



Dated *the Twenty First day of May* 2010

- (1) SHEPWAY DISTRICT COUNCIL
- (2) KENT COUNTY COUNCIL
- (3) NICKOLLS PROPERTIES LIMITED

Agreement

I hereby certify that this is a true copy
of the original placed before me this
21 day of *May* 2010


Solicitor

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THIS AGREEMENT is made on

the 21st day of May

2010

BETWEEN:

- (1) **SHEPWAY DISTRICT COUNCIL** of The Civic Centre, Castlehill Avenue, Folkestone, Kent, CT20 2QY ("SDC");
- (2) **KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone, Kent, ME14 1QX ("KCC");
- (3) **NICKOLLS PROPERTIES LIMITED** (registered number 4960429) whose registered office is at 63 - 67 Cheriton High Street, Folkestone, Kent, CT19 4HA ("the Owner")

BACKGROUND

- (A) For the purposes of the Planning Act, SDC is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement
- (B) KCC is the local highway authority and local education authority for the purposes of Highways Act and the Education Acts respectively for the area within which the Site is located
- (C) The Owner is the freehold owner of the Site free from encumbrances that would prevent the Owner entering into this Agreement
- (D) Pursuant to the Planning Application the Owner and Cofton Limited had applied to SDC for planning permission for the Development
- (E) SDC has decided to grant the Planning Permission for the Development in accordance with the Planning Application subject to the prior completion of the Agreement
- (F) The obligations contained in this Agreement may be enforced by SDC and where specifically stated by KCC against the Owner and its successors in title.

The parties agree as follows

1. **DEFINITIONS**

In this Agreement, unless the context requires otherwise, the definitions apply:

"Adoptable Highway"

a highway constructed from the adopted highway up to the boundary of the Employment Land or Sports Leisure and Community Land (as appropriate) with no intervening land to a standard necessary to

ensure that KCC agrees to adopt as a highway maintainable at the public expense.

"Affordable Housing"

has the meaning given to it in Annex B of "Planning Policy Statement 3: Housing" published by the Department For Communities And Local Government and shall include the Wheelchair Accessible Units;

"Affordable Housing Provider (AHP)"

means either:

- (i) a registered social landlord within the meaning of the Housing Act 1996 on an approved list maintained by the Head of Housing unless otherwise agreed between the parties; or
- (ii) a registered social landlord which has been approved by the Head of Housing;

"Affordable Housing Land"

means the area or areas of land and/of buildings or parts of buildings (whether at ground level or above ground level) within the Site as shown in an Affordable Housing Scheme approved by SDC for the construction of Affordable Housing Units

"Affordable Housing Scheme"

means a detailed scheme for the phased provision of Affordable Housing Units within the Development to be prepared by the Owner and to be submitted to and approved in writing by the Head of Housing which:

- A) provides for Affordable Housing within each Phase in accordance with a phased programme of delivery agreed with SDC;
- B) provides a tenure and size mix across the Site in accordance with the Affordable Housing Tenure Mix and Affordable Housing Size Mix and identifies the tenure and size mix within each Phase;
- C) identifies the location size and housing types of the Affordable Housing Units;
- D) utilises design techniques to ensure that the Affordable Housing Units should be materially indistinguishable (in terms of outward design and appearance) from the Market Units of similar size;
- E) ensures that the Affordable Housing

Units are provided in clusters and/or pepper potted throughout the development;

- F) addresses any other matters relating to the provision of Affordable Housing that SDC may reasonably require;
- G) identifies the location and phasing of the Wheelchair Accessible Units which shall be provided in one Phase.

"Affordable Housing Size Mix"

means a mix of dwellings sizes to comprise at least the following:

20% x 1 bedroom affordable housing units comprising of a one bedroom flat

30% x 2 bedroom affordable housing units comprising of a two bedroom house

40% x 3 bedroom affordable housing units comprising of a three bedroom house

10% x 4 bedroom affordable housing units comprising of a four bedroom house

such general percentages to be applied to secure an appropriate proportion of Affordable Housing Units in each Phase in accordance with the provisions of the First Schedule

"Affordable Housing

Tenure Mix"

means 60% of the Affordable Housing Units shall be provided as Social Rented Dwellings and 40% of the Affordable Housing shall be provided as Intermediate Dwellings or such other mix of tenures as may be agreed with SDC;

"Affordable Housing Unit"

means any Social Rented Dwelling or Intermediate Dwelling and shall include the Wheelchair Accessible Units which are identified as such in accordance with the terms of this agreement for Affordable Housing and all ancillary and incidental works structures planting and any related roads car parking spaces paths forecourts footpaths frontage and verges signing and lighting;

"Agreed Construction Standards"

means:

- (i) the prevailing housing development standards which ensure that the Affordable Housing Units are eligible to

receive public capital subsidy through the Homes and Communities Agency;

(ii) the construction standards required by NHBC to enable the housing to qualify for NHBC insurance; and

(iii) at least level three of the code for sustainable homes.

"Building"

Means any building to be constructed on the site including a Dwelling

"Bus Contribution"

means the total sum of £625,000.00 (Six Hundred and Twenty Five Thousand Pounds) to be paid by the Owner to the Bus Operator to procure the Bus Service as set out paragraph 4 of the Sixth Schedule;

"Bus Operator"

means the company operating the Bus Service;

"Bus Service"

means the bus service to be operated between Hythe Town Centre and the Development as specified in paragraph 4 of Schedule 6;

"Challenge"

means an application or appeal to the High Court or other appropriate forum in respect of a decision or act or omission of the SDC or the Secretary of State or any court including but not limited to the following:

(a) an application for judicial review under Part 54 of the Civil Procedure rules 1998 and any complementary rules, practice Directions, protocols and any amendments to the foregoing issued by the Lord Chancellor's Department; and

(b) an appeal to the High Court and including any appeal to a higher court made against a judgement given by a lower court in respect of an order or action of the Secretary of State under Section 288 of the Planning Act.

"Children's Play Area"

means the provision of the LEAPs NEAPs and LAPs in locations shown for identification purposes marked red on Plan 4 or such other provision as may be agreed in writing with SDC in accordance with the provisions of the Third Schedule

"Commencement Date"	subject to clause 4.2 the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the Planning Act and Commencement of Development shall be construed accordingly;
"Complete"	means the stage where a Dwelling is fitted out and ready for occupation by a resident and "completed" and "completion" shall be construed accordingly
"Development"	<p>the residential and commercial development more particularly described and specified in the Planning Application and shall include:</p> <ul style="list-style-type: none"> • any application for planning permission consistent with the Development • any planning application to carry out the Development without complying with a condition imposed on the Planning Permission • any reserved matters approval granted pursuant to the Planning Permission
"Dwellings"	means all dwellings to be constructed on the Site as part of the Development pursuant to the Planning Permission to include the Market Dwellings and Affordable Housing Units; and "Dwelling" shall mean any one of them;
"Education Acts"	has the meaning given to it in section 578 of the Education Act 1996;
"Education Contribution"	the sum of £1,200,000.00 (One Million Two Hundred Thousand Pounds) to be paid by the Owner to KCC in accordance with the provisions of the Sixth Schedule;
"Employment Land"	the area shown edged orange on the Master Plan comprising 6 hectares and to be used for the provision of employment development within Use Class B1 or such other area as may be agreed in writing with SDC;
"Employment Marketing Strategy"	the marketing strategy to be submitted by the Owner to SDC detailing the proposed marketing strategy to be employed to secure the disposal of the Employment Land in whole or in part in accordance with the provisions of the Seventh Schedule;

"Footpaths and Cycleways"	means the routes for pedestrians and cyclists to be provided as part of the Development that do not comprise part of the existing or proposed public highway routes;
"Grant Funding"	means the social housing grant provided by the Homes and Communities Agency
"Head of Housing"	means the person from time to time holding or acting in the post of Head of Housing within SDC or any replacement for that post or such other person as SDC made by notice in writing to the Owner;
"Highways Act"	means the Highways Act 1980 or any amendment or variation thereto;
"Highways Contribution"	means the sum of £289,000 (Two Hundred and Eighty Nine Thousand Pounds) to be paid by the Owner to KCC in accordance with the provisions of the Sixth Schedule comprising: <ul style="list-style-type: none"> (a) £162,000 (One Hundred and Sixty Two thousand pounds) towards improvements at the A20 Ashford Road/A261 Hythe Road junction; (b) £127,000.00 (One Hundred and Twenty Seven Thousand Pounds) towards improvements at the A20 Ashford Road/C563 Stone Street junction;
"Highway Works"	means the off-site highways works comprising: <ul style="list-style-type: none"> (a) upgrading of the A20 Ashford Road/A261 Hythe Road junction; and (b) improving the A20 Ashford Road/C563 Stone Street junction.
"HomeBuy Scheme"	means the scheme introduced by the Secretary of State on 2 October 2006 to facilitate social tenants key workers and other first time buyers' purchase of a home
"Homes and Communities Agency"	means the statutory body constituted to administer the delivery of grant funding for Affordable Housing and regulate Registered Social Landlords or such successor body with similar powers and obligations;

"Index"	has the meanings given in clause 10 of this Agreement;
"Indicative Development Areas and Completions Plan"	means the Plan numbered 3 attached hereto;
"Intermediate Dwellings"	means a Dwelling to be provided on Shared Ownership Terms at a price or rent above those of social rent but below those of market price or rents and so as to be affordable with regard to local incomes and local house prices to households whose needs are not met by the market;
"Lakeside Park"	means the area to be shown as part of the land coloured green on Plan 7 comprising the area surrounding the Water Area to be used as a park or such other area as may be agreed in writing with SDC;
"Landscape Buffer"	the landscaped buffer to be provided along the Site boundary in the locations shown edged orange on Plan 2;
"LAP"	a Local Area for Play as defined by the National Playing Fields Association being a small level area of grassed open space designed mainly for younger children up to the age of 6 years;
"LEAP"	a Local Equipped Area for Play as defined by the National Playing Fields Association including play equipment predominantly for children up to 12 years of age with seating for accompanying adults;
"Managed Areas"	means the Public Open Space Areas including the Lakeside Park and two local parks the Urban Square the Children's Play Areas the Landscape Buffer the Water Areas and the Railway Halt Footpath and Cycleways;
"Management Company"	means the company to be nominated or established by the Owner for the long term management and maintenance of the Managed Areas in accordance with the Management Scheme and to secure the appointment of the Travel Co-ordinator in accordance with the provisions of the Third and the Fifth Schedules respectively;
"Management Scheme"	means a written scheme for management of the Managed Areas to be submitted by the Owner to SDC in accordance with the provisions of the Third Schedule;

"Market Dwellings"	means those Dwellings for sale lease or other disposal on the open market other than the Affordable Housing Units forming part of the Development;
"Master Plan"	the illustrative master plan for the Development of the Site numbered 1 attached hereto;
"Monitoring Contribution"	Means the sum of £25,000 to be used for the purpose of monitoring compliance with the Owners obligations in this agreement.
"NEAP"	a Neighbourhood Equipped Area for Play as defined by the National Playing Fields Association including equipment for multiple types of supervised and unsupervised play predominantly for older children between the ages of 8 - 14 years with accompanying areas for teenagers to meet;
"Occupation"	means beneficial occupation for the purpose for which any building comprising the Development was granted planning permission but shall exclude occupation for the purposes of fit out or marketing;
"Pedestrian Route Improvements Contribution"	means the sum of £15,000 (Fifteen Thousand Pounds) to be paid by the Owner to KCC in accordance with the provisions of the Sixth Schedule
"Pedestrian Route Improvements Works"	means Improvements to the existing pedestrian route between the North East corner of the site and Herons Way;
"Phase"	means a phase of the Development identified in accordance with the Indicative Development Areas and Completions Plan numbered 3 or such other phasing arrangement as may be agreed in writing with SDC and in relation to the delivery of Public Open Space Areas means a phase identified in accordance with Plan 2 or such other plan as may be agreed in writing with SDC;
"Plans"	means the plans attached to this Agreement numbered 1 - 7;
"Planning Act"	means the Town and Country Planning Act 1990 or any amendment or variation hereto;
"Planning Application"	means an application for outline planning permission for the carrying out of the Development made by the Owner and given

reference Y06/1079/SH;

"Planning Permission"

means the planning permission granted pursuant to the Planning Application;

"Provide Services"

layout and construct up to the boundary of the land or into the Dwelling (as the case may be) with no intervening land all necessary services so as to enable the relevant land B1 Plot or Dwelling (as the case may be) to be used for its intended purpose and enter into agreements with the relevant statutory undertakers for the connection of those services (and related expressions such as provided services shall be construed accordingly)

"Public Open Space Areas"

means the areas of public open space including the Lakeside Park two local parks and incidental open space shown shaded in green on Plan 7 attached hereto or such other provision to be provided in accordance with the Management Scheme approved pursuant to the provisions of the Third Schedule and delivered in accordance with the Phases shown in Plan 2;

"Public Transport Plan"

means the measures comprising part of the Travel Plan to secure public transport provisions as detailed in the Fifth Schedule

"Rail Operator"

the company operating the Romney Hythe and Dymchurch railway from time to time during the construction of the Development

"Railway Contribution"

means the sum of £100,000.00 (One Hundred Thousand Pounds) to be paid by the Owner to SDC in accordance with the provisions of the Fourth Schedule

"Railway Halt"

means a platform to be provided for the use of passengers on the Romney Hythe and Dymchurch Railway in the approximate position shown marked brown on the Master Plan

"Railway Halt Land"

means the area shown edged brown on the Master Plan comprising some 0.02 hectares to be used for the provision of the Railway Halt or such other area as may be agreed in writing with SDC

"Reserved Matters Submission"

means any reserved matters submission made pursuant to the Planning Permission;

"Shared Ownership Terms"

means a shared ownership lease involving the "purchase" of an equity stake from the

AHP and paying a rent for the remainder on terms so far as possible as set out in the Homes and Communities Agency standard form shared ownership lease for house and which for the avoidance of doubt shall permit:

a) an initial purchase of a minimum of 25% and a maximum of 75% of the equity in the Intermediate Dwelling

b) staircasing up to 100% of the equity in the Intermediate Dwelling and

c) rents not greater than 3% of the value of the equity stake retained by the AHP

or such other terms as may be agreed with SDC;

"Site"

the land known as Nickolls Quarry, Hythe, Kent and more particularly delineated edged red on the Plan numbered 5;

"Social Rented Dwellings"

means a dwelling let on a social rented tenancy by an AHP for which rents are set at the Target Rent and allocated in accordance with Schedule One of this Agreement;

"Specialist"

has the meaning given to it in clause 8.2;

"Sports Leisure and Community Centre"

the sports leisure and community centre proposed to be constructed on the Sports Leisure and Community Land in accordance with the Second Schedule to provide sports, leisure and associated community facilities and to be provided in accordance with the Minimum Specification unless otherwise agreed in writing with SDC;

"Sports Leisure and Community Contribution"

means the sum of £3,200,000.00 (Three Million Two Hundred Thousand Pounds) to be paid by the Owner to SDC in accordance with the provisions of the Second Schedule;

"Sports Leisure and Community Land"

that area of land comprising a maximum of 1.6 hectares within the Site shown for identification edged purple on Plan 3 to be provided fully remediated and serviced for sports, leisure and community purposes in accordance with the provisions of the Second Schedule;

"Supplementary Measures"

means measures to promote and support sustainable transport outwith the content of the Travel Plan;

"Supplementary Measures"

means the account to be maintained by the

Account"	Owner to hold the Supplementary Measures Fund;
"Supplementary Measures Fund"	means the maximum sum of £50,000 (Fifty Thousand Pounds) to be paid by the Owner into the Supplementary Measures Account for application towards the Supplementary Measures in accordance until the provisions of Part 2 of the Fifth Schedule;
"Sustainable Transport Plan"	means the measures comprising part of the Travel Plan to secure sustainable transport provisions as detailed in the Fifth Schedule;
"Target Rent"	shall mean a rent as determined through the national rent regime in accordance with the proposal set out in the Three Year Review of Rent Restructuring (July 2004) which was implemented as policy in July 2006 or any superseding publications and policies as adopted by the Homes and Communities Agency for use by AHP's;
"Title Number(s)"	means Title Numbers K869399 and K897109;
"Travel Co-ordinator"	means the employee of the Management Company appointed to facilitate and manage the requirements of the Travel Plan in accordance with the provisions of the Fifth Schedule;
"Travel Plan"	means a scheme to minimise the impact of travel on the environment by reducing the level of unnecessary travel to be secured pursuant to the provisions of the Fifth Schedule;
"Travel Plan Period"	means a period of 10 years commencing on the employment of a Travel Co-ordinator in accordance with the Fifth Schedule;
"Unencumbered"	free from financial charges and third party rights of occupation and overage or profit or receipt sharing
"Urban Square"	means the area shown on Plan 7 tinted yellow to be provided as a public square for the Development.
"Use Classes Order"	the Town and Country Planning (Use Classes) Order 1997 as amended;
"Vehicular Parking Pedestrian and Cycle Plan"	means the measures to secure vehicular parking pedestrian and cycle provisions as detailed in the Fifth Schedule

Railway Halt

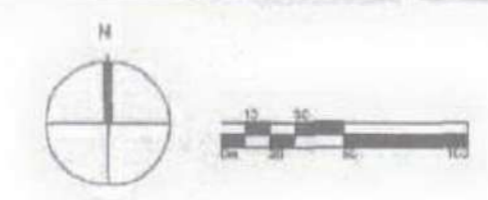
Lakeside Character Area
(refer pages 14/15 of D&A Addendum)

Village Character Area
(refer pages 14/15 of D&A Addendum)

Woodland Character Area
(refer pages 14/15 of D&A Addendum)

Employment Character Area
(refer pages 14/15 of D&A Addendum)

This is an illustrative layout in accordance with DCLG Circular 01/2006 and only intends to illustrate how development may be realised



Martello Lakes
Illustrative Masterplan
04-4613.05.005
Scale 1:2,500@A1
Date: August 2007

A.J. Nicholls, Director
NICHOLLS PROPERTIES LIMITED
P.O. Box 1000, 2000
NICHOLLS PROPERTIES LTD.



APPROVED FOR THE
COUNCIL OF THE
DISTRICT OF
MARTELLO LAKES
ON 14/08/07
Authorised Signatory
A Member of the

Plan 3



Notes

Note:-
 This plan is for indicative illustrative purposes only. The area identified as Sports Community site feasibility land may also be considered for use as a Local Centre. It is the intention to develop any residential areas within the Sports Community site as part of Phase 2 residential land (hatched Blue), or the whole of the area of the Sports Community land for mixed use purposes if this is not required.

Development Areas

- Lot 1 4.41 Ha
- Lot 2 4.49 Ha
- Lot 3 3.78 Ha
- Lot 4 3.19 Ha
- Lot 5 4.05 Ha
- Lot 6 3.68 Ha

Total Residential Area = 23.6 Ha

- Phase 1 employment 0.74 Ha
- Phase 2 employment 5.26 Ha
- Leisure centre Feasibility area 1.6Ha
- Mixed Use 0.31 Ha

Notes added for Sports Leisure Community etc.

E	AYO	14-01-2010
Areas revised.		
D	AYO	09-04-2010
Notes added and acres changed to Hectares.		
C	AYO	1-04-2010
Programme revised & Leisure Centre area amended.		
B	AYO	31-03-2010
Employment and Leisure phasing added.		
A	AYO	28-03-2010
Revision Details		
Revision	Revised by and for	Date of Revision
Revisions		

Indicative Completion's Programme

Sequence of Completion's	1	2	3	4	5	6	7	8	Total
Phase 1 185 units 2 builders 40 units per year	21	80	75	9					185
Phase 2 188 units 2 builders 40 units per year		22	79	66	21				188
Phase 3 158 units 2 builders 40 units per year.			23	75	60				158
Mixed Use phase (30 units)				30					30
Phase 4 163 units 2 builders 40 units per year.				22	75	66			163
Phase 5 171 units 2 builders 40 units per year.					20	80	70	1	171
Phase 6 157 units 2 builders 40 units per year.						20	75	60	155
Phase 1 Employment B1									
Phase 2 Employment B1									
Leisure Facilities									
Completion's per Year	21	102	177	202	176	166	145	61	1050
Cumulative Completion's	21	123	300	502	678	844	989	1050	

www.camlanddevelopments.co.uk

camland developments ltd

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50 Great Charles street
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email : info@camlanddevelopments.co.uk

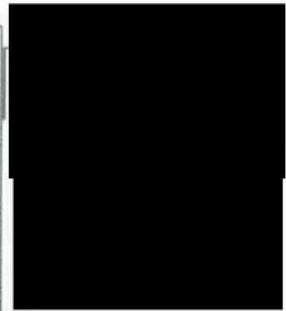
Site Name
**Martello Lakes
Hythe**

Drawing Title
**Indicative Development Areas &
Completions Plan**

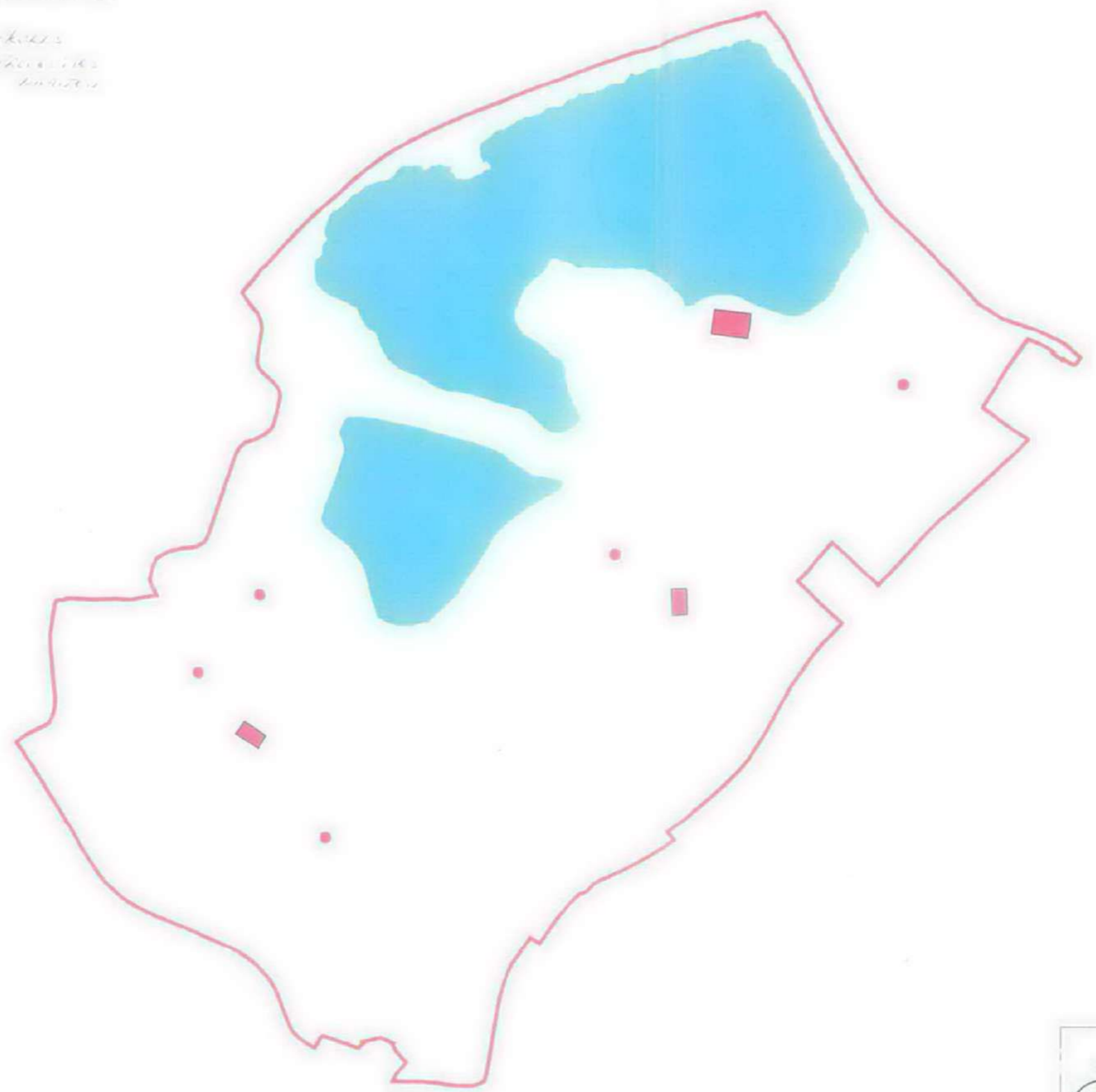
Scale 1 : 1000 (A1) Date 08/10/2009

Compiled For N DOYLE Compiled By A OWEN

Drawing Number HYT/SAL/COM/ND/1004 Revision E



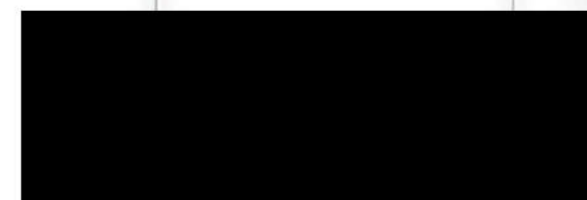
Plan 4
Nickels
Nickels
Nickels



Notes

Legend

- Site Boundary
- NEAP (1000sqm)
- LEAP (400sqm)
- LAP (100sqm)



Plan 4

Revision	Revised by	Date of Revision
Revisions		

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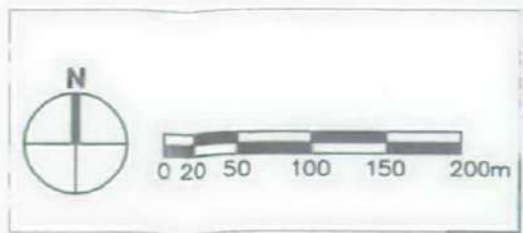
Britannia house
50 Great Charles street
Birmingham
B3 2LT
Tel - 0121 280 0088
email : info@camlanddevelopments.co.uk

Site Name
**Martello Lakes
Hythe**

Drawing Title
Play Areas

Scale 1:5000 (A3) | Date 09/04/2010

Compiled For ND	Compiled By ATO
Drawing Number HYT/PLY/ARA/3304	Revision -





Notes

Plan 5



Site Boundary added and development boundary removed.

A ATD 29-06-2009

Revision Details

Revised by and for Date of Revision

Revisions

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email : info@camlanddevelopments.co.uk

Site Name
West Hythe

Drawing Title
Transfer Plan

Scale	1 : 2000 (A1)	Date	22/06/2009
Compiled For	N Doyle	Compiled By	A Owen
Drawing Number	HYT/TP1/ND/2001	Revision	A

Mr & Mrs Nicholas Nickolls Properties Limited
P.O. Box 100, Nicholas Place, L20, 2001

THE KENT
A Member of the Kent County Council





Notes

 Leisure centre
Feasibility area
1.648Ha

M. J. ...
...
...
...

Plan 6

Revision Details		
Revision	Revised by	Date of Revision
Revisions		

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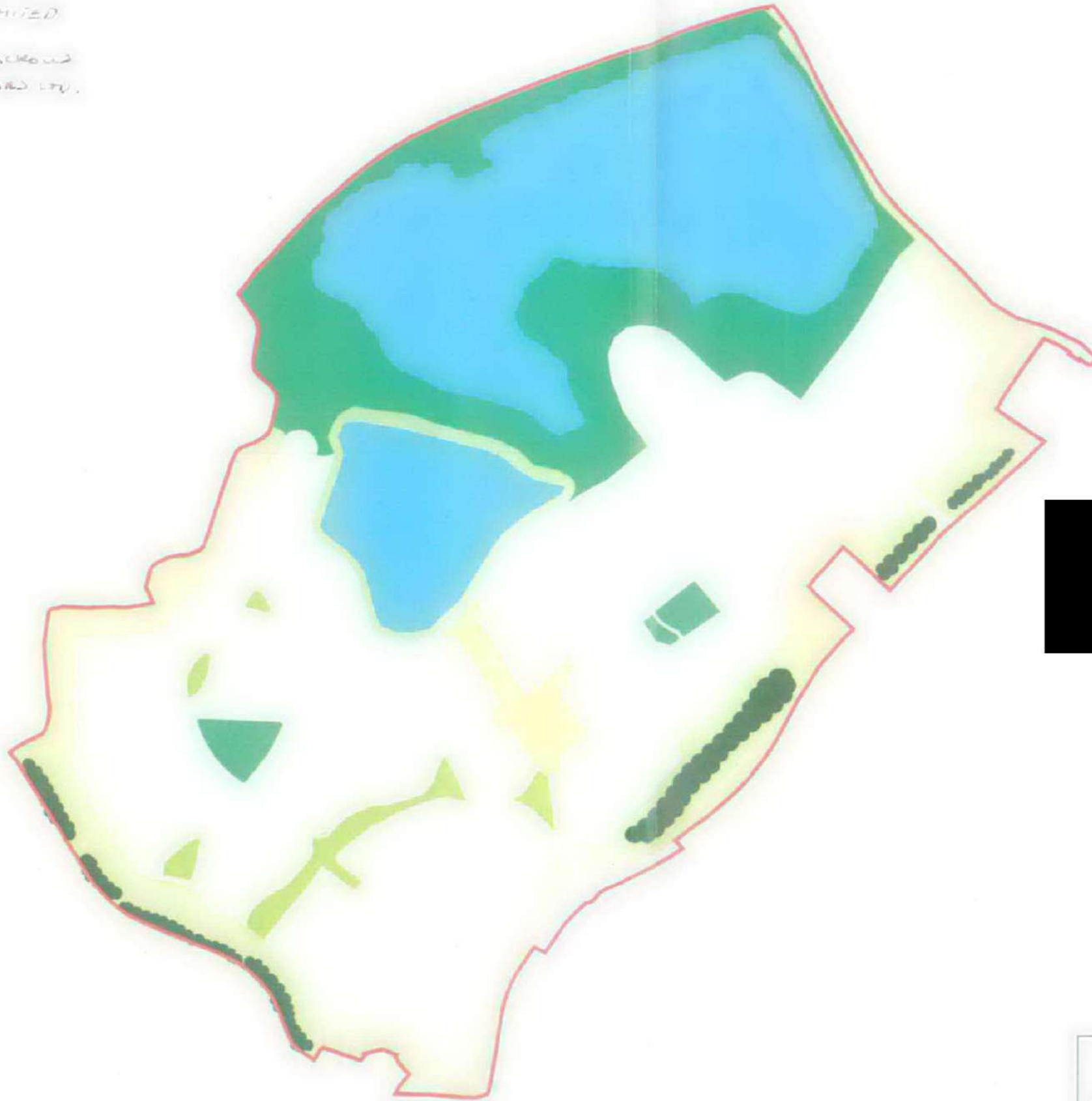
Site Name
Martello Lakes
Hythe

Drawing Title
Leisure Centre
Feasibility Area

Scale	1 : 1000	Date	1/04/2010
Compiled For	N DOYLE	Compiled By	A Owen
Drawing Number	HYT/LEI/ARE/1109	Revision	-



to 7. North of
the properties
shown
to be removed
to be replaced by
the proposed site.



Notes

Legend

-  Existing Vegetation
-  Structural Landscaping/ Open Space
-  Area and Local Parks
-  Incidental Open Space
-  Urban Square

Plan 7

Landscaping phasing boundaries removed.

E	ATO	23-04-2010
---	-----	------------

Landscaping phasing boundaries added.

D	ATO	23-04-2010
---	-----	------------

Text revised from POS to Local Park

C	ATO	22-04-2010
---	-----	------------

Text revised from POS to Local Park

B	ATO	20-04-2010
---	-----	------------

Urban Square added.

A	ATO	15-04-2010
---	-----	------------

Revisions

Revision	Revised by author	Date of Revision
Revisions		

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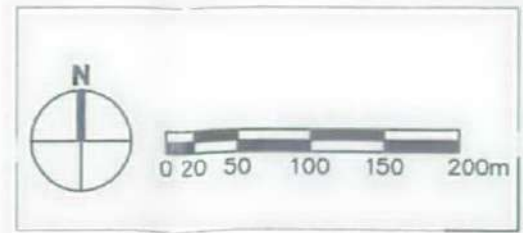
small : info@camlanddevelopments.co.uk

Site Name
**Martello Lakes
Hythe**

Drawing Title
Landscaping Areas

Scale 1:5000 (A3) | Date 09/04/2010

Compiled For	Compiled By
ND	ATO
Drawing Number	Revision
HYT/LANP/ARA/3307	D



Wheelchair Accessible Housing

KASS aims to support the Wheelchair Accessible Homes standards³ to give people with disabilities the choice and quality of housing they require to live independently. Wheelchair Housing should be distributed throughout the development and should be applicable to affordable and private housing.

Whereas Lifetime Homes are designed to adapt to changing needs overtime and do include features helpful to wheelchair users, fully wheelchair accessible homes are purpose build to suit the needs of wheelchair users. These are designed with the necessary circulation space and level access to provide full wheelchair access to all parts of the home. They are also equipped with adjustable fixtures and fittings to enable occupants to live more independently and enjoy a better quality of life.⁴



Photo courtesy of www.johnbirdsall.co.uk

There are 14 key features in the Wheelchair Housing Design Guide 2006;

<p>1. Moving around outside</p>	<p>Ensure a high degree of accessibility within the development taking into account: footpaths, gradients, cross falls, crossings</p>
<p>2. Using the outdoor spaces</p>	<p>Ensure that spaces within the curtilage of the home are accessible, usable and, where appropriate, secure. E.g. garden, gates, balconies, refuse</p>
<p>3. Approaching the home</p>	<p>Ensure ease of approach to the home by car, wheelchair or mobility scooter with good cover at the point of transfer and good protection from the elements at the individual or common entrance</p>
<p>4. Negotiating the entrance door</p>	<p>Ensure that the clear opening, approach space and threshold are suitable for use by a person using a wheelchair</p>
<p>5. Entering and leaving</p>	<p>Ensure that the wheelchair user in their own home can:</p> <ul style="list-style-type: none"> • Enter, manoeuvre outdoor chair to transfer to indoor chair, and reverse the process when leaving • Leave outdoor or indoor chair on charge • Approach door to receive deliveries, retrieve post, open door to visitors, manoeuvre and return into living areas

6. Negotiating the secondary door	Ensure direct connection to external spaces by an easily operated but secure door, as access to private or shared gardens, balconies and as escape in an emergency
7. Moving around inside, storing things	Ensure that wheelchair users can: <ul style="list-style-type: none"> • Conveniently manoeuvre, approach and negotiate all doors within circulation areas • Approach and use storage off circulation
8. Moving between levels within the building	Where dwellings are designed with more than one floor level, ensure that there is provision for independent movement between floor levels in a wheelchair without the need to transfer, without compromise of circulation or living space, and with all the rooms remaining accessible
9. Using living spaces	Ensure that a room can accommodate the usual range of furniture with space for a wheelchair-using member of the household to circulate and transfer from wheelchair to seating
10. Using the kitchen	Ensure ease of approach to an use, from a wheelchair, of the sink, worktops, equipment, all appliances and controls and all storage essential to the kitchen operations
11. Using the bathroom	Ensure that there is scope for independent approach and safe transfer to all bathroom fittings, and for independent use of them
12. Using bedrooms	Ensure that there is space in all bedrooms to accommodate the normal range of furniture, and for the wheelchair-using member to enter, approach and transfer to beds, approach and use other furniture and operate windows. Make provision for future ceiling track hoist installation in main bedroom.
13. Internal doors	Ensure that door construction permits subsequent fixing of pulls or other fittings
14. Windows	Ensure independent control of opening/closing windows, passive and mechanical ventilation to requirements of Building Regulations. Ensure balance of daylight, views out, privacy and security.

³ Wheelchair Housing Design Guide, 2nd edition, BRE press, 2006

⁴ Lifetime Homes, Lifetime Neighbourhoods, A National Strategy for Housing in an Ageing Society. Page 91. Department of Health and Department for Work and Pensions. Feb. 08.

Live reference: www.papworth.org.uk. High quality, wheelchair accessible properties within mixed developments.

"Water Area"	those areas shown shaded blue on the Master Plan or such other areas identified and agreed in writing with SDC
"Wheelchair Accessible Units"	means eight units of which, six are one bedroom and two are two bedroom wheelchair accessible units. Four units will be built in close proximity to one another and near to the local centre/Sports Leisure & Community Centre, consisting of three one bedroom and one two bedroom units. The other three one bedroom and one two bedroom units can be provided scattered throughout the development in partnership with Kent County Council Adult Social Services for people with disabilities who use a wheelchair in accordance with the requirements set out in the Wheelchair Housing Design Guide, Second Edition, BRE;
"Wheelchair Accessible Unit Specification"	means the specification detailed at Annex 1 to Schedule One;

2. INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement unless stated otherwise
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made unless stated otherwise
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa
- 2.5 A reference to a person includes a reference to a firm company authority board department or other body and vice versa
- 2.6 Unless this Agreement states otherwise any reference to any legislation (whether specifically named or not) includes any modification extension amendment or re-enactment of that legislation for the time being in force and all instruments orders notices regulations directions byelaws permissions and plans for the time being made issued or given under that legislation or deriving validity from it
- 2.7 References to any party in this Agreement include the successors in title of that party. In addition references to SDC include any successor local planning authority exercising planning powers under the Planning Act and references to

KCC include any successor local highway authority or local education authority exercising powers under the Highways Act or the Education Acts

- 2.8 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing
- 2.9 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually
- 2.10 If any provision is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Agreement shall be unaffected
- 2.11 For the avoidance of doubt the definition of Commencement of Development in this Agreement shall not apply to any conditions forming part of the Planning Permission.

3. EFFECT OF THIS AGREEMENT

- 3.1 This Agreement is made pursuant to section 106 of the Planning Act
- 3.2 To the extent that they fall within the terms of section 106 of the Planning Act the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the Planning Act that bind the Site and are enforceable by SDC and where specified by KCC
- 3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Planning Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 section 2 of the Local Government Act 2000 and all other enabling powers
- 3.4 Nothing in this Agreement constitutes an obligation to grant planning permission
- 3.5 Nothing in this Agreement grants planning permission or any other approval consent or permission required from SDC in the exercise of any other statutory function and no approval given under this Agreement or for the purposes of this Agreement shall be or be deemed to be approval for any other purpose whatsoever
- 3.6 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by SDC or KCC of any of their statutory powers functions or discretions in relation to the Site or otherwise
- 3.7 This Agreement will be registered as a local land charge by SDC
- 3.8 The obligations in this Agreement will not be enforceable against:

- 3.8.1 the buyers or occupiers of completed Market Dwellings erected on the Site pursuant to the Planning Permission or save in respect of the provisions of the First Schedule an Affordable Housing Unit erected on the Site pursuant to the Planning Permission; or
- 3.8.2 a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Owners to that statutory undertaker;
- 3.9 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission other than one relating to the Development as specified in the Planning Application granted after the date of this Agreement whether or not pursuant to an appeal
- 3.10 If SDC agrees pursuant to an application under Section 73 Planning Act to any variation or release of any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 Planning Act the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission

4. COMMENCEMENT

- 4.1 The obligations contained in this Agreement will come into effect on the Commencement Date save for the provisions of clauses 5 and 13 and paragraphs, 4.1 of the First Schedule, paragraphs 1, 2 and 3 of the Second Schedule which shall come into effect immediately upon completion of this Agreement and paragraph 6.1 of the Third Schedule, and which shall come into effect on the grant of Planning Permission
- 4.2 The Commencement Date will not be triggered by any of the following operations referred to in this Agreement as Site Preparation Works:
 - 4.2.1 site investigations or surveys;
 - 4.2.2 site decontamination;
 - 4.2.3 the demolition of any existing buildings or structures;
 - 4.2.4 the clearance or regrading of the Site;
 - 4.2.5 works connected with infilling;
 - 4.2.6 the provision of any temporary site access for construction traffic;
 - 4.2.7 the provision of any security fencing;

4.2.8 works for the provision of drainage or mains services to prepare the Site for development; and

4.2.9 any other preparatory works as may be agreed in writing with SDC

5. OBLIGATIONS OF THE PARTIES

5.1 The Owner agrees with SDC and where so specified with KCC to comply with the obligations set out in Schedules 1 to 9 in relation to the Development

5.2 The Owner shall give SDC and KCC seven days notice in advance of the Commencement of Development and shall send a copy of such notice to the Principal Solicitor at SDC and KCC and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and SDC and KCC PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring

5.3 The Owner agrees with SDC and separately with KCC to give them immediate written notice of the transfer or granting of any lease (other than a transfer or occupational lease of individual Dwellings) or any change in ownership of any interest in the Site occurring before all of the obligations under this agreement have been discharged such notice to give details of the interest acquired and the transferees' or grantees' full name and registered office (if a company) or usual address (if not) together with the area of the Site or unit of occupation affected by reference to a plan

5.3 The Owner hereby agrees to notify SDC and KCC of the reaching of any of the Occupation or Completion thresholds relating to Dwellings contained in this Agreement such notification to be given within 5 working days of the reaching of such threshold and unless otherwise provided in this Agreement

5.4 SDC agrees with the Owner to comply with its obligations set out in this Agreement

5.5 KCC agrees with the Owner to comply with its obligations set out in this Agreement

5.6 The Parties agree to act reasonably properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular where any notice consent approval authorisation agreement or other similar affirmation is required under the terms of the Agreement the Parties will not unreasonably withhold or delay such notice consent approval authorisation agreement or other similar affirmation

- 5.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this clause 10 or any part thereof

6. TERMINATION OF THIS AGREEMENT

- 6.1 This Agreement will come to an end if (in so far as it has not already been complied with):

6.1.1 subject to clause 6.2 the Planning Permission is quashed or revoked;
or

6.1.2 the Planning Permission expires without having been implemented

- 6.2 Where the Agreement comes to an end under clause 6.1 SDC shall vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site

- 6.3 Where the Agreement is released in part by a future agreement or by operation of this Agreement SDC will place a note against the entry made in the Local Land Charges Register stating which obligations no longer have effect

- 6.4 If the Owner makes a request in writing for SDC to place a note against the entry made in the Local Land Charges Register stating which obligations under this Agreement have been discharged and complied with SDC will place such a note against the entry

7. NOTICES

- 7.1 Any notice demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post pre-paid or recorded delivery

- 7.2 Any notice demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service; and

7.2.1 in the case of SDC addressed to Shepway District Council, Planning Services Manager, Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY

- 7.2.2 in the case of KCC addressed to KCC, Director of Law and Governance, Sessions House, County Hall, Maidstone, Kent ME14 1XQ (Ref: LS/A/01415/359)
- 7.3 Unless the time of actual receipt is proved a notice demand or communication sent by the following means shall be treated as having been served:
- 7.3.1 if delivered by hand at the time of delivery;
- 7.3.2 if sent by post on the second working day after posting; or
- 7.3.3 if sent by recorded delivery at the time delivery was signed for
- 7.4 If a notice demand or any other communication is served after 4.00pm on a working day or on a day that is not a working day it shall be treated as having been served on the next working day
- 7.5 For the avoidance of doubt where proceedings have been issued in the Courts of England and Wales the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings

8. DETERMINATION OF DISPUTES

- 8.1 Subject to clause 8.7 and 8.9 if any dispute arises relating to or arising out of the terms of this Agreement either party may give to the other written notice requiring the dispute to be determined under this clause 8. The notice shall propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute
- 8.2 For the purposes of this clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site
- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Royal Institution of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4
- 8.4 Any dispute over the identity of the Specialist shall be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power with the right to take such further advice as he may require to determine and nominate the appropriate Specialist or to

arrange his nomination. If no such organisation exists or the parties cannot agree the identity of the organisation then the Specialist shall be nominated by the President or next most senior available officer of the Law Society of England and Wales

8.5 The Specialist shall act as an Independent expert and:

8.5.1 each party may make written representations within 20 working days of his appointment and will copy the written representations to the other party;

8.5.2 each party shall have a further 20 working days to make written comments on the other's representations and will copy the written comments to the other party;

8.5.3 the Specialist shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

8.5.5 the Specialist shall have regard to all representations and evidence before him when making his decision which shall be in writing and shall give reasons for his decision; and

8.5.6 the Specialist shall use all reasonable endeavours to publish his decision within 30 working days of his appointment

8.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 8 including costs connected with the appointment of the Specialist and the Specialist's own costs but not the legal and other professional costs of any party in relation to a dispute will be decided by the Specialist

8.7 This clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts nor to the amount of any financial contribution payable by the Owner under this Agreement

8.8 The findings of the Specialist shall save in the case of manifest material error be final and binding on the Owner SDC and KCC save that the parties shall retain the right to refer to the court on a matter of law

8.9 This clause 8 shall not apply in respect of any dispute solely relating to the quantum of any financial contribution as provided for and already quantified in this Agreement

9. **WAIVER**

No waiver (whether express or implied) by SDC and/or KCC of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent SDC and/or KCC (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

10. **INDEXATION**

Any sum referred to in the Schedules to this Agreement as payable by the Owner or any sums which are referred to as maximum sums for provision of facilities shall be increased in line with the increase in the following indices from the date of this Agreement (unless otherwise stated) until the date of the payment of the sum;

10.1 Subject to clause 10.2 below the index to be used shall be the "All-in Tender Price Index" as published by the Building Costs Information Service on behalf of the Royal Institution of Chartered Surveyors and any indexation shall be calculated by applying the Contribution to the percentage increase in the Index between the quarterly index figure immediately proceeding the date of this Agreement and the quarterly index figure on the quarter immediately proceeding the date of actual payment of the contribution;

10.2 With regard to the Highway Contribution and the Pedestrian Route Improvement Contribution the index to be used shall be the "Road Construction Tender Price Index" issued by the Department for Transport and indexation shall be calculated by applying the Contribution to the percentage increase in the index between the quarterly index figure immediately proceeding the date of this Agreement and the quarterly index figure on the quarter immediately proceeding the date of actual payment of the contribution;

10.3 In the event that any of the indices referred to in this clause 10 cease to be published then the SDC (or KCC in the case of the indices which affect the sums due to KCC) shall nominate an alternative relevant index to be used in place of that index and after the date of such cessation the relevant indices increase shall be taken as referring to the increase in such nominated alternative index from the date of cessation.

11. **INTEREST**

If any payment to be made by the Owner under this Agreement is paid late interest at 4 percent above the base lending rate of National Westminster Bank plc from time to time will be payable from the date payment is due to the date of

actual payment and the Owner shall pay such interest to SDC or where the payment is payable to KCC the Owner shall pay such interest to KCC

12. **VAT**

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

13. **COSTS**

13.1 The Owner shall pay to SDC on completion of this Agreement the sum of £12,500 in settlement of their reasonable legal costs incurred in the negotiation and preparation of this Agreement.

13.2 The Owner shall pay to KCC on completion of this Agreement the County Council's reasonable legal and administrative costs incurred in the negotiation and preparation of this Agreement.

14. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15. **JURISDICTION**

This agreement shall be governed by and interpreted in accordance with the law of England and Wales.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.