

DATE 25th September 1996

ASHFORD BOROUGH COUNCIL

- and -

ENGLISH VILLAGES HOUSING ASSOCIATION LIMITED

A G R E E M E N T

Under Section 106 Town and Country
Planning Act 1990

- relating to -

**Land on the south west side of
Appledore Road Woodchurch**

E R
THE TUNBRIDGE WELLS
DISTRICT LAND REGISTRY
TITLE No. K483236.
NOTICE REGISTERED

I H KIRKLAND
Borough Secretary & Solicitor
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
Kent
TN23 1PL

L:15540KF.WPD
KF/DS.54/303

THIS DEED is made the 25th day of September 1996

BETWEEN:-

(1) ASHFORD BOROUGH COUNCIL of Civic Centre Tannery Lane Ashford Kent hereinafter called ("the Council") _____

(2) ENGLISH VILLAGES HOUSING ASSOCIATION LIMITED whose registered office is situate at 9 Clarendon Place Leamington Spa Warwickshire CV32 5QP hereinafter called ("the Owner") _____

INTERPRETATION

(1) Save as herein provided the Interpretation Act 1978 shall apply to this Agreement as if this Agreement were an Act of Parliament _____

(2) In this Agreement the following words and expressions shall unless the context otherwise requires have the following meanings:-

WORDS & EXPRESSIONS

MEANINGS

"the Planning Application" the application for planning permission registered by the Council on 24th November 1995 reference 95/1469/AS _____

"the Council" the Ashford Borough Council or any successor authority thereof including any agent or any other person appointed or nominated by it for the purpose of this Agreement _____

"the Development" the development referred to in the Planning Application and described in the First Schedule _____

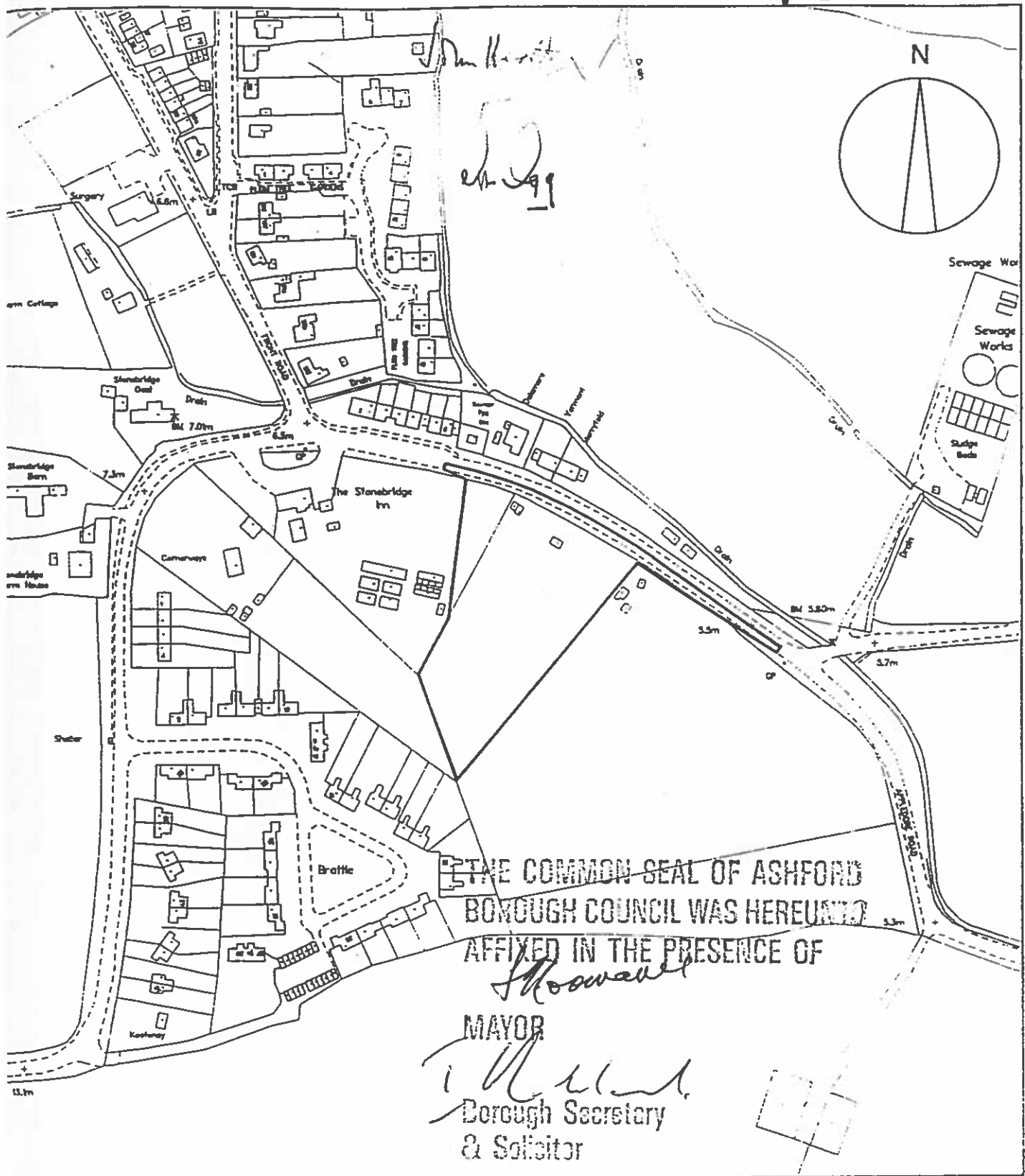
"Plan 1" the plan annexed hereto marked 1 _____

"Plan 2" the plan annexed hereto marked 2 _____

"the Land" the land at the south west side of Appledore Road Woodchurch shown for identification purposes edged with a thick black line on the Plan 1 _____

"the Planning Permission" the planning permission granted or authorised to be granted pursuant to the Planning Application by way of a Decision Notice or any other planning permission for the same or substantially the same development

PLAN 1



THE COMMON SEAL OF ASHFORD
BOROUGH COUNCIL WAS HEREUNTO
AFFIXED IN THE PRESENCE OF

Howard
MAYOR

[Signature]
Borough Secretary
& Solicitor

ASHFORD BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 106 PLANNING OBLIGATION
BY AGREEMENT

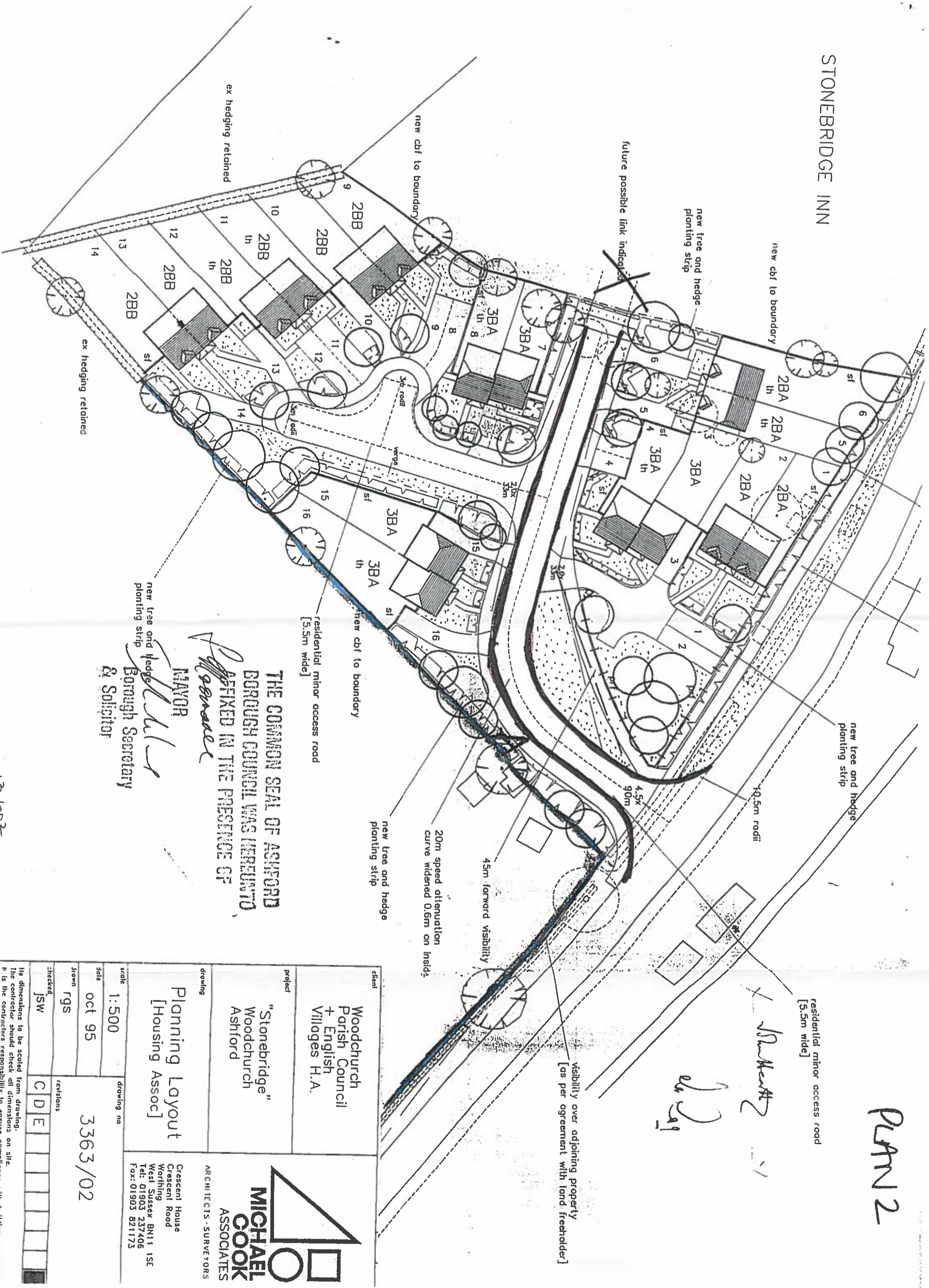
Local needs housing on land adjacent to
The Stonebridge Inn, Woodchurch

Date. April 1996
Scale. 1:2500

Anthony Slack, MRTPI
Borough Planning Officer.
Civic Centre,
Tannery Lane,
Ashford,
Kent.

13,602
Drawing No. TB/96/22
Application No. 95/1469/AS
Grid Ref. TQ 947 338

STONEBRIDGE INN



THE COMMON SEAL OF ASHFORD
 BOROUGH COUNCIL WAS HEREBY
 AFFIXED IN THE PRESENCE OF
[Signature]
 MAYOR
[Signature]
 Borough Secretary
 & Solicitor

PLAN 2

| | | | |
|--|--------|---|---------|
| client | | Woodchurch Parish Council + English Villages H.A. | |
| project | | "Stonebridge" Woodchurch Ashford | |
| drawing | | Planning Layout [Housing Assoc] | |
| scale | 1:500 | drawing no | 3363/02 |
| date | oct 95 | drawn | rqs |
| checked | jsw | revisions | C D E |
| No dimensions to be scaled from drawing. The contractor should check all dimensions on site. It is the contractor's responsibility to ensure compliance with building regulations. | | | |

13,602

MICHAEL COOK ASSOCIATES
 ARCHITECTS - SURVEYORS

Crescent House
 Crescent Road
 Worthing
 West Sussex BN11 1SE
 Tel: 01903 237406
 Fax: 01903 821173

"Shared Equity Dwelling"

those dwellings to be sold to local persons as a shared equity basis in accordance with the terms of the Housing Corporation Rural Shared Ownership Lease _____

"Adjacent Parishes"

the Parishes of Warehorne Kenardington Shadoxhurst Appledore Tenterden High Halden and Bethersden in the County of Kent as constituted at the date of this Agreement (or any of them) _____

"the Settlement"

the Parish of Woodchurch in the County of Kent as constituted at the date of the Agreement _____

"Local Person"

(i) persons resident in the Settlement or Adjacent Parishes in accommodation unsuited to their circumstances lacking separate accommodation or living in socially unacceptable standards of accommodation _____

(ii) persons who are dependents of households living in the Settlement or Adjacent Parishes _____

(iii) retired or disabled people who have lived or worked in the Settlement or Adjacent Parishes _____

(iv) households including persons employed in the Settlement or Adjacent parishes and living elsewhere _____

(v) households including persons seeking or about to take up employment or provide a rural service in the Settlement or Adjacent Parishes and who require to live locally for the purposes thereof _____

(vi) such other persons as the Council may consider appropriate within its absolute discretion _____

and a Local Person shall be construed accordingly _____

"Operative Acts"

Section 106 of the Town and Country Planning Act 1990 Sections 8 9 and 609 of the Housing Act 1985 and so far as necessary Section 111 of

the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 _____

"Borough Secretary and Solicitor"

such person as may be appointed from time to time to discharge those functions including the nominee of such person _____

"Borough Planning Officer"

such person as may be appointed from time to time to discharge those functions including the nominee of such person _____

"Woodchurch Parish Council"

The Parish Council as constituted at the date of this Agreement _____

"Owner"

English Villages Rural Housing Association Limited and its successors in title _____

"Open Market Value"

the price which the entire legal estate and equitable interest in a dwelling within the Development would realise on any given date on a Disposal at arms length with vacant possession _____

"Assured Tenancy"

a tenancy within the meaning of Part 1 of the Housing Act 1988 let on a weekly or monthly basis upon payment of rent without fine or premium

(3) Reference in this Agreement to a clause schedule paragraph or part are references where the context so admits to a clause Schedule paragraph of a Schedule or Part of a Schedule in this Agreement and references in a Schedule to a paragraph or a part are (unless the context otherwise requires) references to a paragraph or Part of that Schedule _____

(4) Covenants made hereunder _____

(i) if made by more than one person are made jointly and severally and _____

(ii) are to the intent that the same shall bind whomsoever shall become a successor or successors in title to the Land _____

(iii) shall operate as a charge on the Land and shall be registered in the Register of Local Land Charges and as Notice against the land or registered title as the case may be _____

RECITALS

- (1) The Council is the Local Planning Authority for the purpose of this Agreement and is the authority by whom the planning obligations hereinafter referred to are enforceable and is desirous of facilitating Local Needs Housing pursuant to the policies of the Rural Ashford Local Plan _____
- (2) The Council is also the Local Housing Authority for the purposes of the Housing Act 1985 ("the Housing Act") and as the Local Housing Authority is required by Section 8 of the Housing Act to consider housing conditions in its District and the needs of the District with respect to the provisions of further housing accommodation _____
- (3) Pursuant to such consideration the Council has concluded that there is a need in the District for the provision of housing accommodation to let on shared ownership leases and on assured tenancies to Local Persons and that the provision of the housing accommodation on the Land contributes towards the satisfaction of that need _____
- (4) The Council is disposed to grant planning permission provided that the Development is regulated in order to secure its future use for the provision of housing accommodation for rent on assured tenancies and use as low cost housing to Local Persons in the manner hereinafter appearing _____
- (5) To the extent that the provision of the Development on the Land in accordance with this Agreement fulfils the responsibilities of the Council as Local Housing Authority and thereby relieves it pro tanto of its duty to provide and manage that kind of housing accommodation itself it is a benefit in money's worth to the Council _____
- (6) The Owner is the registered proprietor of the Land registered with Absolute Title at Tunbridge Wells Land Registry under Title No. K483236 _____
- (7) The Council decided at a meeting of its Plans Sub-Committee held on the 3rd day of April One thousand nine hundred and ninety-six to grant Planning Permission for the Development subject to the completion of an agreement under the Operative Acts for the purpose of restricting or regulating the use or development of the land in the manner set out in the Second Schedule hereto _____
- (8) The Council and the Owner have accordingly agreed to enter into this Agreement pursuant to the provisions of the Operative Acts upon the terms and conditions hereinafter appearing with the intention that it should be

binding not only upon the Council and the Owner but also upon their successors in title and any persons claiming through under or in trust for it save that the Owner shall not be liable for any breach of this Agreement arising after it shall have parted with all interest in the land _____

(9) The Owners will pay the Council's full legal costs for preparing this Agreement _____

N O W THIS DEED WITNESSETH as follows:-

1. **THIS** Agreement is completed pursuant to the Operative Acts and the covenants by the Owners hereinafter contained shall be ones to which the provisions of Section 106 of the Town and Country Planning Act 1990 Section 111 of the Local Government Act 1972 and Section 609 of the Housing Act 1985 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply and shall be binding and enforceable against the Owners and their successors in title to the Land or parts thereof _____

2. **IN** so far as such covenants prescribe and restrict the categories of persons in need of the housing accommodation to be erected upon the Land or who shall occupy the said housing accommodation or prescribes or limits the terms by which such persons may so occupy the said units or prescribes or restricts the terms on which any letting of such housing accommodation may be made **IT IS HEREBY DECLARED** that without prejudice to any other power in that behalf such covenants shall be entered into pursuant to Sections 8, 9 and 609 of the Housing Act and in order that the same may be enforceable (without any limit of time) against any person deriving title from the Owner the Owner hereafter charge the Land to the Council by way of legal mortgage to secure the money's worth to the Council as the Local Housing Authority and for the avoidance of doubt Section 1(1)b and (d) of the Local Land Charges Act 1975 shall apply to such covenants _____

3. **THE** said legal charge shall have priority over all other mortgages on the Land except those created for the acquisition of the Land and to finance the Development (including residual finance) and those charges created by individual purchasers of the shared ownership dwellings and the Council and the Owner hereby apply to the Chief Land Registrar to enter a restriction upon the Proprietorship Register of the Register of title of the Land as follows:-

"Except under an Order of the Registrar no disposition is to be registered without the consent of Ashford Borough Council of Civic Centre Tannery Lane Ashford Kent or its successors in title."

PROVIDED THAT upon the request in writing of the Owner the Council will grant a postponement of the said legal charge secured on the Land provided that the Owner has shown to the Council's reasonable satisfaction that the remaining provisions of this Deed have been fulfilled and are being fulfilled at the date of such postponement_

4. **THIS** Agreement is a conditional agreement and shall become an absolute agreement upon the implementation of the Planning Permission by the commencement of the carrying out of a material operation as defined in Section 56 of the Town and Country Planning Act 1990_____

5. **SUBJECT** as herein provided the Owner for itself and their successors in title to the land hereby agree and covenant with the Council that the Land shall be subject to the terms restrictions and obligations as to the manner of carrying out the Development and otherwise contained in the Second Schedule and it is further agreed that the said terms restrictions and obligations constitute planning obligations for the purpose of the said Section 106_____

6. **NOTHING** contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and its rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement_____

7. **IT IS HEREBY AGREED AND DECLARED** between the parties that this Agreement is not to be interpreted as the granting of any consent or approval under any legislation whatsoever_____

8. **IN** the event that any part of this Agreement may be subject to challenge review deletion or otherwise rendered null void or avoidable the balance of the said Agreement shall remain in full force and effect_____

9. **IT IS HEREBY AGREED AND DECLARED** between the parties hereto that the Agreement constitutes the whole agreement between the parties relating to the subject matter and that subject to Sections 106A and B of the Town and Country Planning Act 1990 any release variation or discharge of the Owners liability under this Agreement shall not take effect unless evidenced in writing in a document under the seal of the Council and further that any consent or approval to be given by the Council or the Borough Secretary and Solicitor or Borough Planning Officer pursuant to the terms hereof shall be of no effect unless the same is in writing and is expressly given pursuant to the terms of the agreement to which it relates_____

10. FOR the avoidance of doubt it is hereby agreed between the Council and the Owner that:

there shall be no restriction upon the Owner selling any part of the Land to be used other than for the Shared Ownership Dwellings onto the English Rural Housing Association or other registered housing association approved by the Council _____

I N W I T N E S S whereof the parties hereto have executed this Deed the day and year first before written _____

THE FIRST SCHEDULE

The Development

The erection of a residential development comprising 10 two bedroom and 6 three bedroom affordable two storey houses including access and parking on the Land for Local Needs (the "Local Needs Site") in accordance with the Planning Permission _____

THE SECOND SCHEDULE

Restrictions and Obligations affecting the Land

(1) Not without the prior written consent of the Council to use or occupy or permit the use or occupation of the dwellings to be erected on the Land as part of the Development otherwise for the provision of housing accommodation by means of the grant of shared ownership leases and assured tenancies (as defined by the Housing Act 1988 or any statutory modifications or re-enactment thereof) to Local Persons provided that any shared ownership leases shall be substantially in the form annexed hereto and thereon marked "a" **PROVIDED THAT** IN respect of the original grant or subsequent grant of an assured tenancy or the original grant or subsequent assignment of a shared ownership lease if following a period of one month (hereinafter called "the Restricted Period") (during which period the Owner shall consult Woodchurch Parish Council and the Council and advertise in a newspaper circulating in the locality) a local person has not been found the Owner shall be at liberty to grant (as may be appropriate) an assured tenancy to any person complying with its general letting policy or grant a shared ownership lease to any person or grant licence to assign in respect of any willing assignee whether or not he is a

local person **PROVIDED THAT** the Owner shall nevertheless give preference to a local person over any other person and for the avoidance of doubt it is **FURTHER PROVIDED** that the Restricted Period shall commence:-

- (i) in relation to the original grant of an assured tenancy or shared ownership lease on the date that the Council receives notice in writing from the Owner of the anticipated date of structural completion of a dwelling to be let on an assured tenancy or shared ownership lease
 - (ii) in relation to the subsequent grant of an assured tenancy on the date that the Council receives notice in writing from the Owner that an assured tenancy is available for letting
 - (iii) in relation to the assignment of a shared ownership lease on the date that the Council received notice in writing from the Owner that it has received an application for licence to assign
- (2) No dwelling erected on the Land shall be occupied otherwise than by a Local Person or Persons and the dependents of such a person or persons (subject to the proviso to (1) above _____)
- (3) To provide within 14 days of being requested to do so by or on behalf of the Council such details in writing as the Council may determine including details of lessees and occupiers for the time being of any dwelling erected on the Land as part of the Development and such other information as the Council may require to be provided to enable it to determine that any covenant herein contained has been is being or will be complied with _____
- (4) Prior to any Disposal the owner of any dwelling shall send written notice to the Council of the person to whom the owner intends to dispose of the said property together with such other information as the Council shall within 14 days of receipt of such notice properly and reasonably request and the Council will within 28 days of receipt of such notice give written notice to the said owner as to whether the said person (or any of them) is a Local Person and if the Council is of the opinion that the said person is not a Local Person it will give reasons for such a decision and such decision shall be conclusive and binding upon the parties hereto and such person or persons
- (5) Forthwith upon the Disposal of any dwelling on the Land to notify the Borough Secretary and Solicitor of the Council of the details of such disposal including the names of the new owners and occupiers _____
- (6) To provide within 14 days of being requested to do so by or on behalf of the Council such details in writing as the Council may determine including details of owners or occupiers for the time being of any dwelling on the

Land and such other information as the Council may require to be provided to enable it to determine any covenant herein contained has been is being or will be complied with _____

(7) An Assured Tenancy of any dwelling erected upon the Land shall contain covenants on the part of the Tenant prohibiting the assignment or subletting of part only of the dwelling and provide that any assignment or subletting of the whole shall only be to a Local Person or Persons _____

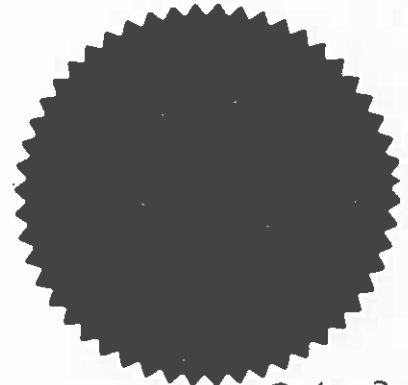
(8) Not to use or permit the estate road edged red on plan 2 to be used as anything other than a road for access for the Local Needs Site in connection with the occupier's enjoyment of the property and in particular not to use or permit the use of the estate road for access onto the adjoining Stonebridge Inn Site in the area marked X on plan 2 for any other reason than the development of that site for local needs housing and not to allow the use of the estate road for the benefit of any adjoining land if such is to be used for residential housing other than local needs housing or industrial or commercial use (except for access to and from the adjoining agricultural land edged blue in the area marked A on Plan 2) approximate _____

THE COMMON SEAL of
ASHFORD BOROUGH COUNCIL
was hereunto affixed to this Deed
in the presence of:-

)
)
)
)



Mayor




13,602



Assistant/Borough Secretary and Solicitor

THE COMMON SEAL of
ENGLISH VILLAGES HOUSING
ASSOCIATION LIMITED was hereunto
affixed to this Deed in the
presence of:-

)
)
) X
)
)


Committee Member



2557

10 Secretary