housing Providers to persons over 55 years of age
"Affordable Housing"	housing which shall be constructed and occupied in accordance with the definition set out in Annex 2 of the National Planning Policy Framework (as shall be updated and replaced from time to time)

“Affordable Housing Contribution”	£1,000,000 to be used to fund Affordable Housing in the Council’s administrative area and for no other purpose
“Affordable Housing Land”	the land on which the Affordable Units are situated
“Affordable Housing Provider”	any of the bodies which are from time to time included in the list of registered providers of affordable housing within the meaning of the Housing and Regeneration Act 2008 (the "2008 Act") with which the Council has a partnership agreement and any other body registered with the Homes and Communities Agency as a registered provider of affordable housing within the meaning of the 2008 Act and which has been approved in writing by the Council
“Affordable Housing Scheme”	<p>a written scheme for the provision of 50 units of Affordable Housing to be provided in Building W03 and the said scheme shall include the following details:-</p> <p>(a) (unless otherwise agreed in writing by the Council) 50% Active Elderly Units and 50% Shared Ownership Units;</p> <p>(b) the construction standards, size, tenure and design of the Affordable Units;</p> <p>(c) the location of the Affordable Units;</p> <p>(d) the management of the Affordable Units by an Affordable Housing Provider;</p> <p>(e) the occupancy criteria to be used for determining the identity of occupiers of the Affordable Units and the means by which such occupancy shall be enforced;</p> <p>(f) the planning and timing of the delivery of the Affordable Units;</p> <p>(g) the arrangements for the transfer of the Affordable Units to an Affordable Housing Provider including transfer at an Affordable Price; and</p> <p>(h) the arrangements to ensure that the Affordable Units remain Affordable Housing for subsequent occupiers</p>
“Affordable Price”	<p>the sum payable to the Developer by the Affordable Housing Provider for the Affordable Units which sum shall be calculated as follows:-</p> <p>(a) the transfer or lease of the Affordable Housing Land at nil cost;</p> <p>(b) the Developer having at its own cost (i) remediated the Affordable Housing Land in accordance with all necessary consents and statutory requirements; and (ii) cleared and levelled the Affordable Housing Land; and (iii) provided the Affordable Housing Land with all</p>

necessary services including telecommunications, water, foul and service water drainage, highways and electricity to render the Affordable Housing Land fit for use (once developed) for residential purposes and without requiring plant or equipment to provide services; and

(c) the Affordable Housing Provider paying for the build costs of the Affordable Units to be constructed on the Affordable Housing Land prior to the transfer or lease of the Affordable Housing Land to the Affordable Housing Provider

“Affordable Units”	the Active Elderly Units and Shared Ownership Units which are to be provided in Building W03
“Affordable Rent Units”	housing let by local authorities or Affordable Housing Providers of social housing to households who are eligible for social rented housing which shall be let at a rental level of no more than 80% of local market rents (including Service Charge where applicable)
“Air Quality Contribution”	the sum of £10,000 to be used to fund: the passive monitoring of air quality in the vicinity of the Site; the real-time roadside air station at Painters Ash used to verify the passive monitoring of air quality; and/or the implementation of measures within the Council’s air quality action plans and for no other purpose
“Application”	Edinburgh House Estates Limited’s application for the Planning Permission (reference 20120931)
“Building E01”	the building marked 'E01' on Plan 1
“Building E02”	the building marked 'E02' on Plan 1
“Building E03”	the building marked 'E03' on Plan 1
“Building W01”	the building marked 'W01' on Plan 1
“Building W02”	the building marked 'W02' on Plan 1
“Building W03”	the building marked 'W03' on Plan 1
“Building W04”	the building marked 'W04' on Plan 1
“Commencement of Development”	the date on which the Development is begun by any Material Operation and “Commence Development” shall be construed accordingly
“Community Infrastructure Provision”	the provision of library, youth work, community learning and/or adult social services in Gravesend town centre and for no other purposes
“Completed”	completed to the satisfaction of the Council and the Council

has confirmed the same in writing to the Developer

“Commutated Sum”

the difference between the Open Market Value of the Affordable Unit free of any affordable housing restrictions in this Agreement and the value of the Affordable Unit as an Affordable Unit (as the case may be) for payment in lieu of affordable housing. Valuation of the Affordable Unit must be undertaken by an independent valuer at the Developer’s expense on the date on which the Commuted Sum becomes payable to the Council

“Confirmatory Deed”

a deed in substantially the same form as that in at Appendix 3 of this Agreement ensuring that the Remaining Land (or a relevant part thereof) is bound by the covenants in this Agreement

“County Council”

Kent County Council

“Deferred Sum”

40% of any Development Surplus identified in a Viability Appraisal which shall be allocated by the Council in the following total amounts for the stated purposes:-

- (a) up to £2,225,900 towards the provision of Affordable Housing in Gravesend split as to up to £1,000,000 in relation to Phase 1; and up to £1,225,900 in relation to Phase 2 (plus any additional sum due to cover any part of the £1,000,000 not allocated in relation to Phase 1);
- (b) up to £259,268 towards Education Provision split as to up to £50,000 in relation to Phase 1; up to £64,690 in relation to Phase 2 (plus any additional sum due to cover any part of the £50,000 not allocated in relation to Phase 1); up to £40,000 in relation to Phase 3 (plus any additional sum due to cover any part of the £114,690 not allocated in relation to Phases 1 and 2); and up to £104,578 in relation to Phase 4 (plus any additional sum due to cover any part of the £154,690 not allocated in relation to Phases 1, 2 and 3);
- (c) up to £123,219 towards Community Infrastructure Provision split as to up to £30,000 in relation to Phase 1; up to £22,969 in relation to Phase 2 (plus any additional sum due to cover any part of the £30,000 not allocated in relation to Phase 1); up to £20,000 in relation to Phase 3 (plus any additional sum due to cover any part of the £52,969 not allocated in relation to Phases 1 and 2); and up to £50,250 in relation to Phase 4 (plus any additional sum due to cover any part of the £72,969 not allocated in relation to Phases 1, 2 and 3);
- (d) up to £230,000 towards Health Improvements split as to up to £70,000 in relation to Phase 1; up to

£45,000 in relation to Phase 2 (plus any additional sum due to cover any part of the £70,000 not allocated in relation to Phase 1); up to £30,000 in relation to Phase 3 (plus any additional sum due to cover any part of the £115,000 not allocated in relation to Phases 1 and 2); and up to £85,000 in relation to Phase 4 (plus any additional sum due to cover any part of the £145,000 not allocated in relation to Phases 1, 2 and 3);

- (e) up to £500,000 towards Highway Improvements split as to up to £80,000 in relation to Phase 1; up to £45,000 in relation to Phase 2 (plus any additional sum due to cover any part of the £80,000 not allocated in relation to Phase 1); up to £50,000 in relation to Phase 3 (plus any additional sum due to cover any part of the £125,000 not allocated in relation to Phases 1 and 2); and up to £325,000 in relation to Phase 4 (plus any additional sum due to cover any part of the £175,000 not allocated in relation to Phases 1, 2 and 3); and
- (f) up to £125,000 towards Sport and Recreation Facilities split as to up to £35,000 in relation to Phase 3 and up to £90,000 in relation to Phase 4 plus any additional sum due to cover any part of the £35,000 not allocated in relation to Phase 3)

"Developer Land"

all that land shown for indicative purposes as hatched red on Plan 5, being The St Georges Centre, Bath Street, Gravesend DA11 0TB (held under title number K592051)

"Development"

the demolition of buildings and redevelopment of land in Gravesend Town Centre known as the Heritage Quarter comprising the Western Quarter and the Eastern Quarter. The Western Quarter comprising the West Street and St George's Church and Gardens, part of the existing George's Centre, the Blockbuster site and the river walkway between Elizabeth Gardens and Town Pier. The Eastern Quarter comprising Horn Yard and Market Square car parks and St Andrews Gardens. The proposal comprises:

Western Quarter – outlines proposal (including details of access only with all other matters reserved for a mix of uses including retail and food and drink (Use Classes A1, A2, A3, A4 and A5). Offices (Use Class B1), between 164 no and 187no residential units (Use Class C3), community space (Use Class D1), public and private car parking, public realm and amenity space as well as associated servicing, landscaping and highway works.

Eastern Quarter – detailed proposal for the erection of 3 no buildings to provide 141 no residential units (Use Class C3), restaurant space (Use Class A3), a 50 no bedroom

	hotel (Use Class C1), as well as public and private car parking and associated servicing, landscaping and highway works
“Development Profit Figure”	20% of the Gross Development Value after deducting all costs (but before tax) as set out in each Viability Appraisal
“Development Surplus”	any sum identified in a Viability Appraisal which exceeds the Development Profit Figure
“Dwelling”	a building or part of a building designed for residential occupation by a single household constructed pursuant to the Planning Permission
“Eastern Quarter”	the part of the Site shown blue on Plan 1
“Education Provision”	the provision of primary school places in Gravesend
“Education Contribution”	£65,000 to be used to fund primary school provision in Gravesend and for no other purpose
“Final Viability Appraisal”	the Viability Appraisal submitted to the Council for approval upon the Occupation of the final Dwelling on the Site or within 2 years of Occupation of 90% of the Dwellings on the Site (whichever is the earlier)
“First Car Park Contribution”	£1,000,000 to be used to fund public car parking in Gravesend town centre and for no other purpose
“First Car Park Monitoring Contribution”	£15,000 to be used to fund updates and improvements to the Council’s real-time car park monitoring in Gravesend town centre and for no other purpose
“Gravesend town centre”	the area of Gravesend shown edged red on Plan 4
“Gross Development Value”	the total projected aggregate receipts of the completed Development
“Health Improvements”	improvements to doctors surgeries in Gravesend by way of extension, refurbishment and/or upgrading to provide the required capacity to meet the needs of residents on the Site
“Highway Improvements”	the re-alignment of Rathmore Road and associated works in Gravesend town centre
Homes and Communities Agency”	the Homes and Communities Agency or any successor organisation or body which provides funding/investment to Affordable Housing Providers
“Index”	the All in Tender Price published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
“Interest”	interest at 4% above the base lending rate of the National Westminster Bank Plc from time to time

“Lettings Plan”	a plan to ensure that the Affordable Units are let in a way that provides an appropriate mix of tenures and rent levels to meet local housing need
“Local Employment and Training Initiative”	<p>a scheme which seeks to maximise employment and training opportunities for residents in the Council’s administrative area during the construction of the Development through:</p> <ul style="list-style-type: none"> i the creation of job opportunities; ii the means for advertising all construction vacancies; iii the means of recruiting local staff through local job centres, relevant recruitment agencies and liaison with the Economic Development department of the Council; iv the means by which the use of local contractors, sub-contractors and supply chains will be facilitated and encouraged through tender processes; v the means of ensuring and promoting equal opportunities as part of the employment process; vi maintaining appropriate records of performance and compliance with the initiative; vii apprenticeship opportunities including offering apprenticeship opportunities to students at North West Kent College <p>provided always that such scheme may be amended from time to time with the written consent of the Council</p>
“Management Company”	a limited company registered by the Registrar of Companies in England for the purpose of procuring the management and maintenance of the Open Space and Public Realm Areas
“Market Units”	the Dwellings which are available for sale or rent on the open market
“Material Operation”	a material operation as defined in Section 56 of the Act and for the purposes of determining whether or not a material operation (pursuant to this Agreement and for no other purpose) has been carried out there shall be disregarded such operation as archaeological investigation, ground investigation and/or site survey work, construction of boundary fencing or hoarding, preparatory works below ground level, works relating to the laying or diversion or connection of services, demolition, site clearance and site preparation
“Maximum Sum”	£3,463,387.40 being the total contribution payable as the Deferred Sum which is the proper contribution payable from

	the Development having regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010
“Monitoring Fee”	£15,000 to be used to fund the monitoring of the Developer’s compliance with this Agreement and for no other purpose
“Offer of Notice of Transfer”	the Offer of Notice of Transfer in the form set out in Appendix 4 of this Agreement
“Occupy, Occupied or Occupation”	the occupation of a Dwelling but for the avoidance of doubt excludes the occupation for marketing, fit out or securing purposes
“Open Market Value”	as defined by the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual Practice Statement 4 in the form current as at the date of this Agreement (or as may be amended from time to time) as determined by an independent professionally qualified valuer (whose fees shall be paid by the Developer and whose identity shall be first approved by the Council and in the event that such appointment is not agreed then by the President from time to time at the Royal Institution of Chartered Surveyors such valuation to be current at the date on which the Commuted Sum becomes payable to the Council
“Open Space and Public Realm Areas”	the areas shown shaded orange on Plan 2
“Phase”	any of Phase 1, Phase 2, Phase 3 and/or Phase 4
“Phase 1”	the phase of the Development edged pink and shown marked “Phase 1” on Plan 3
“Phase 2”	the phase of the Development shown edged green and shown marked “Phase 2” on Plan 2
“Phase 3”	the phase of the Development shown edged orange and shown marked “Phase 3” on Plan 2
“Phase 4”	the phase of the Development shown edged blue and shown marked “Phase 4” on Plan 2
“Plan 1”	the plan attached to this Agreement and marked “Plan 1”
“Plan 2”	the plan attached to this Agreement and marked “Plan 2”
“Plan 3”	the plan attached to this Agreement and marked “Plan 3”
“Plan 4”	the plan attached to this Agreement and marked “Plan 4”
“Plan 5”	the plan attached to this Agreement and marked “Plan 5”
“Planning Permission”	the hybrid planning permission for the Development and granted pursuant to the Application

“Remaining Land”	the Site save for the Developer Land
“Schedule”	any one or all of the Schedules annexed to this Agreement
“Second Car Park Contribution”	£1,000,000 to be used to fund public car parking spaces in Gravesend town centre and for no other purpose
“Second Car Park Monitoring Contribution”	£15,000 to be used to fund updates and improvements to the Council’s real-time car park monitoring in Gravesend town centre and for no other purpose
“Service Charge”	the service charge to be paid by the occupiers of the Affordable Units for services or facilities
“Shared Ownership Unit”	a Dwelling which shall be sold as a leasehold property under a part buy/part rent scheme to be provided by an Affordable Housing Provider
“Site”	the land (including the Developer Land) as shown edged red on Plan 1
“Social Rent Unit”	housing which is owned by local authorities or Affordable Housing Providers for which guideline target rents are determined through the national rent regime
“Sport and Recreation Facilities”	sport and recreation facilities in the vicinity of the Development
“Sport and Recreation Contribution”	£50,000 to be used to fund projects to improve and/or provide Sport and Recreation Facilities and for no other purpose
“Viability Appraisal”	an appraisal of the Development in the form set out at Appendix 1 of this Agreement to be updated and submitted to the Council for approval
“Western Quarter”	the part of the Site shown green on Plan 1
“Working Days”	Monday to Friday inclusive but excluding public holidays

2 In this Agreement:-

- (i) references to any statute or any section thereof include any statutory extension or modification amendment or re-enactment of such statutes and include all instruments orders bye-laws and regulations for the time being made issued or given thereunder or deriving validity therefrom and all other legislation of the European Community that is directly applicable to the United Kingdom
- (ii) references to any clause sub-clause paragraph sub-paragraph or schedule without further designation shall be construed as a reference to the clause sub-clause paragraph sub-paragraph or schedule to this Agreement so numbered

- (iii) words importing one gender shall include both genders and the singular shall include the plural and vice versa
 - (iv) any covenant by a party to this Agreement not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by another person
 - (v) if at any time any of the provisions of this Agreement become illegal invalid or unenforceable in any respect under any law or regulation of any jurisdiction neither the legality validity or enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired as a result
 - (vi) nothing contained in or done under this Agreement shall prejudice the rights powers or duties and/or obligations of the Council in the exercise of its functions or under any statutes bye-laws instruments order or regulations
 - (vii) no waiver (whether expressed or implied) by the Council of any breach or default by the Developer in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereto by the Developer
 - (viii) where the agreement approval consent or expression of satisfaction is required by the Developer under the terms of this Agreement that agreement approval consent or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed
 - (ix) in all dealings with each other under this Agreement and in any negotiations necessary with any third parties pursuant to the provisions of this Agreement the parties hereto shall act and deal reasonably and in good faith
 - (x) the expressions "the Developer", "the Chargee" and "the Council" shall include their respective successors in title and assigns
- 3.1 This Agreement constitutes a planning obligation for the purposes of and is made in pursuance of Section 106 of the Act, Section 1 of the Localism Act 2011, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000
- 3.2 The Council is the local planning authority entitled to enforce the provisions of this Agreement as against the Developer
- 3.3 This Agreement is entered into in respect of the Developer Land (provided always that no Material Operation pursuant to the Planning Permission may take place on any part of the Remaining Land until that part of the Remaining Land becomes bound by the provisions of this Agreement by the completion of a Confirmatory Deed)
- 3.4 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval
- 3.5 This Agreement shall not take effect (save for clauses 1-16 (inclusive), paragraphs 1,2,6 and 20 of Schedule 1 and paragraph 1 of Schedule 2 all of which shall take effect upon completion of this Agreement) until the:-
- 3.5.1 grant of Planning Permission; and

3.5.2 Commencement of Development

4. The Developer hereby covenants with the Council:-
 - 4.1. to comply with and carry out the obligations contained in Schedule 1 of this Agreement;
 - 4.2. on completion of this Agreement to pay the Council's reasonable costs for the preparation and completion of this Agreement;
 - 4.3. not to undertake a Material Operation pursuant to the Planning Permission on any part of the Site (other than the Developer Land) until the completion of a Confirmatory Deed in relation to that part of the Site so as to ensure it is bound by the covenants in this Agreement; and
 - 4.4. to indemnify and keep indemnified the Council from and against all liability and all actions claims compensation costs demands and expenses at any time incurred or as the case may be arising out of the carrying out by the Developer of the works required to be done under the terms of this Agreement provided that the Developer shall not be liable for any actions claims compensation costs demands or expenses where they are as a consequences of any act, omission or negligence by the Council, its employees, agents or contractors.
5. The Council hereby covenants to comply with and carry out the obligations contained in Schedule 2 of this Agreement.
6. No person shall be liable hereunder after he/she/it shall have parted with his/her/its interest in the Developer Land (or the Site as the case may be) or part thereof in respect of which such breach occurs but without prejudice to liability for any breach of covenant subsisting prior to parting with such interest
7. The obligations contained in Schedule 1 shall not bind nor be enforceable against:-
 - 7.1. any statutory undertakers or utilities companies in relation to any part of the Developer Land (or the Site as the case may be) required by them for electricity substations, gas governor stations and/or for the supply of any services: and;
 - 7.2. any individual owners and/or occupiers of the units and dwellings within the Development
8. Notices to be served shall be in writing and shall be deemed to be sufficiently served if hand delivered or sent by recorded delivery post to the registered office of the parties
9. This Agreement shall be registered in the Council's register of local land charges immediately on completion hereof
10. Any sum referred to in this Agreement shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid
11. If any payment due under this Agreement is paid late, Interest shall be payable on the sum from the date payment is due until the date of payment
12. If the Planning Permission is quashed or is revoked or expires before the Commencement of Development this Agreement shall cease to have effect
13. Nothing in this Agreement shall prohibit or limit the right to develop the Developer Land and/or the Site (or any part thereof) in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
14. If a Court determines that any obligation contained within this Agreement is not:

- (a) necessary to make the Development acceptable in planning terms;
- (b) directly related to the Development; and/or
- (c) fairly and reasonably related in scale and kind to the Development

then such obligation shall immediately cease and determine (without any further act by the Parties)

15.

15.1 Except as to matters of law and subject to the express provision of this Agreement to the contrary any dispute or different arising between the parties as to any of the provisions of this Agreement and/or their respective rights duties or obligations or as to any other matter or thing in any way arising out of or in connection with the subject matter of this Agreement shall forthwith be referred by the parties or any of them for determination by an independent person (the "**Expert**") to be agreed upon between the parties and failing such agreement within ten Working Days of any party calling upon the other to agree to be appointed on the application of the parties or any of them by the President for the time being of the Royal Institution of Chartered Surveyors or any successor Institute (the "**President**")

15.2 The Expert shall act as an expert and make his determination within twenty (2) Working Days from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties save for manifest error

15.3 If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

15.4 It is hereby agreed and declared that:-

15.4.1 the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within ten (10) Working Days after the parties have been afforded such an opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other parties and within five Working Days or such receipt to make written counter-representations;

15.4.2 the Expert shall be entitled to call for such independent expert advice as he shall think fit;

16.4.3 the Expert shall have an unfettered discretion to determine the reference to him; and

16.4.4 the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if any party shall pay the Expert's fees the expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

16. The Chargee agrees to its interest in the Developer Land being subject to the terms of this Agreement PROVIDED THAT the Chargee shall not incur any liability under this Agreement unless and until it enters into possession of the Developer Land

17. This Agreement:-

- (i) shall be governed by and construed in accordance with the Law of England
- (ii) does not create any right enforceable by any person not a party to it nor does it create any right enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999

IN WITNESS whereof the parties hereto have caused this Agreement to be duly executed as a deed the day and year first before written

SCHEDULE 1

Developer Obligations

Site-Wide Requirements

The Developer covenants with the Council as follows:

Air Quality Contribution

1. To pay the Air Quality Contribution to the Council prior to the Commencement of Development

Agreement monitoring

2. To pay the Monitoring Fee to the Council prior to the Commencement of Development
3. To notify the Council in writing within 7 Working Days of the following milestones in the Development:-
 - 3.1 Commencement of Development;
 - 3.2 Completion of contract and transfer of Affordable Units to an Affordable Housing Provider;
 - 3.1 Occupation of the first Dwelling in each Phase;
 - 3.2 Occupation of the first Dwelling on the Eastern Quarter;
 - 3.3 Occupation of the 50th Dwelling on the Eastern Quarter;
 - 3.4 Occupation of the 90th Dwelling on the Eastern Quarter;
 - 3.5 Occupation of 90% of the Dwellings on Phase 1;
 - 3.6 Occupation of 90% of the Dwellings on Phase 2;
 - 3.7 Occupation of 90% of the Dwellings on Phase 3;
 - 3.8 Occupation of 90% of the Dwellings on Phase 4;
 - 3.9 Occupation of the final Dwelling on the whole Site;
 - 3.10 a Material Operation being undertaken on the Eastern Quarter;
 - 3.11 a Material Operation being undertaken on the Western Quarter;
 - 3.12 a Material Operation being undertaken in respect of Building E01;
 - 3.13 a Material Operation being undertaken in respect of Building E02;
 - 3.14 a Material Operation being undertaken in respect of Building E03;
 - 3.15 a Material Operation being undertaken in respect of Building W01;
 - 3.16 a Material Operation being undertaken in respect of Building W02;

- 3.17 a Material Operation being undertaken in respect of Building W03;
- 3.18 Occupation of any Market Unit in Building W03;
- 3.19 transfer of the Affordable Units to the Affordable Housing Provider; and
- 3.20 Occupation of 90% of the Dwellings on the Site
- 4. To provide the Council with a written update on progress with the construction of the Development, the anticipated construction programme, Occupation of the Development and anticipated future Occupation of the Development upon 6 months after Commencement of Development, and thereafter every 6 months until the Development is Completed

Maintenance/management of Open Space and Public Realm Areas

- 5. To permanently manage and maintain the Open Space and Public Realm Areas in accordance with the management schemes approved by the Council under the Planning Permission and at its own costs and shall not dispose of it to a Management Company unless and until the following have been submitted and approved in writing by to the Council:
 - 5.1 details of the proposed Management Company;
 - 5.2 details of how such Management Company is funded;
 - 5.3 details of the funds available to the Management Company for the long term management and maintenance at the Open Space and Public Realm Areas

Local employment and training

- 6. Not to Commence Development until the Local Employment and Training Initiative has been submitted to and approved in writing by the Council
- 7. Upon Commencement of Development to implement the Local Employment and Training Initiative approved by the Council under paragraph 6 for the duration that the Development is constructed

Education Contribution

- 8. To pay the Education Contribution to the Council in the following instalments:
 - 8.1 £25,000 prior to Occupation of the first Dwelling on the Site;
 - 8.2 £25,000 prior to Occupation of the 50th Dwelling on the Site; and
 - 8.3 £15,000 prior to Occupation of the 90th Dwelling on the Site

Sport and Recreation Contribution

- 9 To pay the Sport and Recreation Contribution to the Council prior to Occupation of the first Dwelling on the Site

Viability re-appraisal process

- 10. The Developer shall submit a Viability Appraisal to the Council for approval at each of the following stages of the Development:

- 10.1 prior to Occupation of 90% of the Dwellings on Phase 1;
- 10.2 prior to Occupation of 90% of the Dwellings on Phase 2;
- 10.3 prior to Occupation of 90% of the Dwellings on Phase 3;
- 10.4 prior to Occupation of 90% of the Dwellings on Phase 4; and
- 10.5 on Occupation of the final Dwelling on the Site or within 2 years of Occupation of 90% of the Dwellings on the Site (whichever is the earlier)
11. In the event that any of the Viability Appraisals submitted to the Council in accordance with paragraph 10 above show that the Development Profit Figure is exceeded, then the Developer shall pay a Deferred Sum to the Council
12. Each payment of a Deferred Sum shall be paid to the Council within 30 Working Days of the relevant Viability Appraisal being approved by the Council (or determined by the Expert in accordance with Clause 15 as the case may be)
- 13.. The total Deferred Sum to be paid to the Council by the Developer shall not exceed the Maximum Sum
14. The Developer shall pay the Council's reasonable costs of reviewing each Viability Appraisal (including the costs of obtaining external expert advice on any Viability Appraisal)

Eastern Quarter Requirements

The Developer covenants with the Council in respect of the Eastern Quarter as follows:

Affordable Housing Contribution

15. To pay the Affordable Housing Contribution to the Council in the following instalments:
 - 15.1 £300,000 prior to Occupation of the first Dwelling on the Eastern Quarter;
 - 15.2 £300,000 prior to the Occupation of the 50th Dwelling on the Eastern Quarter; and
 - 15.3 £400,000 prior to Occupation of the 90th Dwelling on the Eastern Quarter

Car Park Contribution

16. To pay the First Car Park Contribution in the following instalments:-
 - 16.1 £500,000 prior to a Material Operation being undertaken in respect of Building E01; and
 - 16.2 £500,000 prior to a Material Operation being undertaken in respect of Building E02 or Building E03

Car Park Monitoring Contribution

17. To pay the First Car Park Monitoring Contribution to the Council prior to a Material Operation being undertaken on the Eastern Quarter

Western Quarter Requirements

The Developer covenants with the Council in respect of the Western Quarter as follows:

Car Park Contribution

18. To pay the Second Car Park Contribution in the following instalments:
 - 18.1. £100,000 prior to a Material Operation being undertaken in respect of Building W01 or Building W02 (whichever is the later); and
 - 18.2. £900,000 prior to a Material Operation being undertaken in respect of Building W03

Car Park Monitoring Contribution

19. To pay the Second Car Park Monitoring Contribution to the Council prior to a Material Operation being undertaken on the Western Quarter

Affordable Housing

20. At the same time as submitting the first reserved matters application for the Western Quarter the Developer shall submit to the Council for approval the Affordable Housing Scheme
21. To implement the Affordable Housing Scheme (as approved by the Council) and the following provisions shall apply to the Affordable Units provided on the Site:-
 - 21.1 Subject to clause 22, not to use the Affordable Units except for the provision of Affordable Housing;
 - 21.2 To the extent that the Service Charge is not set and administered by an Affordable Housing Provider, to ensure that the Service Charge is justifiable, fully explained and clearly described to the occupiers of the Affordable Units and the occupiers of the Affordable Units shall also be consulted annually on the level of the Service Charge. Individual Service Charges shall not be increased annually by more than the Index or by more than the costs (in the case of utilities for example) to the Developer of those services SUBJECT TO there being the need for extraordinary expenditure;
 - 21.3 Unless otherwise agreed in writing by the Council, not to permit the Occupation of any Market Unit in Building W03 unless and until the Affordable Units are ready for Occupation and have been transferred to the Affordable Housing Provider at the Affordable Price;
 - 21.4 Not to transfer the Affordable Units to the Affordable Housing Provider without first procuring that the Affordable Housing Provider has:
 - 21.4.1 entered into nomination agreements with the Council in relation to all of the Affordable Units in substantially the same form as set out in Appendix 2 of this Agreement; and
 - 21.4.2 submitted to the Council for approval a Lettings Plan and received the Council's written approval of the same and the Affordable Units shall not be Occupied otherwise than in accordance with the approved Lettings Plan
22. To use best endeavours to comply with Clause 21 above but if within six months from the date the Affordable Units are ready for Occupation, the Developer has failed to procure that the Affordable Units have been transferred to an Affordable Housing Provider, the Developer shall serve upon the Council the Offer of Notice of Transfer and demonstrate that it has used all reasonable endeavours to transfer the Affordable Units to an Affordable Housing Provider. If the Council certifies in writing (acting reasonably and such certification not to be unreasonably withheld or delayed) that it is satisfied the Developer has used all reasonable endeavours to procure the transfer of the Affordable Units to the Affordable Housing Provider, the Developer shall pay to the Council forthwith on demand a Commuted Sum for each of the

Affordable Units which have not been transferred to the Affordable Housing Provider and the Developer shall be entitled to sell such Affordable Units as private dwellings on the open market free of the restrictions set out in paragraphs 20-22 of this Schedule 1

SCHEDULE 2

Council Obligations

The Council covenants with the Developer:

1. To issue the Planning Permission on the date of this Deed
2. To identify all sums paid by the Developer pursuant to this Deed with a separate designated analysis code with a unique identifier from which the sums may be identified and used by the Council solely for the purposes for which the Developer has paid them to the Council pursuant to the provisions of (and as specified in) this Agreement
3. To expend all sums paid to the Council in accordance with this Agreement in the manner and solely for the purpose for which the sums were made as soon as possible following receipt of each of the sums
4. On receipt to pay each instalment of the Education Contribution (and the part of the Deferred Sum relating to the Highway Improvements (if paid) to the County Council ON CONDITION THAT the County Council agrees to accept those monies on the same terms as the Council (as set out in this Schedule)
5. In the event that any payment made to the Council pursuant to this Deed has not been spent within a period of 10 years from the date it (or an instalment thereof) was paid, the Council will repay the unexpended balance to the original party which made such a payment together with interest accrued PROVIDED THAT if any part of the First Car Park Contribution and/or the Second Car Park Contribution (as the case may be) has not been spent within a period of 5 years from the date when the final instalment was paid, the Council will repay the unexpended balance of the First Car Park Contribution and/or the Second Car Park Contribution (as the case may be) to the original party which made such payments, together with interest accrued.
6. Upon the written request of the Developer at any time after any of the Planning Obligation(s) under this Deed have been fulfilled and upon supply of any appropriate evidence to issue a written letter of release in relation to such Planning Obligation(s)
7. To ensure that all costs and expenses which it incurs or expends in relation to any of its obligations pursuant to this Deed are reasonable, accurate, verifiable and evidenced by appropriate documentation which shall be produced to the Developer within 28 days after the Developer requests it

APPENDIX 1
Viability Appraisal

APPENDIX 2

Nominations Agreement

APPENDIX 3

Confirmatory Deed

under Section 106 of the Town and Country Planning Act 1990

Dated _____ 20XX

PARTIES

- (1) [LONG LEASEHOLD OWNER OF THE REMAINING LAND (OR PART THEREOF)] of [INSERT ADDRESS] (the **Owner**)
- (2) **GRAVESHAM BOROUGH COUNCIL** of Civic Centre Windmill Street, Gravesend Kent DA12 1AV (the **Council**)

RECITALS

- A [The Owner] and the Council entered into the Original Deed
- B The Owner has now taken a long leasehold interest of [Phase x of the Site/the Remaining Land] as shown on the Plan
- C Clauses 3.3 and 4.3 of the Original Deed and condition [C2 and/or D2] of the Planning Permission prohibits the undertaking of a Material Operation any part of the Site (save for the Developer Land) unless and until the Remaining Land (or the relevant part thereof) has been made the subject of a Deed containing the same covenants as set out in the Original Deed so as to bind the Remaining Land (or the relevant part thereof) by the terms of the Original Deed

THIS DEED WITNESSES:

1 DEFINITIONS

The Confirmatory Deed adopts the definitions used in the Original Deed unless stated otherwise.

Original Deed means the Deed of Agreement dated [INSERT DATE] 2014 between (1) the Council; and (2) Queenridge Properties Limited (including as varied pursuant to section 106A of the Act, if applicable)

Planning Permission means planning permission dated [INSERT DATE] issued by the Council with reference number 20120931 and any variations thereto made pursuant to section 73 of the Act

2 STATUTORY PROVISIONS

2.1 This Confirmatory Deed contains planning obligations under Section 106 of the Act and is enforceable by the Council in respect of the Owner's interest in the Remaining Land and is registerable as a local land charge.

2.2 This Deed will take effect upon the date hereof.

3 THE OWNER'S COVENANTS

The Owner hereby covenants with the Council that:

- (a) [Phase x of the Site] [the Remaining Land] will be bound on the same terms as if it had been bound by the Original Deed; and
- (b) it will observe and perform the obligations in the Original Deed so far as they relate to [Phase x of the Site/the Remaining Land] and further that subject to the terms of the

Original Deed those obligations shall be binding on persons deriving title to [Phase x of the Site/the Remaining Land] through it.

4 THE COUNCIL'S COVENANT¹

The Council hereby covenants with the Owner that it will observe and perform the obligations in the Original Deed so far as they relate to [Phase x of the Site/the Remaining Land]

IN WITNESS whereof the Owner has executed this document as a Deed.

**Executed on behalf of QUEENRIDGE)
PROPERTIES LIMITED)
acting by:-)**

Director

Director

**THE COMMON SEAL of GRAVESHAM)
BOROUGH COUNCIL was hereunto)
Affixed (but this Deed is not delivered)
until the date hereof) in the presence)
of:-)**

Authorised Signatory

¹ Only to be inserted if the Deed of Confirmation is in the form of an Agreement as opposed to an Undertaking
1327977 38811461.1

APPENDIX 4
OFFER OF TRANSFER NOTICE

	Name of Affordable Housing Provider and address	Date of offer	Date of refusal
1.			
2.			
3.			
4.			
5.			
6.			
7.			

IN WITNESS whereof the parties have executed this document as a Deed.

**THE COMMON SEAL of GRAVESHAM)
BOROUGH COUNCIL was hereunto)
Affixed (but this Deed is not delivered)
until the date hereof) in the presence)
of:-)**

Authorised Signatory

**Executed as a Deed on behalf of)
QUEENRIDGE PROPERTIES LIMITED)
acting by:-)**

Director

Director/Secretary

**Executed as a Deed on behalf of)
ANGLO IRISH ASSET FINANCE PLC)
acting by:-)**

Authorised Signatory

Authorised Signatory