

(1) CASTLE POINT BOROUGH COUNCIL

-AND-

(2) ESSEX COUNTY COUNCIL

-AND-

(3) GLENN PATRICK SMITH and GARY MARTIN SMITH and GRAEME WALTER SMITH

AND

(4) G & K GROUNDWORKS LIMITED

-AND-

(5) MARDEN SIGNS & DESIGNS LIMITED

AND

(6) BARCLAYS SECURITY TRUSTESS LIMITED

AND

(7) ACT ROADWAYS LIMITED

**PLANNING OBLIGATION BY DEED OF AGREEMENT UNDER
SECTION 106 OF THE TOWN AND COUNTRY PLANNING
ACT 1990 AND OTHER POWERS
relating to land at Manor Trading Estate Benfleet Essex**

THIS AGREEMENT is made on

2023

BETWEEN:

- (1) **CASTLE POINT BOROUGH COUNCIL** of [REDACTED]
[REDACTED] ("Council");
- (2) **ESSEX COUNTY COUNCIL** [REDACTED] H ("County Council");
- (3) **GLENN PATRICK SMITH** [REDACTED] **MARTIN SMITH** [REDACTED] **GRAEME WALTER SMITH** [REDACTED] ("the First Owner")
- (4) **G & K GROUNDWORKS LIMITED** [REDACTED]
[REDACTED] ("the Second Owner")
- (5) **MARDEN SIGNS & DESIGNS LIMITED** [REDACTED]
[REDACTED] ("the Third Owner")
- (6) **BARCLAYS SECURITY TRUSTEE LIMITED** [REDACTED]
[REDACTED] ("the Third Owners Mortgagee")
- (7) **ACT ROADWAYS LIMITED** [REDACTED]
[REDACTED] ("the Estate Road Owner")

hereafter referred to as ("**the Parties**")

WHEREAS:

- (A) For the purposes of the 1990 Act, the Council and the County Council are the local planning authorities for the area within which the Site is located and the authorities who are entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is also the local authority for statutory age education and pre-school age education and childcare for the area in which the Site is located.
- (C) The First Owner is the freehold owner of the part of the Site which is registered at HM Land Registry with the Title Number EX439219 free from any encumbrances that would prevent the First Owner from entering into this Agreement
- (D) The Second Owner is the freehold owner of the part of the Site which is registered at HM Land Registry with the Title Numbers EX498233 and EX560014 and EX825566 free from any encumbrances that would prevent the Second Owner from entering into this Agreement
- (E) The Third Owner is the freehold owner of the part of the Site which is registered at HM Land Registry with the Title Number EX755725 free from any encumbrances that would prevent the Third Owner from entering into this Agreement and subject to the interest of the Third Owners Mortgagee
- (F) The Estate Road Owner is the freehold owner of the Estate Roads (as defined in Schedule 8) which are registered at HM Land Registry with the Title Number EX590021 free from any encumbrances that would prevent the Estate Road Owner from entering into this Agreement
- (G) The Planning Application was submitted to the Council and was refused on 10 May 2022 by a decision notice dated 10 May 2022.

- (H) The Appeal is due to be considered by a Planning Inspector.
- (I) The Council is opposing the Appeal but without prejudice to this opposition the Council agrees with the parties that if the Appeal is successful and Planning Permission is granted the benefits contained in this Agreement should be secured save in relation to any obligation which the Planning Inspector expressly states is not necessary for the grant of permission
- (J) In order to satisfy the tests in regulation 122 (2) of the Community Infrastructure Levy Regulations 2010, and subject always to clause 3.3 hereof, the Owner agrees with the Council that the obligations imposed in this Deed are necessary to make the Development acceptable in planning terms and are directly related to the Development and are fairly and reasonably related in scale and in kind to the Development.
- (K) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council against the First Owner the Second Owner the Third Owner the Estate Road Owner and the Third Owners Mortgagee and their respective successors in title

NOW THIS AGREEMENT WITNESSES as follows: -

OPERATIVE PART

1. DEFINITIONS

1.1 In this Agreement including the recitals the following terms and expressions have the following meanings: -

"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Appeal"	means the appeal lodged by the Owner under s78 of the 1990 Act against the Council's refusal of the Planning Application (PINS reference APP/M1520/W/22/3310794)
"CIL"	means Community Infrastructure Levy as defined in Regulation 3 of the CIL Regulations
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended)
"Commencement Date"	means the date of Commencement of Development
"Commencement of Development"	subject to Clause 3.2 means the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56 of the 1990 Act and "Commence the Development" "Commencement of Development" and "Commence Development" shall be construed accordingly

"County Council Monitoring Fee"	means a fee of £550 per each obligation due to the County Council under this Agreement and for the avoidance of doubt this is a total of £1100 (one thousand one hundred pounds sterling) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement
"Contributions"	means the Education Contribution the Library Contribution the Pitches Contribution the Sports Hall Contribution, the Ecological Mitigation (RAMS) Contribution and the NHS Health Contribution
"Decision Letter"	means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
"Development"	means the development permitted by the Planning Permission
"Dwelling"	means a house or self contained flat or bungalow constructed as part of the Development and Dwellings shall be construed accordingly
"Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as shall replace such index or as the Council reasonably requires and agreed between the parties (acting reasonably)
"Index Linked"	means increase(d) to reflect any increase in the Index during the period from and including the date of this Agreement (unless specified to the contrary elsewhere in this Agreement) to and including the date of actual payment
"Infrastructure"	has the meaning ascribed in Section 216 (2) of the Planning Act 2008
"Market Dwellings"	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings as defined in Schedule 2 and "Market Dwelling" shall be construed accordingly
"the Notice of Commencement"	means a written notice advising of the proposed Commencement Date

"Occupation"	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations and "Occupy" , "Occupied" and "Occupancy" shall mutatis mutandis be construed accordingly
"Owner"	means the First Owner and the Second Owner
"Plan"	means drawing number 16.3839DP/M008B attached to this Agreement at Appendix A
"Planning Application"	means the application for outline planning permission which the Council has given reference No. 21/0532/OUT consisting of 68 Residential Units, Three Class E (Commercial, Business and Service) Units, One B2 (general Industrial) Unit and Two B8 (Storage and Distribution) Units with Associated Access, Parking, Amenity Space, Strategic Landscaping and Noise Attenuation. Restoration and Improvements of Existing Estate Roads and Infrastructure on the Site
"Planning Inspector"	means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal
"Planning Permission"	means the planning permission that will be granted for the Development in pursuance of the Planning Application
"Reserved Matters"	means an application for reserved matters approval in relation to the Planning Permission
"Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given under Section s77, 78 and 79 of the 1990 Act
"Site"	means the freehold land to the east of Manor Trading Estate Benfleet Essex shown for identification purposes only edged red on the Plan
"Sterling Overnight Index Average (SONIA) Rate"	means an assessment of the rate of interest the County Council or the Council (as appropriate) can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions or other financial institutions and other institutional investors and "SONIA Rate" shall be construed accordingly or such other rate as approved by the County Council or the Council
"Working Days"	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Agreement: -

1.2.1 where a Schedule to this Agreement lists further definitions, the defined terms shall have the meanings set out in that Schedule

1.2.2 the clause headings do not affect its interpretation: -

- (a) unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule.
- (b) references to any statute or statutory provision include references to: -
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision.
- (c) references to the Site include any part of it;
- (d) references to any party in this Agreement include the successors in title of that party. In addition, references to the Council and the County Council include any successor local planning authority exercising planning powers under the 1990 Act;
- (e) "including" means "including, without limitation"; and
- (f) 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.

1.3 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.

2. EFFECT OF THIS AGREEMENT

2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council.

2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.

2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.4 The obligations in this Agreement will not be enforceable against a statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.6 Subject to the provisions of Schedule 2 insofar as they relate to a Chargee as defined in Schedule 2 a mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security and it will not be liable for any breach of the provisions of this Agreement after it has parted with or released its interest in the Site.

3. COMMENCEMENT DATE

- 3.1 Save in respect of Clause 7 which will become operative on the date of this Agreement and in respect of obligations expressly in this Agreement requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date.
- 3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations: -
 - 3.2.1 site investigations or surveys including for the purpose of assessing ground conditions.
 - 3.2.2 site decontamination and any remedial work in respect of any contamination or other ground conditions;
 - 3.2.3 the clearance of the Site including demolition;
 - 3.2.4 works connected with infilling;
 - 3.2.5 works for the provision or diversion of drainage or mains services to prepare the Site for development together with access roads;
 - 3.2.6 erection of fencing or hoarding;
 - 3.2.7 erection of boards advertising the development;
 - 3.2.8 the construction of a temporary site compound or a temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite; or
 - 3.2.9 the construction of temporary access roads.
- 3.3 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation contained in this Agreement:

3.3.1 is not a material planning consideration; or

3.3.2 can be given no or little weight in determining the Appeal; or

3.3.3 does not constitute a reason for granting Planning Permission in accordance with Regulation 122 of the CIL Regulations or fails to meet any of the tests set out in Regulation 122 of the CIL Regulations

then such planning obligation shall not be enforceable pursuant to this Agreement and shall cease to have effect within this Agreement save as set out in the Decision Letter

3.4 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the Planning Permission the Council has adopted CIL any contribution payable under the terms of this Agreement which is for an Infrastructure project which is identified to be funded wholly or partly by CIL shall cease to be payable

4. OBLIGATIONS OF THE PARTIES

4.1 The Owner covenants with the Council and the County Council to comply with the obligations set out in the Schedules to this Agreement.

4.2 The Owner covenants with the Council to provide Notice of Commencement to the Council not less than three (3) Working Days prior to the Commencement Date.

4.3 The Owner covenants with the Council and the County Council to provide not less than three (3) Working Days' notice in writing of the intended first Occupation of the first Dwelling on the Site.

4.4 The Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.

4.5 The County Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.

4.6 The Council and the County Council covenant with the Owner 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 Council and where appropriate the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation Provided Always that such notice, consent, approval, authorisation, agreement or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless agreed otherwise by the Council and/or the County Council, as applicable).

4.7 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

4.8 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to

positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires.

- 4.9 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. For the further avoidance of doubt neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site or part of the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.9
- 4.10 No compensation shall be payable by the Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council or the County Council.
- 4.11 Representatives of the Council and the County Council may enter upon the Site at any reasonable time on reasonable prior written notice giving at least 3 clear days before such entry is required (unless otherwise agreed with the Owner) (and immediately in the event of an emergency provided that the Council and County Council will give as much notice as they reasonably can) to ascertain whether the terms of this Agreement are or have been complied with subject to complying with all health and safety and security requirements required by the Owner provided that this right shall cease and determine as follows:
- 4.11.1 in relation to any Dwelling, on first Occupation of that Dwelling; and
- 4.11.2 in relation to all other parts of the Site, on the first Occupation of any commercial unit constructed as part of the Development and the last Dwelling on the Site to be Occupied.
- 4.12 Any agreement obligation covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.13 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.14 Subject to the provisions of Clause 4.20 no variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the owner, lessee or occupier of any Dwelling or any commercial unit constructed as part of the Development or their mortgagees or chargees or any receiver appointed by a mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.

- 4.15 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.16 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.17 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner that following the performance of all of the obligations contained in the Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 4.18 That in the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the Council and/or the County Council shall be entitled to payment of the various Contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a Contribution and the time period for the return of a Contribution shall be extended accordingly.
- 4.19 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one Agreement
- 4.20 If the Council agrees following an application under section 73 of the 1990 Act to the variation or release of any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be deemed to bind the new planning permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Agreement to reflect the impact of the section 73 application, when a separate deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.
- 4.21 Where the Council fail to give such notice consent, approval, authorisation, agreement or similar affirmation notice of approval or rejection with reasons within 40 Working Days of being requested so to do (and provided any relevant submissions to the Council have been served on the Council in accordance with Clause 6) the same shall be deemed to be approved (as appropriate) Provided always that a new 40 Working Day approval period shall commence after each resubmission of a request for consent, approval, authorisation, agreement or similar affirmation submitted by the Owner to the Council subject however to the Council giving reasons for such rejection and dealing with any alterations that the Owner makes consequent upon such rejection as soon as reasonably practicable notwithstanding the 40 Working Day period specified and the right of any party to invoke the provisions of clause 8

5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date or the Planning Permission expires before the Commencement Date.
- 5.2 Where this Agreement comes to an end under Clause 5.1 the Council covenants on the written request of the Owner, to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

- 6.1 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 and is to be sent to the following or to such other address as one party may notify in writing to the others at any time as its address for service:-
- 6.1.1 for the First Owner at the address above or such other address as shall be notified in writing to the Council and the County Council from time to time
- 6.1.2 for the Second Owner at the address above or such other address as shall be notified in writing to the Council and the County Council from time to time
- 6.1.3 for the Third Owner at the address above or such other address as shall be notified in writing to the Council and the County Council from time to time
- 6.1.4 for the Third Owners Mortgagee at the address above or such other address as shall be notified in writing to the Council and the County Council from time to time
- 6.1.5 for the Estate Road Owner at the address above or such other address as shall be notified in writing to the Council and the County Council from time to time
- 6.1.6 for the Council it shall be marked for the attention of the Head of Place and Policy with Ref: 21/0532/OUT
- 6.1.7 for the County Council to development.enquiry@essex.gov.uk and marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH if delivered by hand, at the time of delivery;
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:-
- 6.2.1 if delivered by hand, at the time of delivery;
- 6.2.2 if sent by post, on the second Working Day after posting; or
- 6.2.3 if sent by recorded delivery, at the time delivery was signed for.

- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served at 9am on the next Working Day.
- 6.4 If a notice, demand or any other communication is served before 9am on a Working Day, it is to be treated as having been served at 9am on that Working Day.

7. COSTS OF THIS AGREEMENT

- 7.1 Upon completion of this Agreement the Developer covenants to pay to the Council its reasonable and proper legal costs in a sum not to exceed £3,829.97 (Three thousand eight hundred and twenty nine pounds and ninety seven pence) (no VAT) and the County Council its reasonable and proper costs in connection with the preparation, negotiation and completion of this Agreement.
- 7.2 Prior to submission of the first application for reserved matters approval to the Council a non-refundable fee of £550.00 (five hundred and fifty pounds) (no VAT) towards each reserved matter for the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement
- 7.3 The Owner further covenants to pay the County Council Monitoring Fee to the County Council on or before the Commencement Date

8. DETERMINATION OF DISPUTES

- 8.1 Subject to Clause 8.7, if any dispute arises relating to or arising out of the terms of this Agreement or matters to be agreed between the parties under this Agreement, either party may give to the other written notice requiring the dispute to be determined under this Clause 8. The notice is to 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 (10) 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 any party to the dispute to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute (or failing agreement as nominated by any such party in writing)) 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 is to be referred at the request of any party to the dispute 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 is to be nominated by the

President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute (or failing agreement as nominated by any such party in writing)).

8.5 The Specialist is to act as an independent expert and:-

8.5.1 each party to the dispute may make written representations within fifteen (15) Working Days of his appointment and will copy the written representations to the other party;

8.5.2 each party to the dispute is to have a further fifteen (15) 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 is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist is not to take oral representations from the parties to the dispute without giving those parties the opportunity to be present and to give evidence and to cross-examine each other;

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

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (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 or failing such decision will be shared equally between the parties to the dispute.

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 of England.

9. **THIRD OWNERS CONSENT**

The Third Owner consents to the giving by the Owner of the covenants in this Agreement but only in relation to its interest in the Site of the Third Owner

10. **ESTATE ROAD OWNERS CONSENT**

The Estate Road Owner consents to the giving by the Owner of the covenants in this Agreement but only in relation to its interest in the Estate Roads of the Estate Road Owner

11. **MORTGAGEE CONSENT**

The Third Owners Mortgagee consents to the giving by the Third Owner of the covenants in this Agreement but only in relation to its interest in the Site that is subject to the legal charge dated 28 September 2005 and made between the Third Owner and the Third Owners Mortgagee ("the Charged Land").

Furthermore, the Third Owners Mortgagee agrees to be bound by the obligations that affect the Charged Land only in the event that Third Owners Mortgagee, as mortgagee, takes possession of the Charged Land or enforces its rights pursuant to their charge by foreclosure or exercise a power of sale in respect of the Charged Land

12. **JURISDICTION**

This Agreement is to be governed by and interpreted in accordance with the law of England

13. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together form one single document.

14. **EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

SCHEDULE 1

OPEN SPACE

1 In this Schedule the following words and expressions shall have the following meanings:-

“Management Company”	means a company established or engaged for inter alia the purpose of managing the Open Space Land
“Open Space Completion Certificate”	means a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Specification
“Open Space Land”	means the land identified on the Open Space Plan and equating to at least 0.45 hectares of the Site which shall include but not be limited to recreational open space which is to be used for no purpose other than for open space to provide a recreational and amenity facility for members of the public in perpetuity
“Open Space Management Plan”	means a management plan prepared by the Owner to include details of ongoing maintenance and management of the Open Space Land and funding for the maintenance of the Open Space Land and to be approved in writing by the Council
“Open Space Plan”	means the plan identifying the Open Space Land
“Open Space Specification”	means the specification for the laying out, profiling, clearing, planting, landscaping and decontaminating the Open Space Land and generally for ensuring that the said land is fit for its intended purpose as recreational and amenity land to be enjoyed by members of the public

2. The Owner hereby covenants with the Council:

- 2.1 Prior to the Occupation of the first Dwelling to submit the Open Space Plan and the Open Space Specification and the Open Space Management Plan to the Council for approval
- 2.2 Not to Occupy or allow cause or permit to be Occupied any Dwelling unless and until the Council has approved the Open Space Plan and the Open Space Specification and the Open Space Management Plan in writing or the detail of the Open Space Plan and the Open Space Specification and the Open Space Management Plan has been approved or approval has been determined pursuant to the disputes determination procedures set out in Clause 8 of this Agreement and
- 2.3 Not to Occupy or allow cause or permit to be Occupied any more than 80% of the Dwellings unless and until the Open Space Land has been physically set out on the Site in accordance with the approved Open Space Specification and the Council has received the Open Space Completion Certificate(s)

- 2.4 To maintain the Open Space Land in accordance with the Open Space Management Plan following the issue of the relevant Open Space Completion Certificate(s) until such time as the transfer described in paragraph 2.5 has been completed
- 2.5. To transfer the Open Space Land to the Management Company free of encumbrances and with all necessary easements and vacant possession and the Management Company shall from the date of completion of the said transfer manage and maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan
- 3. The Owner shall include in any transfer pursuant to this Schedule :
 - 3.1 a covenant only to permit the Open Space Land to be utilised solely as recreation, SUD's and amenity land by the general public
 - 3.2 a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan; and
 - 3.3 a covenant not to transfer the Open Space Land into the individual ownership of the owner or owners of any of the Dwellings
- 4 The Owner shall furnish a copy of the transfer referred to in paragraph 2.5 above to the Council
- 5. The Owner acknowledges that the Management Company shall be funded through contributions from purchasers or lessees of the whole or any part of the Site and the Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under this Schedule

SCHEDULE 2
AFFORDABLE HOUSING

Part One

1 In this Schedule the following words and expressions shall have the following meanings:-

“Affordable Housing”	means affordable housing as described in Annex 2 of the NPPF
“Affordable Housing Dwellings”	means fifty per cent (50%) of the Dwellings or such lesser percentage as the Planning Inspector shall specify in his Decision Letter all provided in accordance with the Affordable Housing Scheme without reliance on public subsidy and in accordance with Nationally Described Space Standards
“Affordable Housing For Rent”	has the meaning ascribed to it in paragraph a) of the definition of affordable housing at Annex 2 of the NPPF
“Affordable Housing Scheme”	means a scheme and plan to <ol style="list-style-type: none">Identify the location of the Affordable Housing Dwellings on the SiteIdentify the size of the Affordable Housing DwellingsIdentify the exact Affordable Housing Tenure of the Affordable Housing Dwellingsprovide a list of Approved Bodies who will be approached to take a transfer of the Affordable Housing Dwellings that are not First Homes (if any)
“Affordable Housing Tenure”	means Affordable Housing for Rent and Other Affordable Routes to Home Ownership and should the Council or the Specialist so require, First Homes
“Approved Body”	means a provider of social housing registered with Homes England under the provisions of the 2008 Act or any body, organisation or company which is a registered charity with the Charity Commissioners for England and Wales and approved by Homes England or the Regulator of Social Housing or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association
“Capital Receipts”	means proceeds from Staircasing less the Approved Bodies cost of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees

“Chargee”	any mortgagee or chargee (or any receiver or manager, including an administrative receiver, appointed by such mortgagee or chargee or any administrator howsoever appointed or any such person appointed under any security documentation to enable a mortgagee or a chargee to realise its security) of the Approved Body or of the owner (excepting the Owner) or successors in title to such mortgagee or charge and/or a Housing Administrator of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body
“First Homes”	has the meaning ascribed to it at paragraph (c) of the definition of affordable housing at Annex 2 of the NPPF
“Homes England”	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body
“Homes England New Model Shared Ownership Lease”	means the lease included at Section 11 of the HM Government Homes England Capital Funding Guide
“Housing Administrator”	has the meaning ascribed to it in the Housing and Planning Act 2016
“NPPF”	means the National Planning Policy Framework 2021 (or any successor policy thereto) issued by H M Government
“Nomination Rights”	the ability for the Council to nominate 100% of the occupants on the first letting of the Affordable Housing For Rent and (unless otherwise agreed in writing with the Council) 100% of the occupants of subsequent lettings of Affordable Housing For Rent
“Other Affordable Routes to Home Ownership”	has the meaning ascribed to it at paragraph (d) of the definition of affordable housing at Annex 2 of the NPPF and for the avoidance of doubt includes Shared Ownership
“Protected Tenant”	<p>means any tenant who:</p> <p>(a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual or voluntary right) in respect of a particular Affordable Housing Dwelling</p> <p>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling</p> <p>(c) has been granted a shared ownership lease by the Approved Body and has become a 100% Staircaser</p>

“Regulator of Social Housing”	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body
“Shared Ownership”	means dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide
“Shared Ownership Lease”	<p>means a lease of over 999 years substantially in the form of the Homes England New Model Shared Ownership Lease from time to time where:-Capital Receipt received from Staircasing is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re invest such Capital Receipt in Affordable Housing (in order of priority):-</p> <p>i) within the borough of Castle Point</p> <p>ii) within the neighbouring councils areas within the county of Essex</p> <p>iii) within the rest of England</p> <p>subject to any contrary requirements within the Regulator of Social Housing capital funding guide</p>
“Staircasing”	means the process by which a lessee of Shared Ownership dwelling becomes a 100% Staircaser
"100% Staircaser"	means a lessee of an Affordable Housing Dwelling under a shared ownership or shared equity arrangement who has acquired 100% of the equity in the said Affordable Housing Dwelling
"2008 Act"	means the Housing and Regeneration Act 2008

2. The Owner hereby covenants with the Council as follows:
 - 2.1 prior to the Commencement of Development
 - 2.1.1 to request that the Council confirm whether it requires First Homes to be included in the Affordable Housing Tenure and in the event the Council requires First Homes to be included in the Affordable Housing Tenure (or there is a Specialist determination under Clause 8 of this Agreement that First Homes should be provided as part of the Affordable Housing) not to Commence Development unless and until a further agreement under Section 106 of the 1990 Act has been concluded to secure the details for the provision of First Homes
 - 2.1.2 to submit the Affordable Housing Scheme to the Council with the first application for Reserved Matters approval and not to Commence Development unless and until the Affordable Housing Scheme has been approved by the Council or approval has been

determined pursuant to the disputes determination procedures set out in Clause 8 of this Agreement

- 2.2 to construct the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme
- 2.3 not to permit the Occupation of more than fifty per cent (50%) of the Market Dwellings until such time as fifty per cent (50%) of the Affordable Housing Dwellings have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Scheme)
- 2.4 not to permit the Occupation of more than eighty per cent (80%) of the Market Dwellings until such time as all of the Affordable Housing Dwellings have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Scheme)
- 2.5 for the purposes of this Schedule 2 only the expression "transfer" or "transferred" shall mean a transfer of the freehold or grant of a lease with a term of not less than 999 years of the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner and which transfer or grant shall be subject to the provisions of Part Two of this Schedule (unless otherwise agreed with the Council)
- 2.6 that Affordable Housing Dwellings shall be Occupied for no other purpose than as Affordable Housing and additionally Affordable Housing For Rent shall be Occupied in accordance with the Nomination Rights (but subject to the provisions of paragraph 3 below);
- 2.7 to serve on the Council notice in writing not less than 14 days after the first Occupation of 45% of the Market Dwellings and 75% of the Market Dwellings
- 3 It is Hereby Agreed and Declared
 - 3.1 The affordable housing obligations and restrictions contained in this Agreement (including for the avoidance of doubt this Schedule 3) shall not bind:
 - 3.1.1 a Chargee of the whole or part of the Affordable Housing Dwellings PROVIDED THAT such Chargee on enforcement of security has first complied with the provisions of paragraph 3.2 of this Schedule; or
 - 3.1.2 a Protected Tenant; or
 - 3.1.3 a 100% Staircaser; or
 - 3.1.4 any mortgagee or chargee or receiver of a 100% Staircaser or Protected Tenant; or
 - 3.1.5 any mortgagee or chargee or receiver of an occupier of an Affordable Housing Dwelling; and
 - 3.1.6 any person or body deriving title through or from any of the parties mentioned in paragraphs 3.1.1 – 3.1.5 above.
 - 3.2 Any Chargee claiming the protection granted by paragraph 3.1 above must first:
 - 3.2.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling,

- 3.2.2 use reasonable endeavours over a period of twelve weeks from the date of such written notice to complete the transfer of the Affordable Housing Dwelling to another registered provider or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

- 3.3 If such disposal referred to in paragraph 3.2.2 above has not completed within such twelve week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Agreement which shall determine absolutely.

Part Two

- A. The transfers of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner at no cost to the Approved Body and shall contain:
1. a grant by the Owner to the Approved Body of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings
 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Site
 3. such other covenants as the Owner may reasonably require for the maintenance of the Development once it is completed and the preservation of the appearance thereof
 4. a provision whereby Capital Receipt received from Staircasing is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re invest such Capital Receipt in Affordable Housing (in order of priority):-
 - i) within the borough of Castle Point
 - ii) within the neighbouring councils areas within the county of Essex
 - iii) within the rest of England
- subject to any contrary requirements within the Regulator of Social Housing capital funding guide

SCHEDULE 3

PITCHES CONTRIBUTION

1 In this Schedule the following words and expressions shall have the following meanings:-

“Pitches Contribution” means the sum of Seven Hundred and Thirty Five Pounds and Thirty Pence (£735.30) per Dwelling Index Linked;

“Pitches Contribution Purposes” means the use of the Pitches Contribution towards the provision of and/or improvements to facilities in the Benfleet and Thundersley area as set out in the Council’s Football Facilities Plan and Playing Pitch Strategy and Action Plan

2 The Owner hereby covenants with the Council not to Occupy or permit or allow Occupation of more than fifty per cent (50%) of the Market Dwellings prior to paying the Pitches Contribution to the Council.

3. The Council hereby covenants with the Owner to:

3.1 provide a written form of receipt for payment by the Owner of the Pitches Contribution on receipt of the Pitches Contribution;

3.2 place the Pitches Contribution when received from the Owner into an interest bearing account and to utilise the same for Pitches Contribution Purposes;

3.3 upon receipt of a request in writing to do so to be received by the Council no sooner than the fifth (5th) anniversary of the first Occupation of the final Market Dwelling on the Development to return to the party who paid the Pitches Contribution the unexpended part of the Pitches Contribution together with interest calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part;

3.4 where before the fifth (5th) anniversary of the first Occupation of the final Market Dwelling on the Development a legally binding unconditional contract has been entered into by the Council in respect of the use of the Pitches Contribution (or part thereof) for the Pitches Contribution Purposes the Council shall be entitled to utilise the Pitches Contribution to make payment under such a contract; and

3.5 upon receipt of a written request from the Owner, and on only one occasion per calendar year, the Council shall provide the Owner with a statement confirming whether the Pitches Contribution has been spent and if the Pitches Contribution has been spent in whole or in part outlining how the Pitches Contribution has in whole or in part been spent.

SCHEDULE 4

SPORTS HALL CONTRIBUTION

1 In this Schedule the following words and expressions shall have the following meanings:-

“Sports Hall Contribution” means the sum of Four Hundred and Fifteen Pounds and Twenty One Pence (£415.20) per Dwelling Index Linked;

“Sports Hall Contribution Purposes” means the use of the Sports Hall Contribution towards the provision of and/or improvements to facilities in the Benfleet and Thundersley area, as set out in the Council’s latest Indoor Built Facilities Strategy and Action Plan.

2 The Owner hereby covenants with the Council not to Occupy or permit or allow Occupation of more than fifty per cent (50%) of the Market Dwellings prior to paying the Sports Hall Contribution to the Council.

3. The Council hereby covenants with the Owner to:

3.1 provide a written form of receipt for payment by the Owner of the Sports Hall Contribution on receipt of the Sports Hall Contribution;

3.2 place the Sports Hall Contribution when received from the Owner into an interest bearing account and to utilise the same for Sports Hall Contribution Purposes; 3.3 upon receipt of a request in writing to do so to be received by the Council no sooner than the fifth (5th) anniversary of the first Occupation of the final Market Dwelling on the Development to return to the party who paid the Sports Hall Contribution the unexpended part of the Sports Hall Contribution together with interest calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part;

3.4 where before the fifth (5th) anniversary of the first Occupation of the final Market Dwelling on the Development a legally binding unconditional contract has been entered into by the Council in respect of the use of the Sports Hall Contribution (or part thereof) for the Sports Hall Contribution Purposes the Council shall be entitled to utilise the Sports Hall Contribution to make payment under such a contract; and

3.5 upon receipt of a written request from the Owner, and on only one occasion per calendar year, the Council shall provide the Owner with a statement confirming whether the Sports Hall Contribution has been spent and if the Sports Hall Contribution has been spent in whole or in part outlining how the Sports Hall Contribution has in whole or in part been spent.

SCHEDULE 5

EDUCATION CONTRIBUTION

1. In this Schedule the following words and expressions shall have the following meaning:

“Completion Notice” means the written notice served by the Owner on the County Council pursuant to paragraph 2.7 and which shall contain the final Unit Mix

“Education Contribution” means the sum of the Primary Education Contribution to which sum the Relevant Education Indexation shall be added

“Education Index” means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) or in the event that the PUBSEC Index is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council

“Education Index Point” means a point on the most recently published edition of the Education Index at the time of use

“Education Notice of Commencement” means the written notice served by the Owner on the County Council pursuant to paragraph 2.1 and which shall contain the proposed Unit Mix

“Flat” means a Dwelling that occupies a single floor which is not a bungalow and /or does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other persons

“General Index” means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council

‘General Index Point’ means a point on the most recently published edition of the General Index at the time of use

“House” means a Dwelling that does not meet the definition of a Flat

“Payment Notice” means a written notice served by the Owner on the County Council pursuant to paragraph 2.2 advising of a proposed payment of each part of the Education Contribution and the Unit Mix at the time of that payment

“Primary Education Contribution” means the Primary Pupil Product multiplied by the cost generator of seventeen thousand two hundred and sixty eight pounds sterling (£17,268.00)

“Primary Education Purposes” means the use of the Primary Education Contribution towards provision of facilities for the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs within the Castle Point Primary Group 2 – Thundersley and Benfleet as set out in the Essex School Organisation Service’s Ten Year Plan 2021-2030 and/or at a primary school within a three mile radius of the Site or at such other school that in the opinion of the County Council best serves the Development and or including any successor institution and including the reimbursement of capital funding made by the County Council for such provision

“Primary Pupil Product” means the sum of the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.3

“Qualifying Flats” means the number of Flats that shall be constructed on the Site that have two or more rooms that are detailed on the plans and drawings approved pursuant to the

Planning Permission as bedrooms

"Qualifying Houses" means the number of Houses that shall be constructed on the Site that have two or more rooms that are detailed on the plans and drawings approved pursuant to the Planning Permission as bedrooms

"Relevant Education Indexation" means the amount that the Owner shall pay with and in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change shown in the Education Index between the Education Index Point pertaining to January 2020 and the Education Index Point pertaining to the date the payment is due to be made to the County Council

"Relevant General Indexation" means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out under clause 4.2 of this Schedule that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change shown in the General Index between the General Index Point pertaining to January 2020 and the date payment is made to the County Council

"Trigger Date(s)" means the date or dates when the Education Contribution or part thereof are due to be paid to the County Council

"Unit Mix" means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Flats or Qualifying Houses

2. The Owner hereby covenants with the County Council:
 - 2.1 to serve on the County Council not less than 3 months prior to the Commencement of Development the Education Notice of Commencement stating the expected date of Commencement of Development and the proposed Unit Mix of the Development and the estimated Trigger Dates and in the event that the Unit Mix constructed or to be constructed as the Development should at any time differ from the Unit Mix notified to the County Council then the Owner shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the event that the Owner fails to serve notice as set out in this paragraph then the County Council may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably
 - 2.2 to serve on the County Council the Payment Notice between 60 Working Days and Thirty working Days prior to each of the proposed Trigger Dates and the calculation setting out the amount of the Education Contribution due at that Trigger Date
 - 2.3 to serve on the County Council notice of first Occupation of the first Dwelling within one (1) month thereof and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings;
 - 2.4.1 not to Commence any part of the Development prior to depositing fifty percent (50%) of the Education Contribution with the County Council
 - 2.4.2 to pay fifty percent (50%) of the Education Contribution to the County Council prior Commencement of Development
 - 2.5.1 not to Occupy any of the Dwellings prior to depositing the remaining balance of the Education Contribution being a further fifty per cent (50%) of the Education Contribution with the County Council.

- 2.5.2 to pay a further and final fifty percent (50%) of the Education Contribution to the County Council prior to the first Occupation of any of the Dwellings
- 2.6 to serve on the County Council the Completion Notice within 30 Working Days of all Dwellings being first Occupied stating the date that occurred and any further information stipulated in this Schedule
3. The County Council hereby covenants with the Owner:
- 3.1 To place the Education Contribution and each and any part of it when received into an interest bearing account and to utilise the same solely for the Primary Education Purposes;
- 3.2 If requested in writing by the Owner no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the relevant Education Contribution any part of the relevant Education Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment.
4. It is hereby agreed and declared:
- 4.1 In the event that the Education Contribution is paid later than dates set out in paragraph 2.4.1 and 2.4.2 and 2.5.1 and 2.5.2 then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of Commencement and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Education Contribution (or the part thereof) due calculated at the SONIA Rate from the date that the payment is due until the date payment of the Education Contribution is received by the County Council.
- 4.2 In addition to the requirement of 4.1 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owner hereby covenants to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus the Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt.
- 4.3 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owner hereby covenants to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution.
- 4.4. In the event that no written request is received by the County Council from the Owner pursuant to paragraph 4.5 below or no valid dispute is raised by the Owner pursuant to paragraph 4.6 below the Owner shall accept the Education Contribution has been spent in full on the Education Purposes as appropriate.

- 4.5 Upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of receipt of the Education Contribution in full the County Council shall provide the Owner with a statement confirming whether the Education Contributions have been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contributions have in whole or in part been spent.
- 4.6 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within twenty (20) Working Days of receipt by the Owner of the County Council's statement referred to in paragraph 4.5 and shall clearly state the grounds on which the expenditure is disputed.
- 4.7 In the event that the Education Contribution is overpaid by the Owner then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Education Contribution or have entered into a legally binding contract or obligation to spend the Education Contribution otherwise the County Council shall upon the Occupation of the final Dwelling on the Site or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owner (in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owner of such overpayment.

SCHEDULE 6

LIBRARY CONTRIBUTION

1. In this Schedule the following words and expressions shall have the following meaning:

“Library Index”	means the General Index as defined in Schedule 5
“Library Contribution”	means the sum of seventy seven pounds and eighty pence (£77.80) per Dwelling to which sum the Relevant Library Indexation shall be added
“Library Contribution Purposes”	means the use of the Library Contribution towards the upgrading of existing facilities at Great Tarpots Library and/or Benfleet High Road Library and/or Benfleet Library and/or other local libraries serving the Site, to include, but not limited to, additional furniture, technology and stock.
“Library Index Point”	means a point on the most recently published edition of the Library Index at the time of use
“Relevant Library Indexation”	means the amount that the Owner shall pay with and in addition to the Library Contribution paid that shall in each case equal a sum calculated by taking the amount of the Library Contribution being paid and multiplying this amount by the percentage change shown in the Library Index between the Index Point pertaining to January 2020 and the date of the most recent index point published in relation to the date the payment is due to be made to the County Council

2. The Owner hereby covenants with the Council and the County Council

2.1 To pay the Library Contribution to the County Council prior to the first Occupation of any Dwellings and not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until the Library Contribution has been paid to the County Council in full;

2.2 In the event that the Library Contribution is paid later than dates set out in paragraph 2.1 of this Schedule then the amount of the Library Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Library Index between the Library Index Point prevailing at the date of Commencement and the Library Index Point prevailing at the date of actual payment multiplied by the Library Contribution due or if greater an amount pertaining to interest on the Library Contribution (or the part thereof) due calculated at the SONIA Rate from the date that the payment is due until the date payment of the Library Contribution is received by the County Council;

2.3 In addition to the requirement of 2.2 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Schedule should not be received by the County Council by the date that the sum is due then the Owner hereby covenants to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment

including the sum of fifty pounds sterling (£50) plus the Relevant Library Indexation for each and every letter sent to the Owner pursuant to the debt.

3. The County Council hereby covenants with the Owner as follows:

3.1 to provide a written form of receipt for payment of the Library Contribution on receipt of the said Library Contribution;

3.2 that it will only use the Library Contribution towards the Library Contribution Purposes and will return to the payer any part of the said Library Contribution that has not been used on the tenth (10th) anniversary of the date that the County Council received the said Library Contribution with interest accruing at the SONIA Rate PROVIDED THAT the County Council's obligation to return the unused (or uncommitted) part of the Library Contribution referred to shall only apply in the event that the County Council receive a request in writing to return the said unused (or uncommitted) part referred to herein PROVIDED THAT and if the County Council is legally obliged to make a payment in respect of any Library Contribution Purposes the unexpended part of the Library Contribution shall not be repaid until such payment is made and the unexpended part of the Library Contribution to be repaid shall not include such payment.

3.3 upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of receipt of the Library Contribution in full the County Council shall provide the Owner with a statement confirming whether the Library Contribution has been spent and if the Library Contribution has been spent in whole or in part outlining how the Library Contribution has in whole or in part been spent.

4. It is hereby agreed and declared:

4.1 In the event that no written request is received by the County Council from the Owner pursuant to paragraph 3.3 above or no valid dispute is raised by the Owner pursuant to paragraph 4.2 below the Owner shall accept the Library Contribution has been spent in full on the Library Improvement Purposes as appropriate.

4.2 Any dispute in relation to how the Library Contribution has been spent must be raised in writing by the Owner and received by the County Council within twenty (20) Working Days of receipt by the Owner of the County Council's statement referred to in paragraph 3.3 and shall clearly state the grounds on which the expenditure is disputed.

4.3 In the event that the Library Contribution is overpaid by the Owner then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Library Contribution or have entered into a legally binding contract or obligation to spend the Library Contribution otherwise the County Council shall upon the Occupation of the final Dwelling on the Site or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owner (in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owner of such overpayment.

SCHEDULE 7

ECOLOGICAL MITIGATION

1. In this Schedule the following words and expressions shall have the following meaning:

Natura 2000 has the meaning ascribed to it in section 3(1) Conservation and Habitats and Species Regulations 2017;

RAMS means a recreation avoidance and mitigation strategy in relation to Essex Coast Natura 2000 European Designations ;

RAMS Contribution means the sum of one hundred and thirty seven pounds and seventy one pence (£137.71) per Dwelling Index Linked from April 2022

RAMS Contribution Purposes means the funding of strategic 'off-site' measures identified by the draft or adopted RAMS (as the case maybe at Commencement of Development) to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 European Designations.
2. The Owner hereby covenants with the Council to pay to the Council the RAMS Contribution prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development until the RAMS Contribution has been paid to the Council.
3. The Council hereby covenants with the Owner to:
 - 3.1 provide a written form of receipt for payment of the RAMS Contribution on receipt of the said contribution; and
 - 3.2 use the RAMS Contribution for the RAMS Contribution Purposes.

SCHEDULE 8

ESTATE ROADS

1. In this Schedule the following words and expressions shall have the following meaning:

Commercial Units means the six commercial units to be constructed as part of the Development

Estate Roads means the estate roads within the Manor Trading Estate shown for identification purposes only coloured dark green on the Plan

Estate Roads Planning Permission means the planning permission issued under reference 20/0159/FUL

Initial Route means the route shown by light blue arrows on the Plan

2. The Owner with the consent and approval of the Estate Road Owner hereby covenants with the Council
 - 2.1 to carrying out the improvements and repairs to the Estate Roads as specified in the Estate Road Planning Permission along the Initial Route up to and including base course prior to the Commencement of Development
 - 2.2 to complete the improvements and repairs to the Estate Roads as specified in the Estate Road Planning Permission prior to the later of the Occupation of eighty per cent (80%) of the Dwellings or the Occupation of fifty per cent (50%) of the Commercial Units
3. The Owner further covenants
 - 3.1 that all constructions traffic accessing and leaving the Development shall do so via the Estate Roads and more particularly via Brunel Road to get to and from Church Road Benfleet
 - 3.2 to make all drivers connected with the construction of the Development aware of such access arrangements
 - 3.3 to display notices setting out the access and egress arrangements at prominent positions at the Development

SCHEDULE 9

SCHOOL DROP OFF AND PARKING

- 2 In this Schedule the following words and expressions shall have the following meanings:-
- | | |
|---|---|
| “School Drop Off and Parking Area” | means the area of land shown for identification purposes only coloured yellow on the Plan |
|---|---|
2. The Owner hereby covenants with the Council:
- 2.1 To include the details for the provision of the School Drop Off and Parking Area with the first application for approval of Reserved Matters
- 2.2 Not to Occupy or allow cause or permit to be Occupied any of the Dwellings or commercial units constructed as part of the Development unless and until the School Drop Off and Parking Area has been physically set out on the Site in accordance with the Planning Permission
- 2.3 To permit members of the public to access and use the School Drop Off and Parking Area between the hours of 7am and 10pm on any day that the Robert Drake Primary School is operational
- 2.4 To maintain the School Drop Off and Parking Area in a condition commensurate with its use while it is being used as an area for parking and drop off for parents and pupils at the Robert Drake Primary School

SCHEDULE 10

HESTON LODGE

1 In this Schedule the following words and expressions shall have the following meanings:-

“Offer Land”	means the area of land shown for identification purposes only coloured pink on the Plan
“Heston Lodge”	means the area of land within leasehold title EX784908

2. The Owner hereby covenants with the Council:

2.1 Within six months of the Commencement of Development and in any event prior to the Occupation of any Dwelling to offer to transfer the Offer Land to the freehold owner of Heston Lodge for the consideration of £1 free from encumbrances other than as included in HM Land Reg title EX439219

2.2 In the event that the freehold owner of Heston Lodge accepts the offer referred to above within 6 months of it being made to provide a transfer document released for completion to the freehold owner of Heston Lodge within 20 Working Days of receipt by the Owner of such acceptance

SCHEDULE 11

NHS HEALTH CONTRIBUTION

- 1 In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:
- | | |
|---|--|
| “Healthcare Contribution” | means the sum of four hundred and ninety seven pounds and five pence (£497.05) per Dwelling Index Linked (determined by reference to the number of Dwellings authorised by Reserved Matters approval) |
| “Healthcare Contribution Purposes” | means improvements to capacity by way of refurbishment, reconfiguration, extension or potential relocation for the benefit of the patients at the surgeries of Dr Hiscock and Partners and the St Georges Medical Practice both serving the locality of the Site including the reimbursement of capital funding for such provision made by NHS England in anticipation of receipt of the Healthcare Contribution |
| “NHS England” | means the national commissioning authority for health services in England or its successor body from time to time. |
2. The Owner hereby covenants with the Council not to Commence the Development prior to depositing the Healthcare Contribution with the Council
3. The Council hereby covenants with the Owner that it shall:
- 3.1 Provide a written form of receipt for payment of the Healthcare Contribution on receipt of the Healthcare Contribution;
- 3.2 Pay the Healthcare Contribution to NHS England upon receipt of a document from NHS England detailing a project to be undertaken which satisfies the Healthcare Contribution Purposes
- 3.3 Keep and maintain an up to date record of all payments from the Healthcare Contribution transferred by the Council to NHS England;
- 3.4 Following receipt of a written request not to be made prior to the expiry of 5 (five) years from the date of the first Occupation of the final Market Dwelling on the Development to repay to the party who paid the Healthcare Contribution any unspent part of the Healthcare Contribution still held by the Council together with interest calculated at the SONIA Rate on the unexpended part from the date of payment until the date that the unexpended part is actually repaid within 20 Working Days of receipt of the aforementioned written request
4. The Owner acknowledges that the Council shall not be responsible for how the Healthcare Contribution is utilised or for its return under paragraph 3.4 above once it has transferred the Healthcare Contribution to NHS England but without prejudice to the rights of the Owner to seek repayment directly from NHS England and in which case the Council shall provide the Owner with reasonable assistance

SCHEDULE 12

BIODIVERSITY NET GAIN

1. In this Schedule the following words and expressions shall have the following meanings:

“Biodiversity Assessment” means the assessment of the impact on biodiversity of the Development and which shall identify a biodiversity baseline and the Biodiversity Units required to deliver the Biodiversity Net Gain pursuant to the Development

“Biodiversity Land” means the land upon which the approved Biodiversity Mitigation and Enhancement Scheme has been implemented

“Biodiversity Mitigation and Enhancement Scheme” means a scheme to be submitted to and approved by the Council as required by a condition on the Planning Permission which will deliver biodiversity mitigation and enhancements sufficient to deliver the Biodiversity Net Gain and which shall include the following details:

1. The Biodiversity Assessment
2. The biodiversity mitigation and enhancements to be provided on the Site together with the score in Biodiversity Units of those biodiversity mitigation and enhancements
3. The programme for implementation of the biodiversity mitigation and enhancements on the Site
4. A management and maintenance and monitoring scheme for the biodiversity mitigation and enhancements on the Site

“Biodiversity Net Gain” means the biodiversity mitigation and enhancements of the Development measured in Biodiversity Units which provide at least a 10% net gain compared to the impacts on biodiversity of the Development measured in Biodiversity Units

“Biodiversity Units” means the measure that represents the biodiversity impact of the Development in accordance with the Defra Biodiversity Metric 3.1

2. The Owner hereby covenants with the Council to submit the Biodiversity Mitigation and Enhancement Scheme to the Council for its written approval with the first application for Reserved Matters and not to Commence the Development unless and until the Biodiversity Mitigation and Enhancement Scheme has been approved by the Council or approval has been determined pursuant to the disputes determination procedures set out in Clause 8 of this Agreement.

3. The Owner covenants with the Council to thereafter:

- 3.1 implement and comply with the Biodiversity Mitigation and Enhancement Scheme as approved by the Council in accordance with its terms including any timetable for the implementation of the same;

- 3.2 to maintain the Biodiversity Land in accordance with the Biodiversity Mitigation and Enhancement Scheme until such time as the transfer described in paragraph 3.3 has been completed
 - 3.3 to transfer the Biodiversity Land to the Management Company (as defined in Schedule 1) free of encumbrances and with all necessary easements and vacant possession and the Management Company shall from the date of completion of the said transfer manage and maintain the Biodiversity Land in perpetuity
- 4. The Owner shall include in any transfer pursuant to this Schedule :
 - 4.1 a covenant only to permit the Biodiversity Land to be utilised in accordance with the Biodiversity Mitigation and Enhancement Scheme
 - 4.2 a covenant to maintain the Biodiversity Land in perpetuity in accordance with the Biodiversity Mitigation and Enhancement Scheme; and
 - 4.3 a covenant not to transfer the Biodiversity Land into the individual ownership of the owner or owners of any of the Dwellings
- 5. The Owner shall furnish a copy of the transfer referred to in paragraph 3.3 above to the Council
- 6. The Owner acknowledges that the Management Company shall be funded through contributions from purchasers or lessees of the whole or any part of the Site and the Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under this Schedule and Schedule 1 of this Agreement

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

EXECUTED (but not delivered until the date)
hereof) as a DEED by affixing THE COMMON)
SEAL of CASTLE POINT BOROUGH)
COUNCIL in the presence of:)

Authorised Signatory

EXECUTED as a DEED when the seal)
of ESSEX COUNTY COUNCIL)
was affixed in the presence of:)

Attesting Officer

SIGNED as a DEED by GLENN PATRICK)
SMITH in the presence of:-)

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED as a DEED by GARY MARTIN)
SMITH in the presence of:-)

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED as a DEED by GRAEME WALTER)
SMITH in the presence of:-)

Witness Signature

Witness Name

Witness Address

Witness Occupation

EXECUTED as a DEED for and on behalf of)
G & K GROUNDWORKS LIMITED)
acting by a director in the presence of)

Director Name

Director

Signature

Witness Name

Witness Signature

Witness Address

Witness Occupation

EXECUTED as a DEED for and on behalf of)
MARDEN SIGNS & DESIGNS LIMITED)
acting by a director in the presence of)

Director Name

Director

Signature

Witness Name

Witness Signature

Witness Address

Witness Occupation

Signatory Name
as Attorney for and on behalf of
BARCLAYS SECURITY TRUSTEE LIMITED
in the presence of:

)

Signatory Signature

)
)

Witness Name

Witness Signature

Witness Address

Witness Occupation

EXECUTED as a DEED for and on behalf of
ACT ROADWAYS LIMITED
acting by a director in the presence of

)

)

)

Director Name

Director

Signature

Witness Name

Witness Signature

Witness Address

Witness Occupation

APPENDIX A

Plan

