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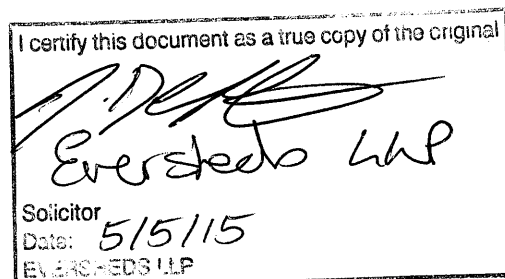
30 April

2015

- (1) DOVER DISTRICT COUNCIL
- (2) THE KENT COUNTY COUNCIL
- (3) GBGB LIMITED

AGREEMENT

relating to land at Phase 1, Whitfield Urban Expansion
Dover, Kent



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CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION	2
2. LEGAL BASIS	15
3. CONDITIONS DURATION AND ENFORCEMENT	15
4. OWNER COVENANTS.....	16
5. PLANNING AUTHORITY COVENANTS.....	17
6. THE MORTGAGEE.....	17
7. DISPUTE RESOLUTION	17
8. PROVISIONS OF IMMEDIATE EFFECT.....	18
9. EXCLUSION OF THIRD PARTY RIGHTS	18
10. NOTICE	18
11. LOCAL LAND CHARGES.....	19
12. JURISDICTION AND LEGAL EFFECT	19
13. INDEXATION INTEREST AND VAT	20
14. CHANGE IN OWNERSHIP	20
SCHEDULE OF PLANS ATTACHED.....	21
SCHEDULE 1	22
The Owner's Title.....	22
SCHEDULE 2	23
Draft Planning Permission	23

SCHEDULE 3.....	24
The Owner's Covenants with the District Council.....	24
SCHEDULE 4.....	36
The Owners' Covenants with the County Council.....	36
SCHEDULE 5.....	43
The District Council's Covenants.....	43
SCHEDULE 6.....	45
The County Council's Covenants.....	45
APPENDIX 1.....	47
Matters for inclusion within the Green Infrastructure Management and Maintenance Plan.....	47
APPENDIX 2.....	49
General Site Transfer Requirements for the School.....	49

THIS AGREEMENT is made the

30

day of

April

2015

BETWEEN

- (1) **DOVER DISTRICT COUNCIL** of White Cliffs Business Park Dover Kent CT16 3PJ (the "**District Council**");
- (2) **THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ (the "**County Council**");
- (3) **GBGB LIMITED** incorporated in the Isle of Man (company registration number 120448C) whose registered office is ~~Bridge House Bridge Street Castletown~~ Isle of Man IM# 1 ~~JE~~ (the "**Owner**").

RECITALS

- (1) The District Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (2) The County Council is the local highway authority and local education authority for the area in which the Site is situated.
- (3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- (4) On the date hereof and before completion of this Agreement:
 - (i) the registered charge dated 30 May 2008 against the freehold title of the Owner at the Land Registry under title number K936495 in favour of HSBC Bank PLC was discharged;
 - (ii) the option to purchase dated 1 April 2008 in respect of that part of the Site owned by Frederick Stanley Husk and registered at the Land Registry under title number K936940 was released and that part of the Site within title number K936940 was transferred to the Owner.
- (5) Phillip Jeans Homes Limited has submitted the Application to the District Council and the Parties have agreed to enter into it in order to secure the planning obligations contained in it.
- (6) The District Council resolved on 20 September 2012 to grant the Planning Permission subject to the prior completion of this Agreement.

- (7) The Parties have agreed that unless the A256 Roundabout and Primary Street Works have been constructed:-
- (a) in accordance with a specification and to a standard approved in writing by the County Council; and
 - (b) made available for pedestrian and vehicular use by members of the public by the date which is the earlier of:-
 - (i) three years and three months from the date of this Agreement; or
 - (ii) two years and three months from the date of the Primary Street s278 Agreement,

then except in the case of Force Majeure the Economic Viability Assessment and this Agreement will be required to be reviewed in the manner set out in this Agreement.

- (8) The Owner the District Council and the County Council consider that the matters contained in this Deed are:
- (a) necessary to make the Development acceptable;
 - (b) directly related to the Development; and
 - (c) fairly related in scale and kind to the Development.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement the following expressions shall have the following meanings:

- | | |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| "1980 Act" | means the Highways Act 1980; |
| "1990 Act" | means the Town and Country Planning Act 1990 (as amended); |
| "A256 Roundabout" | means the new at grade roundabout on the A256 which will provide the access to the Site as shown on Plan 1 attached to this Agreement; |

"A2 Crossing Contribution"	means the sum of £100,000.00 (One Hundred Thousand Pounds);
"A2 Crossing Contribution Purposes"	means for the purposes of acquiring rights and/or land for the delivery of a new crossing over the A2 facilitating the connection of Phase 1 with land to the south of the A2 and located between the Whitfield Roundabout and the A2/A256 junction;
"Adult Services Wheelchair Accessible Homes"	<p>means the provision of accessible homes whereby each such unit will:</p> <ul style="list-style-type: none"> (a) meet the Lifetime Home Standards; and (b) have additional design features to allow them to be adaptable to a reasonable specification for wheelchair users which provides increased space, choice and flexibility over and above that provided within the Lifetime Homes Standards; and (c) shall be adaptable to be in accordance with the most recent edition of the Wheelchair Housing Design Guide available from the Building Research Establishment;
"Affordable Housing"	means dwellings provided and managed in a way that serves to reduce the purchase price or rental levels below normal market rates to enable initial and subsequent Occupation by persons identified by the District Council as being in housing need in the Dover area;
"Affordable Housing Contribution"	means the sum paid by Keith Edward Broadley and Nerbun Limited to the District Council pursuant to Paragraph 5.4 of Schedule 3 to the Phase 1A Planning Obligation;
"Affordable Housing Provider"	<p>means a provider of affordable housing which is:</p> <ul style="list-style-type: none"> (a) a Registered Provider approved by the District Council; or (b) any other provider of Affordable Housing as approved by the District Council;
"Affordable Housing Units"	means that part of the Development comprising three 1 bed and one 2 bed Adult Services Wheelchair Accessible Homes;

"All Reasonable Endeavours"

means that the party responsible for an obligation must exert itself to perform that obligation in a manner which:-

- (a) demonstrates that it has taken serious and detailed consideration of its contractual commitment and the fact that the Planning Permission would not have been granted without there being a planning obligation of that nature included within this Deed;
- (b) has utilised such methods as are likely to achieve the desired result recognising that it is of prime importance that the result is achieved;
- (c) recognises that:-
 - (i) it is not permissible to seek to limit or abandon the contractual commitment to strive to achieve the desired result simply on the grounds that the obligation is not commercially or financially desirable for that Party save where the pursuance of such contractual commitment would lead to a materially negative commercial or financial impact at that time; and
 - (ii) that it entered into the obligation on a voluntary basis and with the benefit of professional advice; and
- (d) in the event that the first attempt at securing the desired result is unsuccessful then (unless it can be demonstrated that there are no reasonable alternatives) demonstrates that it has then undertaken all reasonable alternative means of achieving the desired result with a view to ensuring that the obligation can be performed

AND FOR THE AVOIDANCE OF DOUBT:-

- (i) in relation to the Owner this term is to be interpreted within the context that:-
 - the Planning Permission would not have been granted unless the planning obligations contained in this Deed had been entered into;
 - it seeks to and would expect to profit financially and commercially from the construction and operation of the Development; and
 - there is nothing in the knowledge of the Owner prior to or at the date of this Deed which would require any unreasonable endeavour to be employed

in the performance of the planning obligations;

and

(ii) in relation to the District Council and/or the County Council this term is to be interpreted within the context that:-

- they are public authorities with statutory duties and responsibilities which they are required to fulfil with propriety in the public interest and in accordance with law policy and their standing orders and standard administrative processes where they are adequately funded;
- they have required the planning obligations contained in this deed to be entered into in order that the Planning Permission could be granted for the Development; and
- they are public authorities and not commercial organisations and are required to work within the financial constraints which that status imposes upon them;

"Application"

means the application for outline planning permission for the Development dated 25/11/2010 submitted to the District Council and allocated reference number DOV/10/01010;

"Bus Services Contribution"

means the sum of £1,795,312.50 (One Million Seven Hundred and Ninety Five Thousand Three Hundred and Twelve Pounds Fifty Pence) to be used for the Bus Services Contribution Purposes less any sums spent by the Owner in

- (a) providing bus services in accordance with paragraph 1.10 of Schedule 4; and
- (b) in providing any Bus Infrastructure in accordance with paragraph 1.10(a) of Schedule 4;

- "Bus Services Contribution Purposes"** means:
- (a) the extension to the "61" bus route to provide a service which (unless otherwise agreed) runs within 400 metres of every proposed Residential Unit within the Development; and/or
 - (b) the provision of an express commuter service between the Site and Dover Priory Station via the town centre;
- "Bus Infrastructure"** means bus stops, shelters, clearways and bus boarders information panels, real time bus information displays within the Development and other infrastructure needed for the provision of a bus service;
- "Certificate of Practical Completion"** means the certificate issued by the Owner's architect or engineer as the case may be or if the Development or any Sub-Phase is constructed by a party other than the Owner that party's architect;
- "Chargee"** means any mortgagee or chargee of the Registered Provider, the successors in title to such a mortgagee or chargee, or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;
- "Commencement"** means the commencement of any material operation (as defined in Section 56(4)) of the 1990 Act forming part of the Development other than (for the purposes only of this Agreement) operations consisting of:-
- (a) site clearance;
 - (b) demolition work;
 - (c) archaeological investigations for the purpose of assessing ground conditions;
 - (d) remedial work in respect of any contamination or other adverse ground conditions;
 - (e) diversion and laying of services, access and highway works;
 - (f) erection of any temporary means of enclosure; and
 - (g) the temporary display of site notices or advertisements
- and **"Commence Development"** shall be construed accordingly;
- "Commencement of Construction"** means in relation to any Residential Unit or other building or structure within the Development the commencement of the laying out and construction of the foundations for that Residential Unit or other building or

structure and **"Commence Construction"** and **"Commenced Construction"** shall be construed accordingly;

- "Committed for Use"** means that the District Council or the County Council (as appropriate) has entered into a commitment to deliver a facility or to provide a service or expend any contribution paid to it pursuant to the terms of this Deed for the purpose for which the relevant contribution was paid and has provided written evidence of such commitment to the Owner;
- "Date of Practical Completion"** means the date of issue of a Certificate of Practical Completion of any building facility or Sub-Phase by the Owner's architect or if the Development or any Sub-Phase is constructed by a party other than the Owner by that party's architect and **"Practical Completion"** shall be construed accordingly and shall include the issue of certificate one for Section 278 works;
- "Dover to Kingsdown Cliffs Special Area of Conservation"** means the area designated by the European Commission under the Habitats Directive and identified in the European Natura 2000 network under the code UK0030330 and protected by the Conservation of Habitats and Species Regulations 2010;
- "Development"** means the development of the Site pursuant to the Planning Permission;
- "Duke of York Roundabout"** means the roundabout at the junction of the A2 and A258 known locally as "Duke of York";
- "Duke of York Roundabout Contribution"** means One Hundred Thousand Pounds (£100,000) to be used for the Duke of York Roundabout Contribution Purposes;
- "Duke of York Roundabout Contribution Purposes"** means use for the improvement of the Duke of York Roundabout;
- "DVS"** means District Valuer Services;
- "Dwelling"** means any residential dwelling within the Whitfield Urban Expansion regardless of its tenure;
- "Economic Viability Assessment"** means the viability assessment undertaken by Allsopp dated 25 May 2012 and reviewed by DVS on behalf of the District Council;
- "Expert"** means in relation to any dispute to be resolved under Clause 7 an independent person of at least 10 years standing in the area of expertise relevant to the dispute to be agreed between the Parties or failing agreement to be nominated at the request and option of any of them at

their joint expense by or on behalf of the President for the time being of the Law Society;

"First Occupation"

means the date on which the Development or any Phase or Sub-Phase of the Development first begins to be Occupied and **First Occupied** shall be construed accordingly;

"Force Majeure"

means:

- (i) an act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster; act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; law, judgment, order, decree, embargo, blockade, labour dispute including but not limited to strike, lockout or boycott; interruption or failure of utility service including but not limited to electric power, gas, water or telephone service; and
- (ii) specifically in the case of the Primary Street s278 Agreement and subject to the Owner having used All Reasonable Endeavours to procure the same any delay in completing the Primary Street s278 Agreement;

"Green Infrastructure"

means such areas of public realm including (but not limited to) landscaped space, open space, recreational spaces including the Skate Park, outdoor sports facilities, community gardens, allotments, structural tree-belts, green corridors and other such relevant planting, the SAC Mitigation Land and other green infrastructure or public open space to be created within the Site pursuant to the provisions of Paragraphs 3, 5, 8 and 9 of Schedule 3 to this Agreement;

"Green Infrastructure Land"

means the land on which the Green Infrastructure is to be located shown shaded light green and dark green on Plan 3 attached to this Agreement or such other land within the Site approved by the District Council;

"Green Infrastructure Maintenance Programme"

means a maintenance plan for each phase or Sub-Phase of the Whitfield Urban Expansion which is compatible with the Green Infrastructure Management and Maintenance Plan and provides details of how the Green Infrastructure associated with the relevant phase or Sub-

Phase will be maintained in perpetuity;

"Green Infrastructure Management and Maintenance Plan"

means a plan for the overall coherent establishment and long term maintenance of the Green Infrastructure for the Site which demonstrates practicable connectivity with external features of Green Infrastructure as specified in the WUE SPD and includes details of the management organisation which is to be responsible for managing and maintaining the Green Infrastructure;

"Health and Social Care Centre"

means a centre on Phase 1A of the Whitfield Urban Expansion for the provision of health and social care services to the community that will comprise:

- (a) a general practitioner surgery
- (b) a dental surgery
- (c) provision of a consulting room to carry out assessment clinics and community support for the use by case workers of social care agencies

defined in the Phase 1A Planning Obligation;

"Healthcare Provider"

means an approved supplier or suppliers of healthcare services selected by the Clinical Commissioning Group (CCG) or other public healthcare commissioner or otherwise approved by the District Council;

"Homes and Communities Agency"

means the Homes and Communities Agency or its statutory successors;

"Honeywood Parkway Contribution"

means the sum of £95,000 (Ninety Five Thousand Pounds);

"Honeywood Parkway Contribution Purposes"

means for the purposes of providing the Honeywood Parkway Works;

"Honeywood Parkway Works"

means works to provide new and improved footpaths for pedestrian access between Phase 1 and Honeywood Parkway as shown on Plan 4 attached to this Agreement;

"Index"

means:

- (a) in relation to any contributions paid pursuant to Paragraph 1 of Schedule 4 to this Agreement relating to public highways the Roads Construction Tender Price Index issued by the Department for Business, Innovations and Skills; and
- (b) in relation to the School Contribution the General Building Costs Index as published by the BCIS on behalf of RICS; and

(c) in relation to all other contributions paid pursuant to the provisions of this Agreement the All Items Index of Retail Prices issued by the Office for National Statistics All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;

"Interest"	means interest at 4% above the base lending rate of Barclays Bank plc from time to time;
"Lifetime Homes Standards"	means the revised standards published on 5 July 2010 by Habinteg or any modification or replacement thereof;
"Local Lettings Plan"	means a lettings plan for the Affordable Housing Units in the usual form of the District Council from time to time;
"Lydden and Temple Ewell Downs Special Area of Conservation"	means that area identified by the European Commission under the Habitats Directive and identified in the European Union Natura 2000 network under the code UK0012834 and protected by the Conservation of Habitats and Species Regulations 2010;
"Market Housing Units"	means that part of the Development which comprises general market housing for sale on the open market and which does not comprise Affordable Housing Units;
"Occupy"	means to occupy or permit or suffer to be occupied for the Purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupation" and "Occupied" shall be construed accordingly;
"Parties"	means the parties to this Agreement and "Party" shall be construed accordingly;
"Phase"	means any phase of the Development pursuant to the Phasing Scheme;
"Phase 1A"	means the area of land within the Whitfield Urban Expansion but outside of the Site which is to be developed under planning permission DOV/10/1011 (or such subsequent permission for materially the same development) as shown multicoloured on Plan 5 attached to this Agreement;

"Phase 1A Planning Obligation"	means the deed of agreement pursuant to s106 of the 1990 Act made between the District Council Keith Edward Broadley and Nerbun Limited and dated 21 December 2012 as varied by a deed of variation dated 24 May 2013 relating to Phase 1A of the Whitfield Urban Expansion;
"Phase 1A Link Contribution"	means the sum of £95,000 (Ninety Five Thousand Pounds);
"Phase 1A Link Contribution Purposes"	means for the purpose of providing footpaths for pedestrian access between Phase 1 and Phase 1A including new and improved footpaths;
"Phasing Scheme"	means a plan or plan approved pursuant to the Planning Permission showing the sub-phases of the Development;
"Planning Permission"	means the planning permission subject to conditions to be granted by the District Council pursuant to the Application as set out in Schedule 2;
"Primary Street"	means the part of the Spine Road between the A256 Roundabout and the triangle as shown coloured claret on Plan 7 attached to this Agreement;
"Primary Street Works"	means those works required to construct the Primary Street;
"Practical Completion"	means: <ul style="list-style-type: none"> (a) in relation to a Residential Unit substantial completion of the Residential Unit to a stage where it is fit for Occupation and available for use by residential occupiers; (b) in relation to any other building comprised in the Development substantial completion of the building to a stage where it is fit for Occupation and available for non-residential occupiers and "Practically Complete" shall be construed accordingly
"Primary Street s278 Agreement"	means the agreement pursuant to s278 of the 1980 Act to be entered into between the Owner and the County Council in relation to:- <ul style="list-style-type: none"> (a) the Primary Street; and (b) the A256 Roundabout

"Registered Provider"	means a registered social landlord or other body registered as a social landlord as defined in the Housing and Regeneration Act 2008 and registered with the Homes and Communities Agency pursuant to Part 2 of that Act (and which) has not been removed from the register pursuant to that Act
"Residential Unit"	means any Market Housing Unit or Affordable Housing Unit comprised in the Development;
"SAC Information Pack"	means a pack supplied to each Residential Unit upon First Occupation containing information about: <ul style="list-style-type: none"> (a) the Lydden and Temple Ewell Downs Special Area of Conservation; (b) the SAC Mitigation Land being provided pursuant to this Agreement to enable quiet recreation for members of the public within an informal setting; and such reasonable other information as Natural England and/or the Kent Wildlife Trust and/or the District Council consider to be appropriate from time to time;
"SAC Mitigation Land"	means such areas of Green Infrastructure for the purposes of mitigating the impact on the Lydden and Temple Ewell Downs Special Area of Conservation to be created within the Site in a location as shown on Plan 8 attached to this Agreement or as approved in accordance with the Planning Permission;
"School"	means a primary school to be provided on the School Land to provide primary education to pupils which are expected to be generated from the Development;
"School Contribution"	means the sum of THREE MILLION FIVE HUNDRED THOUSAND POUNDS (£3,500,000.00) for the School Contribution Purposes;
"School Contribution Purposes"	means for the construction fitting out and operation of a School on the School Land;
"School Land"	means the area of land required for the construction of the School;
"Section 106 Monitoring Contribution"	means Five Thousand Pounds (£5,000.00) per annum;

"Service Infrastructure Works"	means such works for the provision of services infrastructure to and within the Site including foul water, drainage, potable water supply, high speed broadband, internet supply, gas supply, electricity supply and surface water drainage including such works as referred to in paragraph 11 of Schedule 3;
"Site"	means the land against which this Agreement may be enforced and is more particularly described in Schedule 1 and shown edged red on the Site Plan;
"Site Plan"	means Plan 9 attached to this Agreement;
"Skate Park"	means the skate park described in the Phase 1A Planning Obligation;
"Spine Road"	means the road shown indicatively on Plan 10 attached to this Agreement and which for the avoidance of doubt shall be contiguous with the public highway at both ends and the Owner shall not retain any ransom strip;
"SPA Contribution"	means the total sum of £61,987.50 calculated on an estimate that 1250 Residential Units will be constructed at the cost of Forty Nine Pounds and Fifty Nine Pence (£49.59) per Residential Unit;
"SPA Contribution Purposes"	means measures to mitigate the impact of the Development upon the Thanet Coast and Sandwich Bay Special Protection Area pursuant to the Thanet Coast SPA Mitigation Strategy version 3 or any modification or replacement thereof;
"Sport Facilities Contribution"	means Seven Hundred and Fifty-Nine Thousand and Seven Hundred Pounds (£759,700.00) for use for Sport Facilities Contribution Purposes;
"Sport Facilities Contribution Purposes"	means upgrading and enhancing sports facilities in the Whitfield Dover area and/or in the vicinity of the Development;
"Sub-Phase"	means the separate areas of the Site as approved under the Phasing Scheme;
"Thanet Coast and Sandwich Bay Special Protection Area"	means the area designated by the European Commission under the Birds Directive and identified in the European Union Natura 2000 network under the code UK9012071 and protected by the Conservation of Habitats and Species Regulations 2010;
"Travel Plan Monitoring Contribution"	means One Thousand Pounds (£1,000.00) per annum;

"Updated Economic Viability Assessment"	means a revised version of the Economic Viability Assessment as at the date it is required to be submitted utilising the same methodology as was used to prepare the Economic Viability Assessment and including, but not limited to, revised figures, fees, interest and performance measures;
"Whitfield Urban Expansion"	means the area shown edged red on Plan 11 attached to this Agreement;
"Working Days"	means Monday to Friday inclusive (excluding Bank Holidays and public holidays);
"WUE SPD"	means the Whitfield Urban Expansion supplementary planning document adopted by the Council in April 2011.

1.2 Interpretation

- (a) Reference in this Agreement to any recital clause paragraph or schedule is unless the context otherwise requires a reference to the recital clause paragraph or schedule in this Agreement so numbered.
- (b) Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- (c) Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeably in that manner.
- (d) Wherever an obligation falls to be performed by more than one person the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- (e) Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permission and directions for the time being made issued or given under that Act or deriving validity from it.
- (f) References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the District Council and the County Council the successors to their respective statutory functions.
- (g) Headings where they are included are for convenience only and are not intended to influence the interpretation of the agreement.

2. **LEGAL BASIS**

2.1 This Agreement is made pursuant to the 1990 Act Section 106, the Local Government Act 1972 Section 111 and the Localism Act 2011 Section 1.

2.2 The terms of this Agreement create planning obligations binding on the Owner pursuant to Section 106 of the 1990 Act and are enforceable as such by the District Council and the County Council.

2.3 Where under this Agreement any notice approval consent certificate direction authority agreement action or expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice approval consent certificate direction authority agreement action or expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed.

3. **CONDITIONS DURATION AND ENFORCEMENT**

3.1 **Conditions Precedent**

This Agreement is conditional upon the grant of the Planning Permission and shall become effective unless the context indicates to the contrary upon the Commencement of the Development in accordance with the timetable set out for each obligation in this Agreement save for Clauses 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13 and 14 which shall come into effect immediately upon completion of this Agreement.

3.2 **Duration**

(a) This Agreement shall cease to have effect in so far only as it has not already been complied with if the Planning Permission is quashed evoked or otherwise withdrawn or without the consent of the Owner it is modified by any statutory procedure or expires before the Commencement of Development.

(b) No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after parting with his interest in that part of the Site on which the breach occurs but without prejudice to liability for any subsisting breach arising before parting with that interest.

(c) No person shall be liable for any breach of the planning obligations contained in Schedule 3 or Schedule 4 if that person has no interest in the particular Sub-Phase to which that planning obligation relates.

(d) Nothing in this Agreement shall prevent compliance with any obligation pursuant to it before that obligation comes into effect under this Clause 3.

3.3 **Other development**

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

3.4 **Non-enforcement**

The obligations contained in this Agreement shall not be binding upon or enforceable against:

- (a) any Chargee or any receiver appointed by such a Chargee or any person deriving title through such a Chargee or receiver;
- (b) any person to whom the Affordable Housing Provider grants a lease of a Residential Unit or any successor in title to any such person other than in relation to para 6.2 of Schedule 3;
- (c) a tenant or any occupant of an Affordable Housing Unit exercising a right to buy right to acquire or similar statutory right to purchase;
- (d) the owners or occupiers of any Market Housing Unit or any mortgagee of a Market Housing Unit.

3.5 **Enforcement Costs**

In the event that the District Council and/or the County Council shall have to take enforcement measures under this planning obligation then the Owner shall pay the full costs of such enforcement measures if such measures are granted or upheld by the Court or the Secretary of State.

3.6 **Force Majeure**

In the event of Force Majeure the obligations in this agreement shall be suspended for such period as is agreed in writing with the District Council or the County Council as appropriate and the time for compliance shall be extended by such agreed period.

4. **OWNER COVENANTS**

- 4.1 The Owner covenants with the District Council as set out in Schedule 3.
- 4.2 The Owner covenants with the County Council as set out in Schedule 4.

5. **PLANNING AUTHORITY COVENANTS**

- 5.1 The District Council covenants with the Owner as set out in Schedule 5.
- 5.2 The County Council covenants with the Owner as set out in Schedule 6.

6. **THE MORTGAGEE**

- 6.1 Any mortgagee or chargee from time to time including the Homes and Communities Agency or a full member of the Council of Mortgage Lenders or otherwise approved in writing by the Council on a case-by-case basis shall be liable only for any breach of the provisions of this Agreement during such period as he is a mortgagee in possession of the Site and shall not be liable for any breach of the provisions of this Agreement after he has parted with or released his interest in the Site.

7. **DISPUTE RESOLUTION**

- 7.1 If a dispute between the Parties persists beyond 10 working days and relates to any matter contained in this Agreement (including any matter to be agreed or approved under this Agreement but excluding matters of its interpretation) the dispute may be referred to the Expert by any Party.
- 7.2 The Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding on the Parties save in the case of manifest error and his costs shall be in his award.
- 7.3 The Expert shall be appointed subject to an express requirement that he must reach his decision and communicate it to the Parties within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than 20 Working Days from the date of his appointment to act unless otherwise agreed in writing with the parties before the expiration of 20 Working Days from his appointment.
- 7.4 The Expert shall be required to give notice to each of the Parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and shall afford to the Parties an opportunity to make counter submissions within a further five Working Days in respect of any such submission and material.
- 7.5 The Expert's decision shall be given in writing within 20 Working Days after his appointment with reasons.
- 7.6 The provisions of this Clause 7 shall not affect the ability of the District Council and/or the County Council to apply for and be granted declaratory relief injunction specific

performance payment of any sum damages any other means of enforcing this deed consequential and interim orders and relief.

8. PROVISIONS OF IMMEDIATE EFFECT

On completion of this Agreement the Owner shall pay to the District Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Agreement.

9. EXCLUSION OF THIRD PARTY RIGHTS

Nothing in this Agreement shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. NOTICE

10.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the Party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.

10.2 A notice or communication shall be served or given:

- (a) on the Owner at its respective address shown on page 1 of this Agreement or such other address as shall be notified by the Owner in writing to the District Council from time to time;
- (b) on the District Council at White Cliffs Business Park Dover CT16 3PJ or such other address as shall be notified in writing to the Owner from time to time marked for the attention of the Chief Executive or such other officer as shall be notified in writing to the Owner from time to time;
- (c) on the County Council at County Hall Maidstone Kent ME14 1XQ or such other address as shall be notified in writing to the Owner from time to time marked for the attention of the Director of Governance and Law or such other officer as shall be notified to the Owner from time to time;
- (d) on any mortgagee at its registered address from time to time.

10.3 Any notice or other written communication to be given by the District Council and/or the County Council shall be deemed valid and effectual if on its face it is signed on

behalf of the District Council and/or the County Council by an officer or duly authorised signatory.

11. LOCAL LAND CHARGES

- 11.1 This Agreement shall be registered as a local land charge by the District Council and the District Council shall immediately after the date of this Agreement register it as such.
- 11.2 The Owner covenant with the District Council at their own cost to do or concur in doing all things necessary to enable an entry noting this agreement to be made in the charges register of the title to the Site.
- 11.3 Following the performance and satisfaction of all the obligations contained in this Agreement the District Council shall immediately effect the cancellation of all entries made in the Register of Local Land charges and the charges register in respect of this Agreement as soon as reasonably practicable.

12. JURISDICTION AND LEGAL EFFECT

- 12.1 This Agreement shall be governed by and interpreted in accordance with the law of England.
- 12.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) and the Parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no Party will argue to the contrary.
- 12.3 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable that invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 12.4 No waiver (whether expressed or implied) by the District Council, the County Council and/or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council, the County Council and/or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.
- 12.5 Nothing contained or implied in this Agreement shall prejudice or affect the rights discretions or powers duties and obligations of the District Council or the County

Council under all statutes byelaws statutory instruments orders and regulations in the exercise of their functions as local authorities.

12.6 The provisions of this Agreement (other than Clause 8 and this Clause 12.6 which shall be effective in any event) shall be of no effect until this Agreement has been dated.

13. **INDEXATION INTEREST AND VAT**

13.1 Any sum to be paid to the District Council under Schedule 3 or the County Council under Schedule 4 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 AND FOR THE AVOIDANCE OF DOUBT no sum paid to the District Council or the County Council shall be decreased as a result of any decrease in the Index from the date of this Agreement until the date on which a sum is paid.

13.2 If any payment due under this Agreement is paid late Interest shall be payable from the date payment is due to the date of payment.

13.3 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

14. **CHANGE IN OWNERSHIP**

The Owner shall give the District Council and the County Council immediate written notice of:

- (a) any change in the ownership of any of its interests in the land within the Site;
or
- (b) the creation of any new interest in the land within the Site other than a sale of the freehold or a grant of a lease or tenancy to an individual owner or occupier of an Affordable Housing Unit or a Market Housing Unit.

IN WITNESS whereof the Parties have executed this Agreement as a Deed the day and year first before written.

SCHEDULE OF PLANS ATTACHED

Plan 1 - A256 Roundabout Plan (Dwg No. 0088-GA-02-RevD)

Plan 2 - [not used]

Plan 3 - Green Infrastructure Land Plan (Dwg No. L215 Rev B)

Plan 4 - Honeywood Parkway Works Plan (Dwg No. 088-SK-06)

Plan 5 - Phase 1A Plan (ref 5705/SK/13C)

Plan 6 - [not used]

Plan 7 - Primary Street Plan (ref 5704/SK72A)

Plan 8 - SAC Mitigation Land Plan (Dwg No. L231 Rev C)

Plan 9 - Site Plan (ref 5498/SK20C)

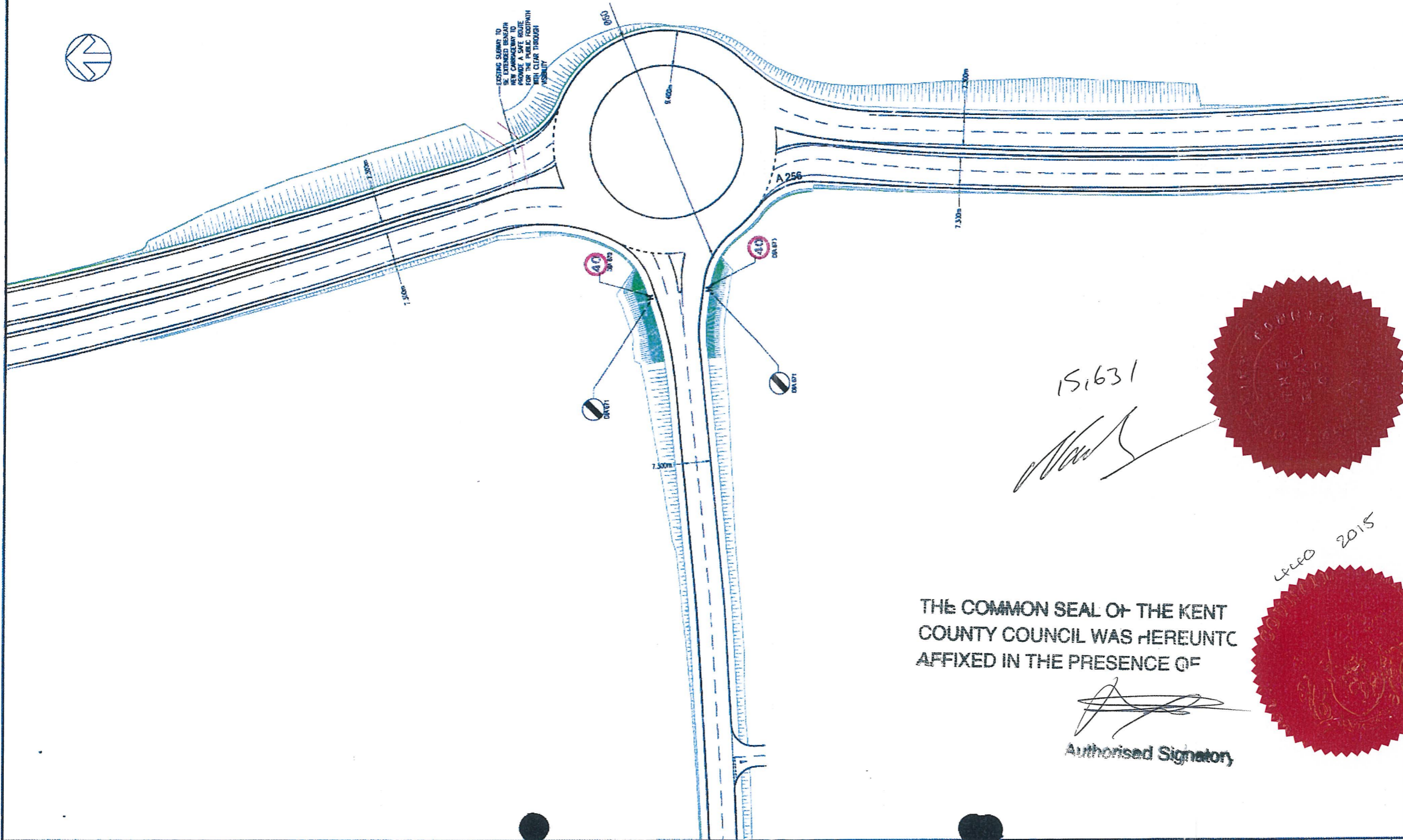
Plan 10 - Spine Road Plan (ref 5704/SK73A)

Plan 11 - Whitfield Urban Expansion Plan (ref 5432SK66B)

Plan 12 - School Site Plan (Dwg No. 5498-005-RevB)

DO NOT SCALE

1. DESIGN WILL BE SUBJECT TO STAGE 1 TECHNICAL ADVICE APPROVALS.
2. ROUNDABOUT WILL BE ILLUMINATED TO CURRENT STREET LIGHTING STANDARDS.
3. SIGNS WILL BE TO CURRENT STANDARDS.
4. EXISTING SUBWAY TO BE EXTENDED UNDER NEW CARREGWAY TO FORM PUBLIC FOOTPATH LINK.
5. SAFETY BARRIERS TO BE CONSIDERED AT DETAILED DESIGN STAGE BASED ON VERGE WIDTHS AND LANDSCAPE PROPOSALS.



Plans
Archer
PLAN 1

15.631
[Signature]



4440 2015



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

[Signature]
Authorised Signatory

PROJECT: WHITFIELD - PHASE 1		DATE: 2015	SCALE: 1:100	PROJECT NO: 0089-GA-02	DATE: JUN 2011
CLIENT: PHILIP JEANS HOMES LTD		DESIGNER: WSP	DRAWN: SE	PROJECT NO: 11560088	DATE: JUN 2011
PROJECT: WHITFIELD - PHASE 1 PROPOSED ACCESS JUNCTION		PROJECT NO: 11560088	PROJECT NO: 0089-GA-02	© WSP Group plc	

WSP
WSP House, 70 Chichester Lane, London, W20A 1AF
Tel: +44 (0)20 7314 6000 Fax: +44 (0)20 7314 6099
http://www.wspgroup.com

FOR INFORMATION ONLY

NO.	DATE	BY	REVISION
1	2011	SE	ISSUED FOR STAGE 1 TECHNICAL ADVICE
2	2011	SE	REVISED AND RE-DESIGNED
3	2011	SE	REVISED AND RE-DESIGNED
4	2011	SE	ISSUED

Small text at the bottom of the page, likely containing project details and version information.

PHASE 1. GREEN INFRASTRUCTURE STRATPLAN
Drawing L215 Rev B

Handwritten signatures and initials:
Moor
H
[Signature]



PLAN 3

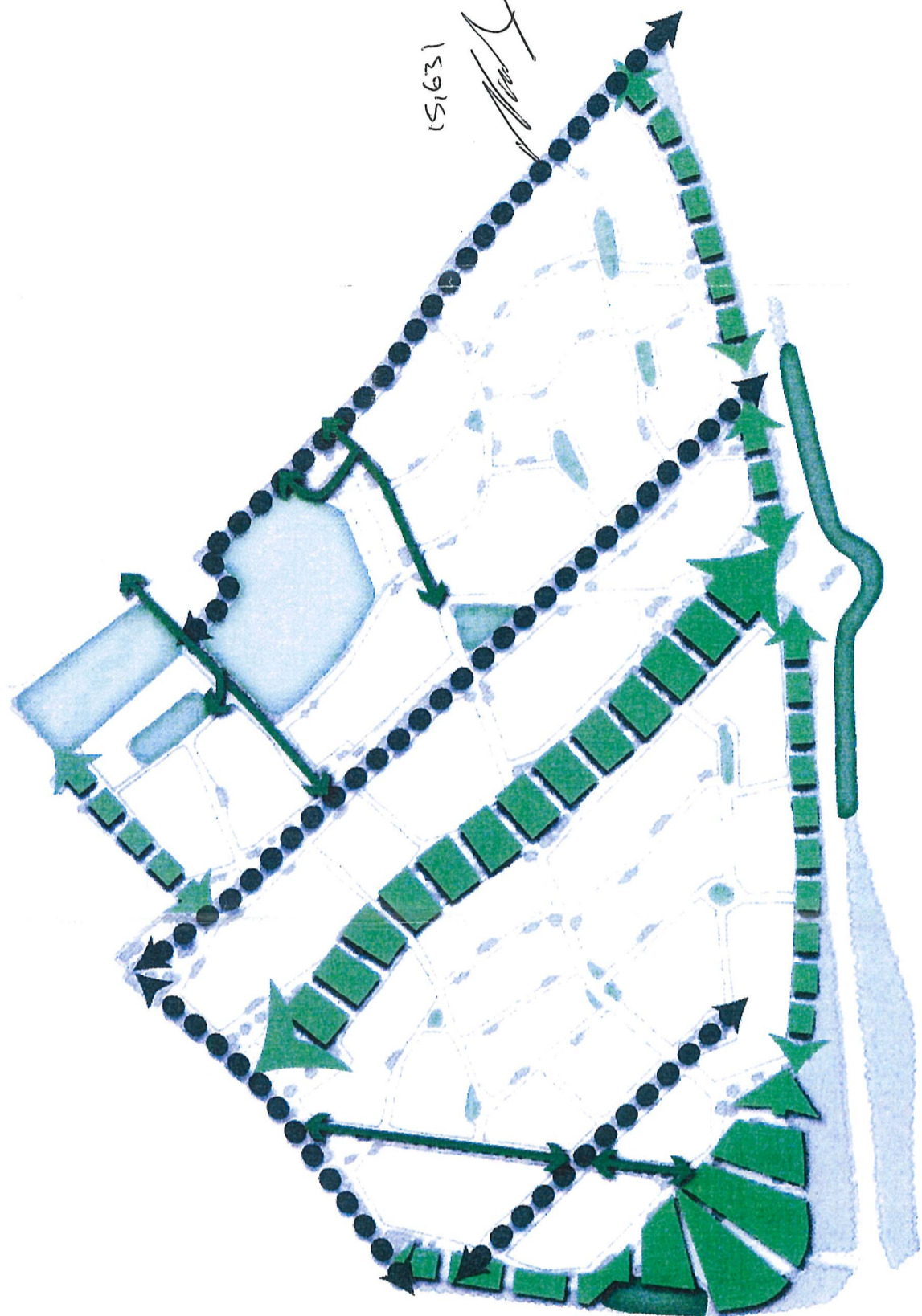


4th 2015








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COUNTY COUNCIL WAS HEREBY
AFFIXED IN THE PRESENCE OF

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Authorised Signatory



LEGEND

-  GREEN CORRIDOR
-  OPEN SPACE
-  STRUCTURAL TREE PLANTING
-  WOODLAND
-  SECONDARY GREEN INFRASTRUCTURE LINKS

446
2015



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Authorised Signatory



- KEY
- PROPOSED FOOTWAY
 - EXISTING FOOTWAY/FOOTPATH
 - EXISTING ROAD (INDICATIVE ONLY)

15.631

A2 - LONDON

POSSIBLE EARTHWORKS TO
ACHIEVE SAFE ACCEPTABLE
FOOTWAY WIDTH

POSSIBLE KERBLINE ADJUSTMENT
TO ACHIEVE ACCEPTABLE
FOOTWAY WIDTH

A2 - DOVER

B&Q

Andrew P Jones



TITLE
WHITFIELD DOVER
FOOTWAY LINKS

FIGURE No.
0088/SK/06

PLAN 4

Y:\WHITFIELD\DOVER 11560088\DRAWINGS\AUTOCAD\0088-SK-06.DWG 18/05/2012 11:20:42 Nevett, Oliver

Reproduced from the Ordnance Survey map
with the permission of the Controller of Her
Majesty's Stationary Office. Licence no.
100046755. Crown copyright reserved.

0 100 metres



151631
[Handwritten signature]

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

[Handwritten signature]
 Authorised Signatory



PLAN 5



Adjacent Properties and Boundaries are shown for illustrative purposes only and have not been surveyed unless otherwise stated.
 All areas shown are approximate and should be verified before forming the basis of a decision.
 Do not scale other than for Planning Application purposes.
 All dimensions must be checked by the contractor before commencing work on site.
 No deviation from this drawing will be permitted without the prior written consent of the Architect.
 The copyright of this drawing remains with the Architect and may not be reproduced in any form without prior written consent.
 Ground Floor Slabs, Foundations, Sub-Structures, etc. All work below ground level is shown provisionally. Inspection of ground conditions is essential prior to work commencing.
 Reassessment is essential when the ground conditions are apparent, and redesign may be necessary in the light of soil conditions found. The responsibility for establishing the soil and sub-soil conditions rests with the contractor.



- Phase A: Private Residential, and access road. Stage 1 mitigation details to be approved pursuant to condition 5 (iv) and 9 (3.85ha gross, road area 0.2ha)
- As part of Phase A Green Infrastructure Land (total area 1.43ha)
- As part of Phase A SAC Mitigation (0.33ha)
- Phase B: Affordable Housing and access road (0.02ha gross, road area 0.1ha)
- Phase C Health & Social Care Centre Land and Bus Hub Stage 2 mitigation details to be approved pursuant to condition 5 (iv) and 9 (0.48ha gross, road area 0.22ha)
- Phase D Commercial Centre
- Phase E Skate Park (indicative location within Green infrastructure Land (0.01ha))

Phase F Learning & Community Campus Land (2.65ha)

Rev.	Date	Description	Initials
C	22-04-13	Reference re-submission of plan	BB
B	22-04-13	Phase A signed	BB
A	20-05-13	Commenced submission	BB

PROJECT: Whitfield Phase 1a
 TITLE: Phasing Plan

DATE: 22/04/2013
 SCALE: 1:1250 @ A1
 DRAWING No. 5705/SK13C
 DRAWN BY: BB

ADAM URBANISM
 OLD HYDE HOUSE, 75 HYDE STREET
 WINCHESTER, HAMPSHIRE, SO23 7DW
 TELEPHONE 01962 843843 FACSIMILE 01962 843502
 www.adamarchitecture.com contact@adamarchitecture.com

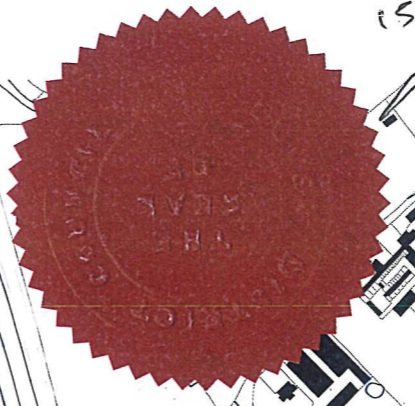
LONDON OFFICE: 8 QUEEN SQUARE WC1N 3AT
 TELEPHONE: 020 7841 0140 FACSIMILE: 01962 843303
 ADAM ARCHITECTURE IS A TRADING NAME OF ROBERT ADAM ARCHITECTS LIMITED

* Note: All boundaries are for illustrative purposes only and subject to further surveys



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[Signature]
 Authorised Signatory



Adjacent Properties and Boundaries are shown for illustrative purposes only and have not been surveyed unless otherwise stated.
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Scale

[Signature]
 PLAN 7
[Signature]

Rev.	Date	Description	CH Initials
A	17/10/14	Red line revised.	
Project Whitfield, Dover			
Title Primary Street Plan Plan 7			
Date 23.04.2014			
Scale 1:2500 @ A1			
Drawing No. 5704/SK72A			
Drawn by FC			

ADAM URBANISM
 9 UPPER HIGH STREET, WINCHESTER, HAMPSHIRE SO23 8UT
 TELEPHONE: +44 (0)1962 843843 FACSIMILE: +44 (0)1962 843303
 www.adamarchitecture.com contact@adamarchitecture.com

LONDON OFFICE: 6 QUEEN SQUARE WC1N 3AT
 TEL: +44 (0) 20 7841 0140 FAX: +44 (0) 20 7713 6740
 ADAM URBANISM IS A TRADING NAME OF ROBERT ADAM ARCHITECTS LIMITED

Arthur Thomas

PLAN 8



5/10/12

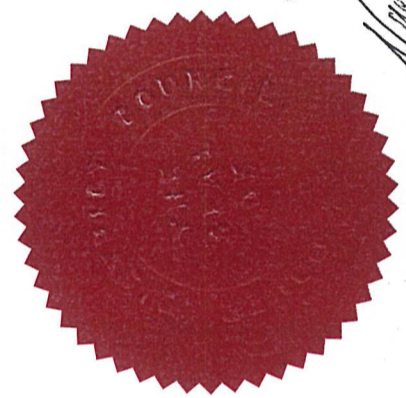


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COUNTY COUNCIL WAS HERE
AFFIXED IN THE PRESENCE OF

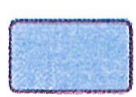
Authorised Signatory



151631



LEGEND



PROPOSED AREAS OF SAC MITIGATION (4.28ha)



RETAINED AND PROPOSED RECREATIONAL LINKAGES

Project
Land at Whitfield
Phase 1

Drawing Title
Landscape Strategy Plan -
SAC Mitigation

Date	Scale	Drawn by	Check by
27.07.2012	NTS	MN	PC
Project No	Drawing No	Revision	
18379	L231	C	



Planning • Master Planning & Urban Design
Architecture • Landscape Planning & Design • Project Services
Environmental & Sustainability Assessment • Graphic Design

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Offices at Reading London Bristol Cambridge Cardiff Edinburgh Leeds Solihull West Malling (Kent)