

DATED

2024

CASTLE POINT BOROUGH COUNCIL (1)

-and-

ESSEX COUNTY COUNCIL (2)

-and-

CLAYDONS FARM LIMITED, JANET PATRICIA COWELL and SHIRLEY ANN MEE (3)

-and-

**DEBORAH BARBARA PAGE, NICHOLAS ROYSTON COOK, VINCENT PETER COOK and
ANGELA ALFREDA BYOTT (4)**

**AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

**relating to the development of land
east of Rayleigh Road, Thundersley, Benfleet**



Flint Buildings

1 Bedding Lane

Norwich

Norfolk

NR3 1RG

Ref: JZM/233244.0053

Appeal Reference: APP/M1520/W/24/3338797

BETWEEN

- 1 **CASTLE POINT BOROUGH COUNCIL** of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF (“Council”);
- 2 **ESSEX COUNTY COUNCIL** of County Hall Market Road, Chelmsford, CM1 1QH (“County Council”);
- 3 **CLAYDONS FARM LIMITED** (Company Registration Number: 12848853) whose registered office is located at Walton Hall, Walton Hall Lane, Purleigh, Chelmsford, CM3 6PS and **JANET PATRICIA COWELL** of The Cottage, Motts Farm, Main Road, St. Lawrence, Southminster, CM0 7LR and **SHIRLEY ANN MEE** of Little Grange, Grange Road, Tillingham, Southminster, CM0 7UT (“First Owners”);
- 4 **DEBORAH BARBARA PAGE** of 3 Ashdown House, Avington Walk, Benfleet, SS7 3PH and **NICHOLAS ROYSTON COOK** of 99 Benfleet Road, Benfleet, SS7 1QF and **VINCENT PETER COOK** of 40 Weald Way, Romford, RM7 9PD and **ANGELA ALFREDA BYOTT** of Pemba, Henny Road, Lamarsh, Bures, CO8 5EX (“Second Owners”)

together referred to as “the Parties”

BACKGROUND

- A The Council and the County Council are the local planning authorities for the purposes of section 106 of the Act for the area within which the Site is situated and by whom the planning obligations contained in this deed are enforceable.
- B The County Council is also the local education authority for early years and childcare and statutory age education and the local highway authority and also the local library authority for the provision of library services under the 1964 Act for the area in which the Site is located.
- C The First Owners are the registered proprietors of the part of the Site registered at the Land Registry under Title Numbers EX737177, EX745635 and EX743558.
- D The Second Owners are the registered proprietors of the part of the Site registered at the Land Registry under Title Number EX781118.
- E The Promoter has the benefit of a promotion agreement dated 14 December 2020 in relation to the Site.

- F The Promoter has submitted the Application to the Council and has subsequently lodged the Appeal against non-determination of that Application.
- G The Parties have agreed to enter into this deed in order to secure the planning obligations and other covenants to the extent that is necessary to ensure that the Development is acceptable in planning terms in the event that the Appeal is upheld by the Inspector.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 DEFINITIONS

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

| | |
|-------------------------------|---|
| “Act” | the Town and Country Planning Act 1990 as amended |
| “1964 Act” | means the Public Libraries & Museums Act 1964; |
| “Affordable Housing Land” | part(s) of the Site upon which Affordable Housing Dwellings shall be provided pursuant to the Planning Permission and the approved Affordable Housing Scheme |
| “Affordable Housing Provider” | a body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) including a Registered Provider (pursuant to part 2 of the Housing and Regeneration Act 2008) registered with Homes England or similar successor body or an alternative affordable housing provider (including but not limited to a housing trust or company, or an almshouse society) |
| “Affordable Housing Scheme” | unless otherwise agreed in writing by the Council means a scheme to be submitted in accordance with the Planning Permission for the provision of the Affordable Housing Dwellings on each Phase such Affordable Housing Scheme shall include details of the following (unless otherwise agreed in writing); |

- the number, location, tenure, plot numbers, type and size of Affordable Housing Dwellings on the Affordable Housing Land;
- full details of the Tenure Mix;
- details of how the Affordable Housing Dwellings comply with Building Regulations M(4) (2) standards;
- details of how the wheelchair accessible Affordable Housing Dwellings comply with Building Regulations M (4) Cat 3 (2b) and
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

“Affordable Housing Dwellings”

no less than forty percent (40%) of the Dwellings (including First Homes) (rounded to the nearest whole unit) on the Site to be provided on the Affordable Housing Land as Affordable Housing and in accordance with the approved Affordable Housing Scheme

“Affordable Housing”

as defined in Annex 2 of the NPPF

“Affordable Rented Dwellings”

Dwellings to be made available for rent on an affordable rent tenure basis as defined in the NPPF and which is owned and managed by an Affordable Housing Provider to be let at a monthly or weekly rental figure that does not exceed eighty percent (80%) of the local market rent inclusive of service charges or the Local Housing Allowance for the area whichever is the higher

“Appeal”

the appeal to the Secretary of State following an appeal against non-determination of the Application and given appeal reference APP/M1520/W/24/3338797

| | |
|--|---|
| “Application” | the application for outline planning permission for the Development submitted to the Council by the Promoter and allocated reference 23/0085/OUT |
| “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” | <p>means a scheme to be submitted to and approved by the Council which will deliver biodiversity mitigation and enhancements sufficient to deliver the Biodiversity Net Gain and which shall include the following details:</p> <ul style="list-style-type: none"> - the Biodiversity Assessment - the biodiversity mitigation and enhancements to be provided on the Site together with the score in Biodiversity Units of those biodiversity mitigation and enhancements - the programme for implementation of the biodiversity mitigation and enhancements on the Site - 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 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 4.0 (or successor document) |
| “Chargee” | any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrative receiver (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver |
| “Commencement of Development” | the date on which the first material operation (as defined in section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence the Development” “Commencement” and “Commence” shall be construed accordingly |
| “Community Hall” | means a multi-use community hall (falling within use classes E(e), (f), F1 and/or F2) to be provided on the Site on an area no less than 0.29ha pursuant to the Planning Permission in accordance with the Community Hall Specification |
| “Community Hall Acceptance Notice” | means notice in writing given by the Council to the Owner accepting the offer contained in the Community Hall Offer Notice and agreeing to take a transfer of the Community Hall |

| | |
|---------------------------------|---|
| “Community Hall Offer Notice” | means notice in writing given by the Owner to the Council offering to build the Community Hall |
| “Community Hall Phase” | means the Phase of the Development within which the Community Hall shall be situated |
| “Community Hall Plan” | means a plan showing the location and the Community Hall Phase |
| “Community Hall Specification” | means a detailed specification for a building capable of being used as a Community Hall and also for Community Use identified on the Community Hall Plan |
| “Community Use” | means the use of the Community Hall including its grounds/curtilage by the residents of Castle Point Borough Council Area and people in the locality as a centre to hold group activities |
| “Council Monitoring Fee” | the sum of £546.75 per obligation plus £100 per Affordable Housing Dwelling (including each First Home) for each Phase to be applied towards the costs to the Council of monitoring and reporting upon compliance with Schedule 2 to this Deed |
| “County Council Monitoring Fee” | the sum of £550 (five hundred and fifty pounds) per obligation (totalling £4,950 (four thousand nine hundred and fifty pounds)) to be applied towards the costs to the County Council of monitoring and reporting upon compliance with Schedule 3 to this deed. |
| “CIL Regulations” | Community Infrastructure Levy Regulations 2010 (as amended) |
| “CIL Tests” | the tests set out in regulation 122 (2) of the CIL Regulations |
| “Development” | the Development of the Site pursuant to the Application for up to 455 new homes, a new multi-use community hall, land for the provision of a healthcare facility, land for a stand-alone early years and childcare nursery, new |

vehicular/pedestrian access points from Stadium Way in the north and Daws Heath Road in the south, new greenways and green links, multi-functional open space, green infrastructure, surface water attenuation, landscaping and associated infrastructure

“Dwelling” means a house of self-contained flat bungalow maisonette or other domestic property constructed as part of the Development and “Dwellings” shall be construed accordingly

“First Homes” has the meaning ascribed to it at Part 7 of Schedule 2 of this Agreement and which shall be provided pursuant to those provisions

“First Time Buyer” means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

“Flat” means a Dwelling that occupies a single floor and/or does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other person and “Flats” shall be construed accordingly

“Homes England” the statutory body trading as Homes England and the Regulator of Social Housing or such successor statutory body or bodies that fund and regulate Affordable Housing Providers

“Healthcare Contribution” means the sum of four hundred and ninety five pounds and sixty pence (£495.60) 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 serving the locality of the Site and or the provision of a new healthcare facility in 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

| | |
|-------------------------------------|--|
| “Healthcare Land” | means an area of land measuring no less than 0.31ha pursuant to the Planning Permission which could provide for a building of up to 1,000sqm of space for healthcare services (unless otherwise agreed in writing with the Council) |
| “Healthcare Land Acceptance Notice” | means notice in writing given by the NHS England to the Owner agreeing to take a transfer of the Healthcare Land |
| “Healthcare Land Scheme” | means a scheme in writing provided by the Owner to the Council and the NHS England which shall contain details as to how the Owner is to secure decontamination of the Healthcare land; details as to how the Owner is to ensure that the Healthcare Land is suitable for use as a healthcare facility; details as to how the Owner is to fence the boundaries of the Healthcare Land; details as to how the Owner is to provide utility services and vehicular and pedestrian access to the boundary of the Healthcare Land |
| “Healthcare Land Option Period” | the period of five years from the Commencement of the Development Provided Always that the Healthcare Land shall not be situated on the last Phase of the Development. |
| “Index Linked” | means increase(d) to reflect any increase in the Index during the period from and including the date of this Agreement (unless otherwise specified elsewhere in this Agreement) to and including the date of actual payment |
| “Index” | the Retail Price Index (All Items) as otherwise provided for in clause 10 or if such indices cease to be published such other index as may be agreed between the Council and the Owner (as appropriate) |

| | |
|-----------------------------|--|
| “Inspector” | an inspector appointed by the Secretary of State for Levelling Up, Housing and Communities to determine the Appeal |
| “Interest” | interest at four per cent (4%) above the base lending rate of the Bank of England from time to time |
| “Local Connection Criteria” | means such local connection criteria as may be designated and published by the Council from time to time as its “First Homes Local Connection Criteria” and which is in operation at the time of the relevant disposal of the First Home and for the avoidance of doubt any such criteria or replacement criteria in operation at the time of the relevant disposal of the First Home shall be the “Local Connection Criteria” which shall apply to that disposal it being acknowledged that at the date of this Deed the Council has not designated any criteria as Local Connection Criteria |
| “Management Company” | a management company to be approved in writing by the Council prior to the Owner entering into any contracts transfers or appointments to the management company for the purposes of the management of the On Site Public Open Space or the Biodiversity Land; or the Owner or other body as approved by the Council |
| “Market Dwelling” | means all Dwellings built or to be built on the Site as part of the Development which are not an Affordable Housing Dwelling or a First Home and “Market Dwellings” shall be construed accordingly. |
| “Mortgagee” | means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari’ah compliant finance for the purposes of acquiring a First Home |

| | |
|---|---|
| “NHS England” | means the national commissioning authority for health services in England or its successor body from time to time |
| “Nomination Agreement” | an agreement between the owner of the Affordable Housing Dwellings and the Council regulating the Occupancy of the Affordable Housing Dwellings for first and subsequent Occupation such agreement to be in a form to be agreed with the Council |
| “NPPF” | the National Planning Policy Framework (December 2023) (or any amended or superseded document) |
| “Occupation” and “Occupied” | occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupancy” shall be construed accordingly |
| “On Site Public Open Space” | such part (or parts) of the Site shown comprising of an area of at least 14.60ha for use by the general public as public open space and to include a village green, children’s play provision, allotments, community orchard, retained woodland, retained hedgerow, a lake and a landscaped corridor to be secured pursuant to the Planning Permission (unless otherwise agreed in writing). |
| “On Site Public Open Space Specification” | <p>a document confirming:</p> <ul style="list-style-type: none"> (i) details of the open space works to be provided on the On Site Public Open Space including a specification for the location (identified on a plan), size, materials, including any remedial works design specification and landscaping treatments; and (ii) details of the maintenance standards and management plan that are to be applied to the On |

Site Public Open Space to serve the Development
(including the identity of the management body)

to be prepared by or on behalf of the Owner by a suitably qualified and professionally approved person experienced in preparing and reviewing specifications for such open space which specifications shall be submitted and approved pursuant to the provisions of this deed

| | |
|---|--|
| “Other Affordable Routes to Home Ownership” | has the meaning ascribed to it at paragraph (d) of the definition of affordable housing at Annexe 2 of the NPPF |
| “Owner” | means the First Owners and the Second Owners |
| “Phase” | means a phase or sub-phase of the Development as identified on the Phasing Plan to be secured pursuant to the Planning Permission |
| “Phasing Plan” | the drawing titled “ <i>Phasing Plan</i> ” and given reference 403 Rev A showing the different phases of the Development and annexed at Schedule 1 unless otherwise agreed in writing with the Council |
| “Pitches Contribution” | means the sum of One Thousand Five Hundred and Sixty Eight Pounds and Fourteen Pence (£1,568.14) 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 |
| “Planning Permission” | the outline planning permission subject to conditions to be granted by the Inspector pursuant to the Appeal (“ Outline Permission ”) or any variations of those conditions determined by the Council under section 73 of the Act or any non-material amendment under section 96A of the Act |

| | |
|------------------------|--|
| “Practical Completion” | issue of a certificate of practical completion by the Owner’s building contract administrator in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s building contract administrator and “Practically Complete” shall be construed accordingly |
| “Promoter” | means This Land Development Limited (Company Registration Number: 11210011) whose registered office is located at Compass House, Vision Park, Chivers Way, Histon, Cambridge, CB24 9AD |
| “Protected Person” | <p>means any person who:</p> <ul style="list-style-type: none"> a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling; b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling; c) a 100% Staircaser; d) any successor in title to a chargee or mortgagee of the persons named in a) – c) above; e) any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions within that Shared Ownership Lease. |
| “RAMS Contribution” | the sum of £163.86 (one hundred and sixty three pounds and eighty six pence) per Dwelling (Index Linked from April 2024) on a Phase to be paid to the Council which purpose is for the funding of necessary measures to avoid and mitigate likely significant effects from recreational |

disturbance in-combination with other plans and projects on the Benfleet and Southend Marshes Special Protection Area (SPA) and Ramsar site.

| | |
|--------------------------|---|
| “Registered Provider” | an organisation registered as a provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England or any other body who may lawfully provide or fund affordable housing from time to time (unless otherwise approved in writing by the Council) |
| “Reserved Matters” | means the applications for reserved matters approval by the local planning authority in relation to and following the grant of the Planning Permission |
| “RSH” | the Regulator of Social Housing whose registered office is Level 1A City Tower Piccadilly Plaza Manchester M1 4BT or any statutory successor thereof or other government body with the function of regulating social housing development |
| “Shared Ownership Lease” | <p>a lease substantially in the form of the RSH model shared ownership lease to provide for the following:</p> <ul style="list-style-type: none">- not more than seventy five percent (75%) and not less than ten percent (10%) of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Affordable Housing Provider; and- power to the purchaser to increase their ownership up to one hundred (100%) if they so wish or such other lesser percentage that complies with the requirements of Homes England or such other maximum percentage as may be agreed with the Council; and- an initial rent not exceeding two point seven five percent (2.75%) of the value of the equity retained by the |

Affordable Housing Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England

“Shared Ownership Dwellings” the Affordable Housing Dwellings which are to be Occupied under a Shared Ownership Lease

“Site” the land known comprised within Title Numbers EX781118, EX737177, EX743558 and EX745635 together known as land east of Rayleigh Road, Thundersley, Benfleet and shown for identification purposes edged red on the plan appended at schedule 1 titled “*Proposed Extent of Site*” and given reference “34580-101 Rev B” dated November 2022

“Sports Hall Contribution” means the sum of Five Hundred and Sixteen Pounds and Fifty Eight Pence (£516.58) 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

“Sterling Overnight Index Average (SONIA) Rate” shall mean an assessment of the rate of interest the County Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and other institutional investors and SONIA Rate shall be construed accordingly

“Tenure Mix” the provision of the Affordable Housing Dwellings comprising no more than twenty five percent (25%) First Homes and at least twenty five percent (25%) Shared Ownership Dwellings and at least fifty percent (50%)

Affordable Rented Dwellings (unless otherwise agreed in writing with the Council)

“Use Classes Order” The Town and Country Planning (Use Classes) Order 1987
(as amended)

“Working Days” Monday to Friday (inclusive) except Good Friday,
Christmas Day and public or bank holiday from time to time
in England

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever more than one person is named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that statute for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that statute or deriving validity from it.
- 2.6 Where this deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document.

- 2.7 References to any party to this deed shall include the successors in title to that party and to any deriving title through or under that party to the Site or any part thereof and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.8 The headings are for reference only and shall not affect construction.
- 2.9 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3 LEGAL BASIS

- 3.1 This deed is made pursuant to section 106 of the Act so as to bind the Site and to the extent that any obligations in this deed are not planning obligations, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all enabling powers with the intent that the covenants and obligations shall hereafter run with the land pursuant to section 106 of the Act.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority and the County Council as local planning against:
- 3.2.1 the First Owners in respect of obligations which relate to their part of the Site;
and
 - 3.2.2 the Second Owners in respect of obligations which relate to their part of the Site.

4 CONDITIONALITY

- 4.1 This deed is conditional upon:
- 4.1.1 the grant of the Outline Permission; and
 - 4.1.2 the Commencement of Development

save for the provisions of this clause 4 and clauses 7.1, 7.9, 14 to 16 and any other relevant provisions which shall come into effect immediately upon completion of this deed.

- 4.2 Any obligation contained in this deed shall not apply and not have any force nor effect if the Secretary of State for Levelling Up, Housing and Communities or the Inspector finds in its decision that a particular obligation or part thereof is not in accordance with the CIL Tests or should the Inspector find in its decision that any provision, obligation, particular contribution as defined in this deed or payment obligation or trigger for compliance should be deleted or amended so as to ensure compliance with the CIL Tests or to enable the grant of Outline Permission such contribution, provision and/or obligation in this deed shall be treated as amended in accordance with the Inspector's decision.

5 THE OWNERS' COVENANTS

- 5.1 The Owner covenants with the Council so as to bind the Site to comply with the obligations restrictions and covenants set out in this Deed and in the Schedules to this Deed.
- 5.2 The Owner so as to bind the Site covenants with the County Council to comply with the obligations restrictions and covenants set out in this Deed and in the Schedules to this Deed.
- 5.3 The Owner hereby covenants with the Council and the County Council unless otherwise agreed in writing by the Council and the County Council not to Commence Development in any Phase unless and until:-

5.3.1 one legal entity is the registered proprietor at HM Land Registry of the land comprising the relevant Phase and

5.3.2 the Council and the County Council have been provided with evidence of such registration as referred to at Clause 5.3.1 above and for the avoidance of any doubt reference to Commence Development in this clause 5.3 has the meaning ascribed to it in section 56 of the 1990 Act and not the meaning ascribed to it in Clause 1 of this Agreement

- 5.4 The Owner hereby covenants that they are the freehold owners of the Site and that they have full power to enter into this deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this deed binding on the Site and all estates and interests therein.

6 THE COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner to comply with the obligations set out in this Deed and the Schedules to this Deed.

- 6.2 The County Council covenants with the Owner to comply with the obligations set out in this Deed and the Schedules to this Deed.
- 6.3 Nothing in this deed shall fetter the statutory rights, powers or duties of the Council as a local planning authority or the County Council as a local planning authority or in the discharge of any statutory function (as the case may be).

7 MISCELLANEOUS

- 7.1 The Owner shall:

7.1.1 Upon completion of this Agreement the pay to the Council and to the County Council their reasonable and proper costs in connection with the preparation, negotiation and completion of this Agreement; and

7.1.3 Prior to Commencement of Development in each Phase to pay the Council Monitoring Fee for that Phase in full to the Council; and pay the County Council Monitoring Fee in full to the County Council prior to Commencement of the Development.

- 7.2 No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.3 This deed shall be registered as a local land charge by the Council.
- 7.4 Where the agreement, approval, consent, expression of satisfaction or a subsequent deed is required or sought by the Owner from the Council and/or the County Council (as appropriate) under the terms of this deed such agreement, approval, consent, expression of satisfaction or subsequent deed shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction on behalf of the Council shall be given by the Council's Planning Manager (or successor in post) (in consultation with the County Council as necessary) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office or individual's last known address (as appropriate) of the relevant party.
- 7.5 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests either of the Council and or the County Council and its duly authorised officers or agents to have access to any part or all of the Site

or any requests to provide documentation within the Owner's possession (at the Owner's) for the purposes of monitoring compliance with the obligations contained herein.

- 7.6 The Owner agrees declares and covenants both with the Council and the County Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this deed and further shall indemnify the Council and the County Council for any expenses or liability arising to the Council and the County Council in respect of breach by the First Owners or Second Owners or any obligation contained herein save to the extent that any act or omission of the Council and the County Council its employees or agents has caused or contributed to such expenses or liability.
- 7.7 Following the performance and satisfaction of all the obligations contained in this deed the Council shall upon written request from the Owner effect the cancellation of all entries made in the register of local land charges in respect of this deed.
- 7.8 Insofar as any clause or clauses of this deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 7.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after it shall have parted with its interest in the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of any rights easements or the inclusion of any covenants in any transfer of the Site shall constitute an interest for the purposes of this clause.
- 7.10 The Council and/or the County Council (as appropriate) shall not be liable to any person under this deed after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto.
- 7.11 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed.
- 7.12 In the event the Appeal is refused or the Outline Permission is quashed revoked or withdrawn before the Commencement of Development or expiring without the Development having been Commenced or in the event of the modification of the Outline Permission without the written consent of the Owner the obligations under this deed shall cease absolutely.

7.13 Save for the obligations contained in Part 1 of Schedule 2 which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Housing Dwellings (but subject to the provisions contained therein) and the obligations contained in Part 7 of Schedule 2 which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of First Homes (but subject to the provisions contained therein), the obligations in this deed shall not be enforceable against:

7.13.3 individual lessees or purchasers Occupying or entitled to Occupy Dwellings within the Development; and

7.13.4 any statutory undertakers or other utility suppliers with an interest in the Site only by virtue of the location of their structures or other apparatus on the Site (including electricity substations, poles, stays, gas governor stations and/or pumping stations) are specifically excluded from liability under this deed.

7.14 Representatives of the Council and the County Council may enter onto the Site at any reasonable time following the Commencement of Development upon reasonable prior notice in writing to ascertain whether the terms of this deed are being or have been complied with PROVIDED THAT the representative of the Council shall, if requested, produce evidence of identity and (SAVE in respect of anything which may be regarded by the Council (acting reasonably) as an actual or emerging emergency or emergency situation) such entry shall comply with the First Owners' or Second Owners' reasonable directions and precautions in the interests of safety.

7.15 Any monies from time to time held by the Council and the County Council under the provisions of this deed shall in any event become the absolute property of the Council and the County Council and shall not be subject to return by the Council and the County Council to the First Owners or Second Owners (or such other person who shall have paid the same to the Council) in the event that the First Owners or Second Owners or such other person becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it or an Administrative Receiver or a Receiver or a Receiver and Manager is appointed in respect of the Site or any part of the same or any other property or the First Owners or Second Owners shall enter into any arrangement scheme compromise moratorium or composition with his creditors or any of them but shall continue to be held by the Council and the County Council under the terms of this deed.

7.16 Save as otherwise provided in this deed all works and activities to be carried out under the terms of this deed (including for the avoidance of doubt such works as are of a preparatory

ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the Council or the County Council.

8 WAIVER

No waiver (whether expressed or implied) by the Council, County Council or the First Owners or Second Owners of any breach or default in performing or observing any of the covenants terms or conditions of this deed shall constitute a continuing waiver and no such waiver shall prevent the Council, County Council or the First Owners or Second Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE OF OWNERSHIP

The Owner covenants with the Council and the County Council to give the Council and the County Council written notice of any change in the ownership of any of its interests in the Site (save for the disposal of an individual Dwelling) occurring before all the obligations under this deed have been discharged within fourteen (14) Working Days of such a change of ownership and such notice is to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or Dwelling purchased or transferred by reference to a plan.

10 INDEXATION

Any sum payable to the Council under this deed shall be Index Linked

11 INTEREST

If any payment due under this deed is made fourteen (14) Working Days or more after the date on which it is due to be paid, Interest will be payable from the date payment is due to the date the payment is received in full by the relevant council.

12 VAT

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

13 DISPUTE RESOLUTION

13.2 Save as provided in this deed the parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this deed promptly initially through negotiations between the respective senior executives of the Parties who have authority to settle the same and thereafter as provided in this clause 13.

13.3 If the matter is not resolved through negotiation within forty (40) Working Days, the Parties will attempt in good faith to resolve the dispute or claim through an alternative dispute resolution ("ADR") procedure as recommended to the Parties by the Centre for Dispute Resolution.

13.4 If the matter has not been resolved by an ADR procedure within twenty (20) Working Days of the initiation of such procedure or if any Party will not participate in an ADR procedure, the dispute may be referred by any Party for decision by a person appointed by agreement between the Parties or in default of agreement, by the president for the time being of the Royal Institution of Chartered Surveyors (an "Expert") and the following provisions shall apply in respect of any such reference:-

13.4.3 the Expert shall act as an expert and not as an arbitrator;

13.4.4 the decision of the Expert shall be final and binding upon the Parties; and

13.4.5 each Party shall bear its own costs save that the fees of the Expert and/or of the said Institution shall be in the Expert's sole determination.

13.5 Nothing in clauses 13.2 and 13.3 shall apply to the recovery of ascertained or ascertainable sums or prevent any of the Parties from commencing or continuing court proceedings.

14 JURISDICTION

This deed is governed by and interpreted in accordance with the law of England.

15 DELIVERY

The provisions of this deed (other than this clause which shall be of immediate effect) shall be of no effect until this deed has been dated.

16 NOTICES

- 16.2 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing.
- 16.3 The address for any notice or other written communication shall be within England and Wales.
- 16.4 A notice or communication shall be served or given:
- 16.4.3 on the First Owners at the addresses set out above or such other address as shall be notified in writing to the Council and the County Council from time to time; and
 - 16.4.4 on the Second Owners at the addresses set out above or such other address as shall be notified in writing to the Council and the County Council from time to time; and;
 - 16.4.5 on the Council at the address set out above or other such address as shall be notified in writing to the parties from time to time; and
 - 16.4.6 on the County Council shall be marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH AND to development.enquiry@essex.gov.uk.
- 16.5 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate.

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

SCHEDULE 1

SITE PLAN

PHASING PLAN

SCHEDULE 2
THE OWNER'S COVENANTS WITH THE COUNCIL
Part 1: Affordable Housing

1. The Owner hereby covenants with the Council unless otherwise agreed in writing:
 - 1.1. Not to Commence the Development or allow the Commencement of Development on a Phase unless or until an Affordable Housing Scheme has been submitted to and approved by the Council for that Phase BUT FOR THE AVOIDANCE OF DOUBT the Council may subsequently approve a revised Affordable Housing Scheme.
 - 1.2. Not to Occupy or permit Occupation of more than fifty percent (50%) of the Market Dwellings on a Phase until:
 - 1.2.1. fifty percent (50%) of the Affordable Housing Dwellings on that Phase have been constructed in accordance with the Planning Permission and have been made ready for residential Occupation and those Affordable Housing Dwellings have been transferred to an Affordable Housing Provider (or individual plot owners where appropriate, or where no transfer is required their ongoing provision has been secured) with the benefit of a certificate of completion issued by the National House-Building Council ("NHBC") or by another organisation of the same or similar standing to the NHBC and approved by the Council in writing SAVE FOR the First Homes in the event they are sold directly by the Owner; or
 - 1.2.2. contracts have been exchanged with an Affordable Housing Provider for the transfer of the Affordable Housing Land on that Phase with obligations to secure delivery of fifty percent (50%) of the Affordable Housing Dwellings on that Phase in accordance with the approved Affordable Housing Scheme prior to the Occupation of fifty percent (50%) of the Market Dwellings on that Phase and written notification of such has been received by the Council SAVE FOR the First Homes in the event they are sold directly by the Owner.
 - 1.3. Not to Occupy or permit Occupation of more than seventy five percent (75%) of the Market Dwellings on a given Phase until:

- 1.3.1. all of the Affordable Housing Dwellings to be provided under the approved Affordable Housing Scheme on that Phase have been constructed in accordance with the Planning Permission have been made ready for residential Occupation and those Affordable Housing Dwellings have been transferred to an Affordable Housing Provider (or individual plot owners where appropriate, or where no transfer is required their ongoing provision has been secured) with the benefit of a certificate of completion issued by the NHBC or by another organisation of the same or similar standing to the NHBC and approved by the Council in writing SAVE FOR the First Homes in the event they are sold directly by the Owner; or
 - 1.3.2. contracts have been exchanged with an Affordable Housing Provider for the transfer of the Affordable Housing Land on that Phase with obligations to secure delivery of all of the Affordable Housing Dwellings on that Phase in accordance with the approved Affordable Housing Scheme prior to the Occupation of seventy-five percent (75%) of the Market Dwellings on that Phase and written notification of such has been received by the Council SAVE FOR the First Homes in the event they are sold directly by the Owner.
- 1.4. Subject to the provisions of this paragraph 1 and unless otherwise agreed with the Council, from the date of Practical Completion of the Affordable Housing Dwellings, the Affordable Housing Dwellings shall not be used other than for the purposes of Affordable Housing.
- 1.5. Not to dispose of any interest in any of the Affordable Rented Dwellings other than by way of an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 (or any form of residential tenancy prescribed by statute in substitution for or in addition to those); PROVIDED THAT nothing in this paragraph 1.5 shall be deemed to prohibit the disposal of the Affordable Housing Dwellings individually or together (in any numerical combination) (whether or not subject to any tenancy) to any other Affordable Housing Provider, shared equity provider or the chargee or mortgagee of those Affordable Housing Dwellings.
- 1.6. It is hereby AGREED and DECLARED that the obligations contained in this deed shall with the exception of the obligations contained in this paragraph 1 of Schedule 2 that shall continue to be binding on those persons and categories provided at paragraphs 1.6.1, 1.6.2, 1.6.3 and 1.6.4 save for those Affordable Housing Dwellings which are to be provided as First Homes:

- 1.6.1. not be enforceable against any Affordable Housing Provider being the owner of the Affordable Housing or any part thereof or the successors in title of such Affordable Housing Provider, or
- 1.6.2. not be enforceable against a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a “Receiver”)) of the whole or any part of the Affordable Dwelling (excluding a First Home) or any persons or bodies deriving title through such mortgagee or chargee or Receiver; and
- 1.6.3. not be enforceable against any owner or occupier of an Affordable Housing Dwellings who acquires a freehold or leasehold interest in such unit by virtue of any statutory entitlement or any person deriving title from such person; and
- 1.6.4. be suspended in respect of any Dwellings demised or to be demised by way of Shared Ownership Lease where the shared ownership lessee has complied with the nomination provisions (if any) of the Shared Ownership Lease and has first offered to sell its interest to a nominee of the Affordable Housing Provider and the Affordable Housing Provider has been unable or unwilling to provide a nominee within the time period specified in the Shared Ownership Lease or such nominee has not exchanged contracts to acquire the lessee’s interest within the time period specified within such Shared Ownership Lease;
- 1.6.5. any Chargee provided that the Chargee shall have first complied with the Chargee’s duty at 1.8 below; and
- 1.6.6. any purchaser from a mortgagee of an individual Affordable Housing Dwellings pursuant to any default by the lessee.

1.7. The obligations in this Schedule 2 shall not be binding on a Chargee of the whole or any part of the Affordable Housing Dwellings PROVIDED THAT:

- 1.7.1. such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 1.7.2. if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing obligations in this schedule 2 paragraph 1 which provisions shall determine absolutely.
- 1.8. The owner of the Affordable Housing Dwellings shall prior to the first Occupation of any of the Affordable Housing Dwellings SAVE FOR the First Homes either enter into the Nomination Agreement or procure that the relevant Affordable Housing Provider does so and (subject to any relevant provisions in this Schedule 2) shall thereafter comply in full with the provisions of such agreement (or procure that the relevant Affordable Housing Provider does so) in connection with the Development.
- 1.9. Any transfer of the freehold or leasehold interest in any part of the Affordable Housing Dwellings to an Affordable Housing Provider shall be upon the following terms and conditions SAVE FOR the First Homes which (unless the Owner elects) shall not be transferred to an Affordable Housing Provider:
 - 1.9.1. the transfer shall be subject to a covenant that the Affordable Housing shall be used solely for the provision of Affordable Housing in accordance with the terms of this deed and the provisions of the Nomination Agreement;
 - 1.9.2. a grant in favour of the Affordable Housing Provider of all rights of access passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings; and
 - 1.9.3. reservation of all rights of access and passage of services and rights of entry reasonably necessary for the beneficial enjoyment of the Affordable Housing Dwellings.

Part 2: On Site Public Open Space

1. The Owner hereby covenants with the Council (unless otherwise agreed in writing):
 - 1.1 Not to Commence the Development within a given Phase on the Site until the On Site Public Open Space Specification has been submitted to and approved in writing by the Council for that Phase of the Site.
 - 1.2 Not to Occupy more than eighty percent (80%) of the Dwellings on a Phase until the On Site Public Open Space has been provided and laid out in accordance with the approved On Site Public Open Space Specification to the reasonable written satisfaction of the Council for that Phase; and thereafter
 - 1.3 Not to Occupy more than ninety percent (90%) of the Dwellings on a Phase until:

the On Site Public Open Space for that Phase has been transferred to a Management Company for the on-going maintenance of the On Site Public Open Space and the Council has been notified of any such transfer in writing for that Phase PROVIDED ALWAYS THAT the Owner shall remain liable for the maintenance of any On Site Public Open Space until such time as it is transferred
 - 1.4 Not to amend the approved On Site Public Open Space Specification without the Council's written consent.
 - 1.5 Not to use or permit the On Site Public Open Space to be used for any purpose other than public recreation and amenity subject to a right for the owners to construct any buildings or other structures ancillary to such use.
 - 1.6 Any transfer of any On Site Public Open Space pursuant to paragraph 1.3 above shall be in accordance with the following terms (unless otherwise agreed in writing between the parties):
 - 1.6.1 in consideration of the sum of one pound (£1.00) to be paid to the Owner and shall contain a covenant by the transferee not to use or suffer or permit to be used the land transferred otherwise than for the purpose of providing public recreation and amenity facilities or for the maintenance of the On Site Public Open Space;
 - 1.6.2 a covenant from the transferee to maintain the On Site Public Open Space in accordance with the On Site Public Open Space Specification in perpetuity;
 - 1.6.3 free of all financial charges and other encumbrances that may materially affect use of the On Site Public Open Space for such purposes; and

1.6.4 with vacant possession.

and the Owner shall furnish a copy of the transfer referred to in paragraph 1.6 above to the Council

1.7 Prior to any transfer of the On Site Public Open Space to a Management Company the Owner shall:

1.7.1 Create or engage a Management Company; and

1.7.2 Submit the proposed memorandum, articles of association and the form of transfer of the On Site Public Open Space to the Management Company in relation to the future maintenance of the same in perpetuity (including any contributions or other payments to be made by occupants of the Development from time to time or any other party) to the Council for its approval in writing (such approval not to be unnecessarily delayed or withheld).

1.8 Where a Management Company is to be constituted (as opposed to appointed) solely for the purpose of maintaining the On Site Public Open Space it shall be constituted to ensure that an appropriate mechanism is in place for securing that future owners of the Dwellings enter into direct covenants with the Management Company in respect of the maintenance costs for the On Site Public Open Space for all Dwellings.

1.9 Not to wind up the Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council has otherwise first agreed in writing.

Part 3: RAMS Contribution

1. The Owner hereby covenants with the Council (unless otherwise agreed in writing):
 - 1.1. to notify the Council before the Commencement of the Development on any given Phase to allow the calculation of the RAMS Contribution on that given Phase;
 - 1.2. not to Commence Development on any given Phase until or cause or permit the Commencement of the Development on that given Phase until the RAMS Contribution for that Phase has been paid to the Council.
2. The Council hereby covenants with the Owner to provide a written form of receipt for payment of each of the RAMS Contributions in respect of the relevant Phases on receipt of the said contributions.

Part 4: Multi-Use Community Hall

1. The Owner hereby covenants with the Council unless otherwise agreed in writing:
 - 1.1. not later than the submission of the first application for Reserved Matters approval it shall prepare both the Community Hall Plan and the Community Hall Specification and submit both documents to the Council for approval; and
 - 1.2. include in both the Community Hall Plan and Community Hall Specification such reasonable amendments as the Council shall reasonably require.
2. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Community Hall Specification within six (6) months of receipt in full by the Council or prior to the determination of the first application for Reserved Matters approval (whichever is the sooner)
3. The Owner covenants with the Council unless otherwise agreed in writing:
 - 3.1. Not to Commence Development unless and until the Community Hall Specification has been approved by the Council;
 - 3.2. Prior to the Commencement of Development and following the Council's approval of the Community Hall Specification to serve the Community Hall Offer Notice on the Council or at the Councils direction on the Nominated Body
 - 3.3. In the event that prior to the expiration of six (6) months from the date of service of the Community Hall Offer Notice the Council serves the Community Hall Acceptance Notice the Owner shall
 - 3.3.1. after receipt of the Community Hall Acceptance Notice submit to the Council a Reserved Matters application for the Community Hall in accordance with the approved Community Hall Specification and use reasonable endeavours to obtain a suitable consent for construction of a Community Hall;
 - 3.3.2. not Occupy more than 50% of the Dwellings in the Community Hall Phase until the Community Hall has been Completed in accordance with the approved Community Hall Specification; and
 - 3.3.3. immediately following and within 60 Working days of the Completion of the Community Hall to transfer the freehold estate free from encumbrances of and in

the Community Hall with full title guarantee at a nominal consideration of One Pound (£1.00) to the Council or at the Councils direction with the Owner paying the reasonable legal costs of the said body

3.4. The transfer of the Community Hall shall contain the following provisions unless otherwise agreed in writing:

3.4.1. the grant by the transferor to the transferee for the benefit of the Community Hall of the full right of passage and running water soil gas electricity and other services from and to the Community Hall in and through all drains channels sewers pipes watercourse gutters electric wires cables and other service conduits which may within the period of 80 years from the date of such transfer be constructed or laid in on over or under the Site with the right to enter upon the Site to make connection with inspect repair renew cleanse and maintain the aforesaid;

3.4.2. reservations of all rights of way access and passage of services and rights of entry reasonably necessary for the purpose of the Development;

3.4.3. a covenant not to use the Community Hall other than for the provision of facilities for the benefit of the local community; and

3.4.4. a right to use estate roads within the Development until access from the public highway is by way of full adopted public highway

4. It is hereby agreed and declared that in the event that the Council fails to serve the Community Hall Acceptance Notice within the timescale indicated in Paragraph 3.3 the Owner shall not be under any further obligation to provide the Community Hall and in which event the provisions of paragraph 5 of this Schedule shall apply

5. In the event the provisions of Paragraph 4 above apply the Owner hereby covenants with the Council not to Occupy more than seventy five percent (75%) of the Dwellings in a Phase on the Development until the Pitches Contribution and the Sports Hall Contribution has been paid to the Council for that Phase

6. In the event that paragraph 5 above applies the Council hereby covenants with the Owner to (unless otherwise agreed in writing):

6.1. provide a written form of receipt for payment by the Owner of the Pitches Contribution on receipt of the same;

- 6.2. place the Pitches Contribution when received from the Owner into an interest bearing account with a clearing bank and to utilise the said Contribution only for the Pitches Contribution Purposes;
- 6.3. upon receipt of a request in writing to do so to be received by the Council no sooner than the 10th anniversary of the date the Council received the Pitches Contribution but no later than 10 years thereafter to return to the Owner any part of the Pitches Contribution which has not been spent on or committed to the Pitches Contribution Purposes together with interest accrued on the unexpended part; and
- 6.4. where at the 10th anniversary of the receipt of the Pitches Contribution a legally binding contract has been entered into by the Council in respect of the Pitches Contribution the Council shall be entitled to utilise the Pitches Contribution to make payment under such a contract.
- 6.5. that upon receipt of a written request(s) from the Owner 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.
- 6.6. provide a written form of receipt for payment by the Owner of the Sports Hall Contribution on receipt of the same;
- 6.7. place the Sports Hall Contribution when received from the Owner into an interest bearing account with a clearing bank and to utilise the said Contribution only for the Sports Hall Contribution Purposes;
- 6.8. upon receipt of a request in writing to do so to be received by the Council no sooner than the 10th anniversary of the date the Council received the Sports Hall Contribution but no later than 10 years thereafter to return to the Owner any part of the Sports Hall Contribution which has not been spent on or committed to the Sports Hall Contribution Purposes together with interest accrued on the unexpended part; and
- 6.9. where at the 10th anniversary of the receipt of the Sports Hall Contribution a legally binding contract has been entered into by the Council in respect of the Sports Hall Contribution the Council shall be entitled to utilise the Sports Hall Contribution to make payment under such a contract.
- 6.10. that upon receipt of a written request(s) from the Owner 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.

Part 5: Healthcare

a. Healthcare Land

1. The Owner covenants with the Council unless otherwise agreed in writing with the Council:
 - 1.1. to reserve the Healthcare Land for the Healthcare Land Option Period and ensure that nothing is done to the Healthcare Land that could prejudice its use for healthcare purposes;
 - 1.2. not to Commence the Development or allow the Commencement of Development unless or until it has been agreed in writing with the Council as to which Phase the Healthcare Land shall be reserved within;
 - 1.3. not to Commence the Development or allow the Commencement of Development for the Phase which the Healthcare Land shall be delivered in unless or until the precise location of the Healthcare Land within that Phase and the Healthcare Land Scheme has been submitted to and approved in writing by the Council;
 - 1.4. in the event that the NHS England serve notice the Healthcare Land Acceptance Notice on the NHS England, the Owner shall use reasonable endeavours to carry out the works required by the Health Land Scheme and transfer the Healthcare Land to NHS England within 12 months from the date that the notice is received and such transfer shall be on the following terms:
 - 1.4.1. in consideration of the sum of one pound (£1.00) to be paid to the Owner and shall contain a covenant by the transferee not to use or suffer or permit to be used the land transferred otherwise than for the purpose of healthcare provision and within use class E(e) of the Use Classes Order;
 - 1.4.2. free of all financial charges and other encumbrances that may materially affect use of the Healthcare Land for such purposes;
 - 1.4.3. covenants that the Healthcare Land shall be remain securely fenced before and during the construction period of any healthcare facility or any works on the Healthcare Land; and
 - 1.4.4. with vacant possession.

If the Healthcare Body fails to serve notice during the Healthcare Land Option Period requesting the transfer of the Healthcare Land or have not completed the transfer of the Healthcare Land within six (6) months of receipt of transfer documentation released for completion then the obligations in this Part 5 (a) concerning the Healthcare Land will no longer apply and the Healthcare Land will be free from restriction pursuant to this Part 5 (a) concerning the Healthcare Land of Schedule 2.

b. Healthcare Contribution

1. The Owner hereby covenants with the Council unless otherwise agreed in writing
not to Commence the Development in a Phase prior to depositing the Healthcare Contribution for that Phase with the Council;
2. The Council hereby covenants with the Owner that it shall:
 - 2.1 Provide a written form of receipt for payment of the Healthcare Contribution on receipt of the Healthcare Contribution;
 - 2.2 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
 - 2.3 Keep and maintain an up to date record of all payments from the Healthcare Contribution transferred by the Council to NHS England;
 - 2.4 Following receipt of a written request not to be made prior to the expiry of ten (10) 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
3. The Owner acknowledges that the Council shall not be responsible for how the Healthcare Contribution is utilised or for its return under paragraph 2.4 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

Part 6 – Biodiversity Net Gain

1. The Owner hereby covenants with the Council (unless otherwise agreed in writing) to submit the Biodiversity Mitigation and Enhancement Scheme to the Council for its written approval prior to the Commencement of the Development 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 13 of this Agreement.
2. The Owner covenants with the Council to thereafter (unless otherwise agreed in writing):
 - 2.1. 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;
 - 2.2. to maintain the Biodiversity Land in accordance with the Biodiversity Mitigation and Enhancement Scheme until such time as the transfer described in paragraph 2.3 has been completed;
 - 2.3. to transfer the Biodiversity 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 Biodiversity Land in perpetuity (unless the Biodiversity Land already forms part of the On Site Public Open Space in which case no further transfer shall be necessary)
3. The Owner shall include in any transfer pursuant to this part of this Schedule or Part 2 of this Schedule in the event that the Biodiversity Land is also On Site Public Open Space
 - 3.1. a covenant only to permit the Biodiversity Land to be utilised in accordance with the Biodiversity Mitigation and Enhancement Scheme; and
 - 3.2. a covenant to maintain the Biodiversity Land in perpetuity in accordance with the Biodiversity Mitigation and Enhancement Scheme.
4. The Owner shall furnish a copy of the transfer referred to in paragraph 2.3 above to the Council.

Part 7 – First Homes

For the purposes of this Part 7 of Schedule 2, the following expressions shall have the following meanings (save where expressly permitted elsewhere in this Agreement):

“100% Staircaser”

means a lessee of a Shared Ownership Dwelling under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling.

“Additional First Homes Contribution”

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 1.6; 2.1; and 5 of this Part 7 of Schedule 2 the lower of the following two amounts:

- 30% of the proceeds of sale; and
- the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner

as a result of the disposal of the First Home other than as a First Home.

“Armed Services Member”

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

“Compliance Certificate”

means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National)

“Discount Market Price”

means a sum which is the Market Value discounted by at least 30%.

“Disposal”

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest other than:

(a) a letting or sub-letting of a First Home in accordance with this Part 7 of Schedule 2

(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner

(c) an Exempt Disposal

and “Disposed”, “Dispose” and “Disposing” shall be construed accordingly

“Eligibility Criteria (Local)”

means local criteria met in respect of a purchase of a First Home if:

- (a) the purchaser meets the criteria in the Local Connections Cascade (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connections Cascade); and
- (b) the purchaser meets any further local criteria in effect at the date of the relevant disposal of a First Home

it being acknowledged that at the date of this Deed the Council has not prescribed Eligibility Criteria (Local)

“Eligibility Criteria (National)”

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed £80,000 or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

“Eligible Person”

means a First Time Buyer who meets the Eligibility Criteria (Local) or the Eligibility Criteria (National) who is funding at least 50% of the purchase price by a first mortgage or other home purchase plan with a Mortgagee

“Exempt Disposal”

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order
- (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 5 of Part 7 of Schedule 2 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 1.9 of this Part 7 of Schedule 2

“First Homes”

has the meaning ascribed to it at paragraph (c) of the definition of affordable housing at Annexe 2 of the NPPF to be purchased by an Eligible Person and for the avoidance of doubt the internal specification of the First Homes shall not by reason of being First Homes be inferior to the internal specification of Market Dwellings

“First Homes Owner”

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

(a) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or

(b) the freeholder a tenant or sub-tenant of a permitted letting under paragraph 1.9, 1.10, 1.11 and 2.3 of this Part 7 of Schedule 2

“Market Value”

means the best price at which the sale of an interest in a Dwelling would have been completed unconditionally for cash consideration on the date of valuation assuming (i) a willing seller and a willing buyer in an arm's-length transaction (ii) any restrictions imposed on a Dwelling by this Agreement (iii) there has been a reasonable period to completion within which to negotiate the sale iv) the Dwelling has been freely exposed to the market (v) both the buyer and seller acted knowledgeably prudently and without compulsion

1. The Owner hereby covenants with the Council as follows (unless otherwise agreed in writing):

1.1. The First Homes (if provided) shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Home to a person or person(s) meeting:

a) the Eligibility Criteria (National); and

b) the Eligibility Criteria (Local) (if any).

1.2. If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 1.1(b) shall cease to apply.

1.3. Subject to paragraphs 1.6 to 1.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

1.4. No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until the Council has been provided with evidence that:

1.4.1. the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 1.2 applies meets the Eligibility Criteria (Local) (if any); and

1.4.2. the Dwelling is being Disposed as a First Home at the Discount Market Price; and

1.4.3. the transfer of the First Home includes:

a) a definition of the "Council" which shall be Castle Point Borough Council;

b) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs 1.1 to 1.9 of this Part 7, Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure."

c) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between and entered into between (1) Castle Point Borough Council; (2) Essex County Council; (3) Claydons Farm Limited, Janet Patricia Cowell and Shirley Ann Mee; and (4) Deborah Barbara Page, Nicholas Royston Cook, Vincent Peter Cook and Angela Alfreda Byott

d) a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions

e) a copy of the First Homes Provisions in an Annexure

1.4.4. the Owner has received the Compliance Certificate from the Council.

- 1.5. On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Castle Point Borough Council of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

- 1.6. The owner of a First Home may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

1.6.1. the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraphs 1.1 and 1.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 1.3 and 1.4.1; or

1.6.2. requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 1.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

- 1.7. Upon receipt of an application served in accordance with paragraph 1.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

- 1.8. Any person who purchases a First Home free of the restrictions in this Part 7 of Schedule 2 of this Deed pursuant to the provisions in paragraphs 2.1 and 2.2 shall not be liable to pay the Additional First Homes Contribution to the Council

- 1.9. Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 1.10 – 1.13 below.

- 1.10. A First Homes Owner may

1.10.1. let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant;

1.10.2. let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years;

1.10.3. let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting

1.11. A letting or sub-letting permitted pursuant to paragraph 1.10 or 2.3 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

1.12. Nothing in this Part 7, Schedule 2 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence

2. The Council hereby covenants with the Owner (unless otherwise agreed in writing):

2.1. If the Council is satisfied that either of the grounds in paragraph 1.6 above have been made out it shall confirm in writing that the relevant Dwelling may be Disposed of:

2.1.1. to the Council at the Discount Market Price; or

2.1.2. (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3 which shall cease to apply on receipt of payment of the Additional First Homes Contribution by the Council where the relevant Dwelling is disposed of other than as a First Home

2.2. If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 1.6 above have been made out then it shall serve notice on the Owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months)

provided always that if at the end of that period the Owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 1.6 following which the Council must issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

2.3. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

2.4. Upon receipt of the Additional First Homes Contribution the Council shall:

2.4.1. provide a completed application within 30 Working Days to enable the removal of the restriction on the title set out in paragraph 1.5 where such restriction has previously been registered against the relevant title

2.4.2. apply all monies received towards the provision of Affordable Housing

3. Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 2.1 or 2.2 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale of the First Home the Additional First Homes Contribution

4. Any person who purchases a First Home free of the restrictions in this Part 7 of Schedule 2 of this Deed pursuant to the provisions in paragraphs 2.1 and 2.2 shall not be liable to pay the Additional First Homes Contribution to the Council
5. The obligations contained in paragraphs 1.6, 1.7, 2.1 and 2.2 of this Part 7 of Schedule 2 shall not be binding upon a mortgagee in possession or chargee in possession or a mortgagee or chargee exercising a power of sale (including a receiver or administrative receiver appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed (each a Receiver)) or to a trustee in bankruptcy prior to sale of any First Home or any persons or bodies deriving title through such mortgagee, charge or Receiver PROVIDED THAT:
 - 5.1.1. such mortgagee, chargee or Receiver shall first give written notice to the Council of its intention to Dispose of a relevant First Home;
 - 5.1.2. once notice of intention to dispose of the relevant First Homes has been given by the mortgagee, chargee or Receiver to the Council, the mortgagee, charge, or Receiver shall be free to sell that First Home at its full Market Value subject to payment to the Council of the Additional First Home Contribution;
 - 5.1.3. following the Disposal of the relevant First Home, the mortgagee, chargee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.
- 5.2. Following receipt of notification of the Disposal of the relevant First Home the Council shall:
 - 5.2.1. forthwith issue a completed application to the purchaser of that Dwelling within 30 Working Days to enable the removal of the restriction on title set out in paragraph 1.5 of this Part 7 of Schedule 2; and
 - 5.2.2. apply all such monies received towards the provision of Affordable Housing

SCHEDULE 3

THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

Part 1

Highway Contributions

1. In this Part 1 of Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meaning:

Bus Service Contribution means the sum of £1,150,000 payable to the County Council to which sum the Relevant Highway Indexation shall be added;

Bus Service Contribution Purpose means the use of the Bus Service Contribution towards bus service enhancements along the Daws Heath Road Corridor to improve frequency/accessibility and routing to / from the site to services, facilities, and areas of employment;

Highway Contribution means the Bus Service Contribution

Highway Contribution Purposes means the Bus Service Contribution Purpose and including any design and feasibility work (even if abortive) in relation to such works and including the programming and managing the delivery of such works on the ground and shall include the reimbursement of capital funding for such provision made by the County Council in anticipation of the receipt of the Highway Contribution;

Highway Index means the Department for Business Innovation and Skills Price Adjustment Formulae Indices (Civil Engineering) Series 2 (BIS) or in the event that the BIS is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council;

Highway Index Point means a point on the most recently published edition of the Highway Index at the time of use;

Relevant Highway Indexation means the amount that the Owner shall pay with and in addition to the Highway Contribution paid that shall equal a sum calculated by taking the amount of the Highway Contribution being paid and multiplying this amount by the percentage change shown in the Highway

Index between the Highway Index Point pertaining to August 2023 and the Highway Index Point pertaining to the date the payment is made to the County Council.

2. The Owner hereby covenants with the County Council so as to bind their interest in the Site:

2.1 to pay the Highway Contribution to the County Council in the following instalments:

2.1.1 fifty percent (50%) of the Highway Contribution prior to first Occupation of any Dwellings on the Development and not to cause permit or allow any Occupation of any Dwellings on the Development unless and until fifty percent (50%) of the Highway Contribution has been paid to the County Council in full;

2.1.2 to pay a further twenty-five percent (25%) of the Highway Contribution prior to and no later than the date of the first anniversary of the date upon which the first instalment was due under paragraph 2.1.1 above and not to cause or permit further Occupation of any Dwellings following the first anniversary date until a further twenty-five percent (25%) of the Highway Contribution has been paid to the County Council in full and thus seventy-five percent (75%) has thereby been paid; and

2.1.3 to pay a further and final twenty-five percent (25%) of the Highway Contribution prior to and no later than the date of the second anniversary of the date upon which the first instalment was due under paragraph 2.1.1 above and not to cause or permit further Occupation of any Dwellings following the second anniversary date until a further twenty-five percent (25%) of the Highway Contribution has been paid to the County Council in full and thus one hundred percent (100%) has thereby been paid; and

2.2. In the event that the Highway Contribution is paid later than dates set out in paragraph 2.1 above of this Schedule 3 then the amount of the Highway 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 Highway Index between the Highway Index Point prevailing at the date the payment is due and the Highway Index Point prevailing at the date of actual payment to the County Council multiplied by the Highway Contribution due or if greater an amount pertaining to interest on the Highway 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 Highway Contribution is received by the County Council; and

2.3 In addition to the requirement of paragraph 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) for each and every letter sent to the Owner pursuant to the debt.

3. The County Council hereby covenants with the Owner to:
 - 3.1 place the Highway Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Highway Contribution Purposes;
 - 3.2 upon receipt of a request in writing to do so to be received by the County Council from the Owner no sooner than the tenth (10th) anniversary of receipt of the Highway Contribution in full and no later than the eleventh (11th) anniversary of the same to return to the party who deposited the Highway Contribution or any part of the Highway Contribution that remains unexpended when such request in writing is received (together with interest accrued on the unexpended part) Provided Always that where a legally binding contract or obligation has been entered into by the County Council prior to the tenth (10th) anniversary of receipt of the Highway Contribution in full to make a payment in respect of the Highway Contribution Purposes the unexpended part of the Highway Contribution shall not be repaid until such payment is made and the unexpended part of the Highway Contribution to be repaid (if any) shall not include such payment; and
 - 3.3 That upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of receipt of the Highway Contribution in full the County Council shall provide the Owner with a statement confirming whether the Highway Contribution has been spent and if the Highway Contribution has been spent in whole or in part outlining how the Highway Contribution has in whole or in part been spent.
4. It is hereby agreed that:
 - 4.1. Any dispute in relation to how the Highway 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 above and shall clearly state the grounds on which it is disputed;
 - 4.2 In the event that no written request is received by the County Council from the Owner pursuant to paragraph 3.2 above or no valid dispute is raised by the Owner pursuant to paragraph 4.1 the Owner shall accept the Highway Contribution has been spent in full on the Highway Contribution Purposes as appropriate;
 - 4.3 In the event that the Highway 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 Highway Contribution or have entered into a legally binding contract or obligation to spend the Highway 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; and

- 4.4 The County Council may utilise up to two percent (2%) of the total amount of the Highway Contribution due under this Agreement to a maximum of Two Thousand Six Hundred and Forty-Five Pounds (£2,645) plus the Relevant Highway Indexation for the purposes of scheme validation, programming, commissioning of works, scheme monitoring including site visits and meetings, budget control, governance and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Highway Contribution Purposes.

Part 2

Residential Travel Plan and Monitoring Fee

1. In this Part 2 of Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meaning unless otherwise agreed in writing by the County Council:

Annual Traffic Counts means the collection of travel data from all entry and exit points to the Development including pedestrian and cycle routes leading to a service or amenity where a lower traffic generation rate has been agreed based on the fact that there will be travel planning measures in place to reduce the modal share travelling by car;

Relevant Sustainable Travel Indexation means the amount that the Owner shall pay with and in addition to each part of the Residential Travel Plan Monitoring Fee paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Plan Monitoring Fee being paid and multiplying this amount by the percentage change shown in the Sustainable Travel Index between the Sustainable Travel Index Point pertaining to April 2023 and the date payment is made to the County Council;

Residential Travel Information Pack means a specific borough tailor-made booklet aimed at promoting the benefits of sustainable transport in support of the objective to secure a modal shift from the private car and increase the use of sustainable modes of travel and shall contain the following:

- (a) guidance and promotional material on the use of sustainable modes of travel;
- (b) details on walking, cycling, trains, buses, park & ride, taxis, car sharing, car clubs, electric vehicles, school transport and personalised journey planning services;
- (c) reference to travel websites, resources and support services for each mode of travel, information provided by the County Council and the Council;
- (d) details of local travel campaigns and networking/support groups; and
- (e) to include six one day travel vouchers for use with the relevant local public transport operator;

Residential Travel Plan means a working plan to include all measures to ensure sustainable means of travel are available to residents of the Development in accordance with the requirements of the National Planning Policy Framework and shall include but not be limited to such Residential Travel Plan Measures as stated in the 'Travel Plan Template' and amended and supplemented from time to time under the provisions of this Deed and the Annual Traffic Counts reviews;

Residential Travel Plan Co-Ordinator means a member of staff appointed by the Owner with appropriate skills and budgetary provision and resources to fulfil the role of the Residential Travel Plan

Co-ordinator as described in the job description(s) stated in the Residential 'Travel Plan Template at ¹Appendix A;

Residential Travel Plan Monitoring Fee means a non-refundable annual payment of £2817 (two thousand eight hundred and seventeen pounds sterling) plus Relevant Sustainable Travel Indexation payable towards the monitoring by the County of the implementation of the Residential Travel Plan to ensure that (a) monitoring is conducted in line with Residential Travel Plan monitoring protocols and (b) the Residential Travel Plan remains an "active" document with the overarching aim to secure a modal shift from the private car and increase the number of people using sustainable modes of travel;

Residential Travel Plan Template means the template appended to this Deed at Appendix A;

Sustainable Travel 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;

Sustainable Travel Index Point means a point shown on the Sustainable Travel Index indicating a relative cost at a point of time;

Travel Plan Targets means those objectives or aims set within the Residential Travel Plan to reduce single occupancy car journeys to and from the Site and at the same time increasing other sustainable modes of transport;

Travel Vouchers means tickets/passes/ vouchers or other means of accessing transport or journey planning information as agreed with the County including the following as a minimum (six scratchcard bus tickets per household OR season ticket voucher) and/or (incentives for rail travel with the local rail operator) for each eligible member of the household AND access to an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information).

2. The Owner hereby covenants with the County Council so as to bind their interest in the Site:

2.1 to pay the first annual Residential Travel Plan Monitoring Fee to the County Council prior to first Occupation of any Dwellings on the Development and not to allow cause or permit first Occupation of any Dwellings on the Development unless and until the Residential Travel Plan Monitoring Fee has been paid to the County Council in full and in the case of late payments interest will be payable by the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the SONIA Rate;

¹ Guidance and Travel plan are published on Essex County Council's website and updated from time to time

- 2.2 to pay the annual Residential Travel Plan Monitoring Fee to the County on each subsequent anniversary following the first annual payment until one year after the Final Occupation of the Dwellings on the Development and in the case of late payments interest will be payable by the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the SONIA Rate;
- 2.3 prior to the Occupation of any Dwellings on the Development to formulate and submit to the County Council for approval by the County Council a Residential Travel Plan and not to cause or allow or permit first Occupation of any Dwellings on the Development unless and until the Residential Travel Plan has been submitted to and approved in writing by the County Council;
- 2.4 to appoint a Residential Travel Plan Co-ordinator prior to first Occupation of any Dwellings on the Development and not to cause or allow first Occupation of any Dwellings on the Development unless and until the Owner has appointed a Residential Travel Plan Co-ordinator;
- 2.5 to notify the County Council of the identity and the contact details of Residential Travel Plan Co-ordinator as soon as an appointment is confirmed and no later than one month of the appointment having been made;
- 2.6 to continue to employ a Residential Travel Plan Co-ordinator for the period until a minimum of one year after the Final Occupation of the Dwellings on the Development and in the event of a vacancy occurring in the post during that period to re-appoint within a maximum period of two months of the vacancy occurring and to notify the County Council as soon as the appointment is confirmed;
- 2.7 to use all reasonable endeavours to ensure that the Residential Travel Plan Co-ordinator fulfils their duties in accordance with the duties specified in the job description of the Residential Travel Plan Co-ordinator stated in the approved Residential Travel Plan;
- 2.8 not to change the responsibilities or role of the Residential Travel Plan Co-ordinator without prior written approval of the County Council;
- 2.9 to implement the Residential Travel Plan in a timely manner and at its own expense and to comply in all respects with the requirements of the Residential Travel Plan for a period of one year after the Final Occupation of Dwellings on the Development;
- 2.10 to submit to the County Council raw data collected as part of the Annual Traffic Count no later than two months from completion of the Annual Traffic Count to which the data relates; and
- 2.11 in the event that any of the Annual Traffic Counts and the Travel Plan Targets are not carried out by the Owner pursuant to the Residential Travel Plan the County Council shall on written notice to the Owner be entitled to conduct such Annual Traffic Counts as are necessary to discharge the requirements of the Residential Travel Plan and furthermore on receipt of an

appropriate invoice or request for payment from the County Council acting reasonably the Owner hereby agrees to pay the costs arising from such surveys immediately.

3. The County Council hereby covenants with the Owner unless otherwise agreed in writing:
 - 3.1 to agree the terms of the Residential Travel Plan (acting reasonably) and to provide recommendations on the said plan following submission by the Owner in a timely manner;
 - 3.2 to provide support and advice to the Residential Travel Plan Co-ordinator in implementing the ongoing monitoring and review of the Residential Travel Plan (in accordance with the terms under which the Residential Travel Plan Monitoring Fee was paid); and
 - 3.3 to respond in writing to the Residential Travel Plan Co-ordinator within two months of receipt of any correspondence relating to the Residential Travel Plan.

Residential Travel Information Packs

4. The Owner further hereby covenants with the County Council:
 - 4.1 to submit a draft Residential Travel Information Pack (including Travel Vouchers) to the County for written approval prior to first Occupation of a Dwelling and not to cause or allow first Occupation of a Dwelling prior to the Residential Travel Information Pack (including Travel Vouchers) being submitted to and approved in writing by the County Council;
 - 4.2 to provide the first occupier of each Dwelling with an approved Residential Travel Information Pack and Travel Vouchers prior to Occupation of any Dwelling and not to cause or permit Occupation of any Dwellings on the Development unless and until the Owner has provided the first occupiers with an approved Residential Travel Information Pack and Travel Voucher at the expense of the Owner.

Part 3

HIGHWAY WORKS

1. In this Part 3 of Schedule 3 the following expressions shall have the following meaning unless otherwise agreed in writing:

Highway Works shall mean the provision of the bus infrastructure enhancements that shall be provided to upgrade existing facilities on Daws Heath Road to include raised kerbs and shelters with Real Time Information, where necessary, to the east of the access and including any necessary alterations to and reinstatements of existing highways and statutory undertakers equipment to the provision of or alteration to street lighting road signs drainage structures traffic signals related accommodation including as appropriate provision of dropped kerb set(s) to facilitate crossing the road near the bus stops by less mobile persons and any other works normally associated with the construction of a highway or required as a result of the County Council's inspections;

Highway Works Agreement means an agreement entered into pursuant to all powers enabling the parties to regulate the carrying out of the Highway Works (in particular Sections 38 and 72 and 278 of the 1980 Act and Section 33 of the 1982 Act) and shall include but not be limited to the following matters:

- (a) securing of a bond to ensure that third party funds are available to complete the Highway Works to the satisfaction of the County Council;
- (b) payment of the County Council's works inspection fees maintenance fees special orders fees supervision fees and any other such fees as the County Council shall require;
- (c) payment of the County Council's legal administrative and other fees and disbursements associated with the drafting negotiating and completion of the Highway Works Agreement;
- (d) preparation and advance approval of works drawings and traffic management measures;
- (e) certification and maintenance of the Highway Works;
- (f) regulating of the issue of the Works Licence to enable the Highway Works to be carried out;
- (g) the securing of an indemnity relating to both Land Compensation Act 1973 matters and Noise Insulation Regulations 1975 as amended and any other indemnity and bonds for liability issues as the County Council shall require;
- (h) the dedication of land as public highway;
- (i) the standards and procedures for carrying out the Highway Works; and
- (j) traffic regulation orders and statutory processes.

2. The Owner hereby covenants with the County Council unless otherwise agreed in writing so as to bind their interest in the Site:

2.1 to enter into a Highway Works Agreement for the Highway Works prior to commencement of such works or such other timescale as shall be agreed in writing with the County Council PROVIDED always THAT the Owner shall enter into the Highway Works Agreement for the Highway Works prior to first Occupation of any Dwellings on the Development; and

- 2.2 to undertake and complete the Highway Works prior to first Occupation of any Dwellings on the Development and in accordance with the Highway Works Agreement; and
- 2.3 and not to Occupy allow cause or permit to be Occupied any Dwellings unless and until the Highway Works have been properly completed in accordance with the Highway Works Agreement and the relevant certificate confirming such completion has been issued under the provisions of the Highway Works Agreement.

Part 4

Library Contribution

1. In this Part 4 of Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meaning unless otherwise agreed in writing:

| | |
|--|---|
| "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 Hadleigh library, to include, but not be limited to, additional furniture, technology and stock |
| "Library 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; |
| "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 Library Index Point pertaining to April 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 County Council unless otherwise agreed in writing:
 - 2.1 to pay the Library Contribution to the County Council prior to first Occupation of any Dwellings on the Development and not to cause allow or permit first Occupation of any of the Dwellings on the Development 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 payment is due 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 paragraph 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 (10) 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) for each and every letter sent to the Owner pursuant to the debt.
3. The County Council hereby covenants with the Owner as follows unless otherwise agreed in writing:
 - 3.1. to use the Library Contribution towards the Library Contribution Purposes;
 - 3.2. if requested in writing by the Owner no sooner than the tenth (10th) anniversary of the date that the Library 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 Library Contribution any part of the Library Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpected part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of the Library Contribution Purpose 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 Contribution 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; and

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 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 Deed) 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.

Part 5

Education Contribution

1. In this Part 5 of Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meaning unless otherwise agreed in writing by the County Council:

Completion Notice means the notice served by the Owner on the County Council pursuant to paragraph 2.5.3;

Early Years and Childcare Contribution means the Early Years and Childcare Pupil Product multiplied by the cost generator of £20,508 (twenty thousand five hundred and eight pounds sterling) to which the Relevant Education Indexation shall be added;

Early Years and Childcare Product means the sum of Qualifying Flats multiplied by 0.045 plus the Qualifying Houses multiplied by 0.09;

Early Years and Childcare Purposes means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or childcare of children between the ages of 0 to 5 (both inclusive) including those with special educational needs within a 3 mile radius of the Development and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution;

Education Contribution means the sum of the Early Years and Childcare Contribution and the Primary Education Contribution;

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 relevant index at the time of use;

Education Purposes means the Early Years and Childcare Purposes and the Primary Education Purposes;

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

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

Notice of Commencement means the written notice served pursuant to paragraph 2.5.1;

Payment Notice means a written notice advising of a proposed payment served pursuant to paragraph 2.5.2;

Primary Education Contribution means the Primary Pupil Product multiplied by the cost generator of £17,268 (seventeen thousand two hundred and sixty-eight pounds sterling) to which the Relevant Education Indexation shall be added;

Primary Education Purposes means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or childcare of children between the ages of 4 to 11 (both inclusive) and including those with special educational needs within a 3 mile radius of the Development and or at a facility that in the opinion of the County Council serves the Development and including the reimbursement of capital funding for such provision made by the County Council and or the County Council's nominee in anticipation of the Primary Education Contribution;

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 may by design be used as bedrooms;

Qualifying Houses means the number of Houses that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms;

Qualifying Housing Units means the Qualifying Houses and Qualifying Flats;

Relevant Education Indexation means the amounts that the Owner shall pay with and/or agree 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 in the Education Index between the Education Index Point pertaining to January 2020 and Education Index Point pertaining to the date payment is made to the County Council;

Sterling Overnight Index Average (SONIA) Rate means an assessment of the rate of interest the County Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and other institutional investors and SONIA Rate shall be construed accordingly;

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 covenant with the County Council so as to bind their interest in the Site as follows:

2.1 to pay fifty percent (50%) of the Education Contribution for a Phase to the County Council prior to Commencement of Development of that Phase and not to cause allow or permit Commencement of Development of a Phase unless and until fifty percent (50%) the Education Contribution for that Phase has been paid to the County Council in full;

2.2 to pay a further final fifty percent (50%) of the Education Contribution for a Phase to the County Council prior to first Occupation of any Dwellings on that Phase and not to cause allow or permit prior to first Occupation of any Dwellings on a Phase unless and until a further final fifty percent (50%) the Education Contribution for that Phase has been paid to the County Council and thus one hundred percent has thereby been paid in full;

2.3 In the event that the Education Contribution is paid later than dates set out in paragraph 2.1 and 2.2 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 payment is due 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 part thereof due calculated at the SONIA Rate from the date of payment is due until the date payment of the Education Contribution is received by the County Council; and

2.4 In addition to the requirement of paragraph 2.3 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 covenant 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) for each and every letter sent to the Owner pursuant to the debt.

2.5 The Owner shall serve on the County Council unless otherwise agreed in writing:

2.5.1 the Notice of Commencement not less than three (3) months prior to Commencement of each Phase of the Development stating the expected Commencement Date of each Phase

of the Development an estimate of the Triggers and any further information stipulated in the Schedules to this Agreement

2.5.2 the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County Council on each Phase of the Development under this Agreement stating the date that such payment becomes due and any further information stipulated in the Schedules to this Agreement

2.5.3 the Completion Notice within 30 Working Days of all Dwellings of each Phase of the Development being Occupied for the first time stating the date that the last Dwelling of each Phase of the Development was Occupied for the first time and any further information stipulated in the Schedules to this Agreement and for the avoidance of doubt any dispute regarding any notice to be served under this Agreement may be resolved through the 2 mechanisms set out in Clause 13 of this Agreement.

2.5.4 to serve on the County Council notice of Occupation of the first Dwelling of each Phase of the Development within 1 (one) month thereof and on a 6 (six) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings of each Phase of the Development the Unit Mix of Dwellings of each Phase of the Development that are completed but not Occupied the Unit Mix of Dwellings of each Phase of the Development that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served

3. The Notice of Commencement shall in addition to that information stipulated in paragraph 2.5.1 to this Part 5 of Schedule 3 state the Unit Mix and in the event that the Unit Mix constructed or to be constructed 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 further event that the Owner fails to serve any notice set out in this Paragraph 3 of this Schedule 3 the County Council may estimate and determine the Unit Mix as it sees fit acting reasonably.
- 4 The Payment Notice stipulated in paragraph 2.5.2 to this Part 5 of Schedule 3 shall state the Unit Mix on which the payment is to be based.
- 5 The Completion Notice stipulated in paragraph 2.5.3 to this Part 5 of Schedule 3 shall state the final Unit Mix.

6. The County Council hereby covenants with the Owner as follows:
- 6.1 To place the Education Contribution when received into an interest-bearing account and to utilise the same solely for the Education Purposes;
- 6.2 If requested in writing by the Owner no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the Education Contribution is paid to the County Council in full (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;
- 6.3 Upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of the date of receipt of the Education Contribution in full the County Council shall provide the Owner with a statement confirming whether the Education Contribution have been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution have in whole or in part been spent.
7. It is hereby agreed and declared unless otherwise agreed in writing:
- 7.1 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 covenant 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;
- 7.2 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 6.3 and shall clearly state the grounds on which the expenditure is disputed;

- 7.3 In the event that no written request is received by the County Council from the Owner pursuant to paragraph 6.2 above or no valid dispute is raised by the Owner pursuant to paragraph 7.2 the Owner shall accept the Education Contribution has been spent in full; and
- 7.4 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.

Part 6

Education Site Transfer

1. In this Part 6 of Schedule 3 the following expressions shall have the following meanings:

Collateral Warranties means deeds of collateral warranties in a form reasonably required and provided by the County Council and or the County Council's Nominee in relation to the Education Site Works from (where applicable):

- a) the appointed design and build contractor and or the Professional Team and all sub-contractors; or
- b) where the Owner undertakes the Education Site Works, the Owner, Professional Team and all sub-contractors;

Competent Authority means any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers;

County Council's Nominee means any person(s) company(ies) body(ies) or organisation(s) that the County Council shall employ fund or work in partnership with and or in connection with the design construction commissioning running or maintenance of the Education Facility and for the avoidance of doubt the County Council's Nominee may include any providers of free state education or childcare of any type;

Contracts means the contracts entered into by the Owner in relation to the Education Site Works including (but not limited to) sub-contracts and any appointments with the Professional Team and Collateral Warranties;

County Council's Surveyor means such surveyor or other consultant appointed by the County Council from time to time to monitor the Education Site Works;

Education Facility means indoor and outdoor facilities for education childcare sports and ancillary uses (paid or otherwise) commensurate to the capacity of the Education Site;

Education Site means the 0.13 hectare (ha) as a minimum of usable land which shall comply with the Education Site Specification the Education Site Boundary Plan to be agreed with the County Council in writing prior to the submission of any Reserved Matters application (or such other timescale as may be agreed with the County Council);

Education Site Access Plan means a plan setting out the location design and specification of routes on the Site that are or shall prior to the opening of the Education Facility be adopted as public highways and which shall provide to the boundary of and at level with the Education Site without ransom-strip unrestricted separate:

- (a) pedestrian access via a paved pedestrianised public area of at least two hundred (200) metres square abutting the boundary of the Education Site and not contiguous with any road highway car-park or area where vehicles except for emergency vehicles may enter and
- (b) a separate vehicular access to the boundary of the Education Site for construction grounds maintenance and emergency vehicles and
- (c) a separate vehicular access to the boundary of the Education Site for parking delivery and emergency access and
- (d) any additional such access infrastructure that the County Council may reasonably require to adequately and properly serve and service the Education Site;

Education Site Boundary Plan means a plan setting out the location and extent and boundary of the Education Site that shall meet the County Council's requirements as outlined in the Education Site Specification;

Education Site Notice means the notice that the County Council may serve on the Owner pursuant to Paragraph 5 of Part 6 of this Schedule 3;

Education Site Option Period means a period of time starting with the date that twenty (20) Dwellings are Occupied for the first time and ending ten (10) years after the date the Completion Notice is validly served;

Education Site Specification means the criteria set out in the 'Education Site Specification' appended to this Part 6 of Schedule 3 at Appendix 2 with which the Education Site must comply unless otherwise agreed in writing by the County Council;

Education Site Transfer Terms means all terms and conditions in this Agreement to be met by the Owner to facilitate the transfer of the Education Site to the County Council or to the County Council's Nominee unless otherwise agreed in writing by the County Council;

Education Site Utility Plan means a plan setting out the design specification and layout of Utilities infrastructure that shall meet the County Council's requirements to properly and sufficiently serve the Education Facility and shall be provided by the Owner to the boundary of the Education Facility at points specified by the County Council and that shall where specified provide the capacities set out in the 'Minimum Education Site Utility Capacities' appended to this Schedule as a minimum;

Education Site Works means all reasonable works required to render the Education Site congruent to the Education Site Specification and fit for an Education Facility in all respects to the satisfaction of the County Council;

Law means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 (as amended), exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a relevant Court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply and any reference to **Laws** shall be construed accordingly;

Minimum Insurance Requirements means the minimum insurance requirements set out at Appendix 1 of this Part 6 of Schedule 3;

Notice of Completion of Making Good means the certificate or written statement issued by the Owner or in accordance with the Building Contract certifying that any defects, shrinkages or faults appearing in the Works during the Rectification Period have been made good;

Professional Team means the architects, structural engineers, mechanical and electrical engineers and any other consultant or subcontractor with design responsibility from time to time employed by the Building Contractor or the Owner as applicable, in connection with the carrying out and completion of the Works;

Practical Completion in this Part 6 of Schedule 3 means the issue of a Practical Completion Statement issued by the relevant architect, builder or contractor confirming the point at which the Education Site Works have been completed, inspected and agreed by the County Council and available to be occupied for use as an Education Facility with all services connected and access to and from any common areas of the Development required to access the Education Site except for minor defects that can be put right without undue interference or disturbance to the occupiers of the Education Site;

Practical Completion Statement means the written statement issued in accordance with the Contracts stating that Practical Completion has occurred according to the terms of the Contracts and setting out the date on which Practical Completion occurred where the Owner has appointed a contractor to carry out the Education Site Works; or the Owner stating that Practical Completion has occurred where the Owner has carried out the Education Site Works;

Rectification Period means a period of 2 years following Practical Completion of Education Site Works;

Requisite Consents means planning permission (any conditions attached to planning permission), Reserved Matters approval; building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any Competent Authority for the carrying out of the Education Site Works;

Remedial Works means works required to render the Education Site congruent to the Education Site Specification and as an Education Facility; and

Utilities means gas water electricity telephone broadband foul drainage and surface water drainage (including such legal rights as the County Council considers necessary for the discharge of surface water over adjoining land) and any and all other media services and or utilities as may in the County Council's reasonable view be appropriate with appropriate rights to use all relevant delivery infrastructure

2. From the date of this Agreement the Owner hereby covenants with the County Council (unless otherwise agreed in writing with the County Council) so as to bind their interest in the Site as follows:
- 2.1 not to use or allow or permit any works or activities to be carried out on the Education Site that may render the Education Site unsuitable for use as an Education Facility in any way or add to the cost or time taken to construct an Education Facility including for the avoidance of doubt storage and or car parking;
- 2.2 to share with and provide at no cost to the County Council and or the County Council's Nominee as appropriate any relevant data studies surveys drawings reports mapping and or other evidence held that may be of assistance in the design and or construction and or commissioning of an Education Facility on the Education Site that shall for the avoidance of doubt include such information pertaining to topography ecology archaeology contamination arboriculture noise and Utilities including depths invert levels and manhole locations;
- 2.3 to agree the form of the Collateral Warranties with the County Council prior to entering into those Contracts and provide Collateral Warranties backed by appropriate insurance in a form as agreed by the County Council for the benefit of the County Council and or the County Council's Nominee and to meet the minimum specification outlined in paragraph 5.6 below;
- 2.4 not to create or grant any encumbrances on or over the Education Site without the written consent of the County Council;
- 2.5 if in the reasonable opinion of the County Council there are any other encumbrances that would detriment and or severely delay the transfer of the Education Site to the County Council pursuant to this Part 6 of Schedule 3 then the Owner shall be required to use their best endeavours (at their own cost) to release remove and or vary such encumbrances prior to the service of the Education Site Notice and or as directed by the County Council acting reasonably;
- 2.6 to consent to and to promptly register the following restriction against the Education Site at the Land Registry:
- "[No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a certificate signed by Essex County Council of County Hall, Market Road, Chelmsford, Essex CM1 1QH or their conveyancer that

the provisions of paragraphs 2.4, 2.5, 2.7 and 3 (if it is amended to include an obligation on the part of the Owner to offer the land prior to completion of a specific milestone) of Schedule [] to an Agreement dated [] and made between [] have been complied with or that they do not apply to the disposition.”

- 2.7 not to obtain any Reserved Matters approval that relates to land congruent with the Education Site or in relation to any services required for the Education Site without the prior written approval from the County Council; and
- 2.8 prior to the submission of any Reserved Matters Application pursuant to the Planning Permission and at any rate within 6 months of the date of service of the Education Site Notice whichever is sooner and relating to any land contiguous with the Education Site boundary and /or which may materially impact agreement of the Education Site Boundary Plan and the Education Site Utility Plan and/or the Education Site Access Plan to agree in writing with the County Council the Education Site Boundary Plan and the Education Site Utility Plan and the Education Site Access Plan ensuring always that there are no ransom strips that prevent full access to the Education Site or use of Utilities;
- 3. At any time during the Education Site Option Period the County Council may at the County Council's total discretion serve the Education Site Notice on the Owner.
- 4. On service of the Education Site Notice the Owner further covenants with immediate effect:
 - 4.1 to grant to the County Council and the County Council's nominee of the right to the free and uninterrupted use passage and running of all Utilities and the like over through and along all Utilities infrastructure (permanent and or temporary) and the like which shall at the time exist or which shall within eighty (80) years of the Commencement Date exist on the Site and if required by the County Council (acting reasonably) grant such legal rights as the County Council considers necessary for the discharge of surface water through land adjacent to and in the vicinity of the Education Site and to ensure the form of transfer of the Education Site includes all of the above rights;
 - 4.2 to grant to the County Council and the County Council's Nominee of the free and uninterrupted rights of way with or without vehicles and for all purposes over any roads or routes (temporary or permanent) on the Site constructed or to be constructed within a period of eighty (80) years from the Commencement Date which are intended for public or construction use and to ensure the form of transfer of the Education Site includes all of the above rights; and

- 4.3 to obtain the written approval of the County Council in relation to the Education Site Specification and prior to the commencement of the Education Site Works, the Owner shall provide the County Council with a build programme for the Education Site Works within 30 working days of receipt of the Education Site Notice;
5. The Owner further covenants to within six (6) months of the date on which the Education Site Notice is served:
- 5.1 with all due diligence to undertake and complete in full the Education Site Works to the County Council's satisfaction;
- 5.2 to keep the County Council informed of progress of the Education Site Works and provide the County Council with access to Education Site in order to monitor construction and compliance with the Education Site Specification and this Agreement;
- 5.3 to allow and grant the County Council and or the County Council's Nominees free uninterrupted access to the Education Site with or without vehicles plant and machinery for the purposes of investigation or verification that the Education Site Works have been satisfactorily completed and or for the purposes of carrying out works for the laying out of playing fields or any other works which the County Council may reasonably require in pursuit of the establishment of an Education Facility;
- 5.4 to provide to the boundary of the Education Site at points agreed by the County with rights to use adequate infrastructure sufficient to bring suitable and adequate electricity and water and drainage (foul and surface water) to the Education Site for uninterrupted construction and commissioning of the Education Facility until such time as connection to all permanent Utilities is provided pursuant of Paragraph 6.1 of Part 6 of this Schedule 3 and until such permanent Utilities have been commissioned rendering the temporary supplies unnecessary ensuring always that there is no break in supply from such Utilities to the Education Site during any required changeover;
- 5.5 to provide and grant to the County Council and the County Council's Nominee access over a temporary route and surface suitable for the free and uninterrupted passage ingress and egress of plant machinery vehicles and pedestrians over the Site from the existing maintainable highway to the boundary of Education Site such route being agreed between the Owner and the County Council which shall remain in existence and be maintained at the

Owner's expense until such time as a permanent maintainable highway has been provided over such route and which is open to the public to the boundary of the Education Site pursuant to Paragraph 6.2 of Part 6 this Schedule 3;

5.6 to provide Collateral Warranties for the benefit of the County Council and or the County's Nominee and for a period of 12 years from Practical Completion of the Education Site Works each of which:

- a) shall be in a form to be agreed with the County Council prior to entering into the Contracts;
- b) are entered into as a deed;
- c) warrants that:
 - i) the Building Contractor, Professional Team and any Sub Contractors have complied and will continue to comply with the Contracts; or
 - ii) the Owner has complied and will continue to comply with its obligations set out in this Part 6 of Schedule 3
- d) includes obligations to exercise reasonable skill and care in carrying out any design;
- e) includes obligations to exercise reasonable skill and care not to use or specify for use any deleterious materials;
- f) meets the Minimum Insurance Requirements;
- g) grants to the beneficiary an irrevocable and royalty-free licence to use any intellectual property rights in relation to the Works vested in the Owner, Building Contractor, any Sub-contractor and the Professional Team;
- h) contains no exclusions that affect the liability of the Owner, Building Contractor, Sub-Contractor or Professional Team to the beneficiary;
- i) provides to the beneficiary the right to assign the Collateral Warranties; and
- j) includes step-in rights.

5.7 The Owner shall take any action reasonable required by the County Council within 30 working days of written request from the County Council acting reasonably] to enforce the Contracts and shall be responsible for all associated costs where:

- a) it is not legally possible for Collateral Warranties to be obtained; and
- b) there is a genuine default or defect with the Education Site Works.

5.8 The Owner shall procure that:

- 5.8.1 the County Council is given at least 20 days' prior written notice to inspect the Education Site Works and shall allow the County Council and the County Council's Surveyor to attend the inspection prior to the issuing of the Practical Completion Statement;
- 5.8.2 a copy of the Practical Completion Statement is given to the County Council as soon as practicable after its issue together with a copy of any accompanying snagging list; and
- 5.8.3 The issue of the Practical Completion Statement shall be conclusive evidence binding on the parties that the Education Site Works have been completed, subject to the Owner's obligations during the Rectification Period and without prejudice to any outstanding breach by the Owner of the terms of this Agreement.

5.9 During the Rectification Period:

- 5.9.1 The Owner shall remedy or procure the remedy of any defects, shrinkages or faults appearing in the construction of the Education Site Works during the Rectification Period including those notified by the County Council's Nominee; and
- 5.9.2 The Owner shall, in a timely manner, make good any snagging issues. Snagging to be limited to standard or defective workmanship, product failure or latent defects as agreed between the Owner and the County Council's approved inspector before snagging work is carried out
- 5.9.3 the County Council or the County Council's Surveyor may make written representations to the Owner identifying defects, shrinkages or faults in the Education Site Works, and the Owner shall remedy or shall enforce the contractor's obligations under the Contracts to remedy any defects, shrinkages or faults appearing in the Education Site Works during the Rectification Period including those notified by the County Council; and
- 5.9.4 In the event of dispute regarding defective works, the parties agree to follow the provisions of Clause 13 (Disputes Provisions).

5.10 The Owner shall procure that:

- 5.10.1 the County Council is given at least 20 Working Days' notice to inspect the Education Site Works and shall procure that the County Council and the County Council's Surveyor are permitted to attend the inspection prior to the issuing of the Notice of Completion of Making Good; and
- 5.10.2 the County Council is given a copy of the Notice of Completion of Making Good as soon as practicable after its issue.
- 5.11 In the event that the Education Site is found by the County Council not to meet the Education Site Specification in full the County Council or the County's Nominee shall be entitled to:
 - 5.11.1 access the Education Site and carry out Remedial Works; and
 - 5.11.2 recover all costs reasonably incurred by the County Council or the County's Nominee and any incidental expenses in connection with the Remedial Works from the Owner and or the Owner's Guarantor within twenty eight (28) days of completion of the Remedial Works
- 5.12 The Owner hereby covenants with the County Council:
 - 5.12.1 to complete the transfer of the Education Site to the County Council or if so directed by the County Council to the County Council's Nominee free from all encumbrances and restrictions and overages and on the Education Site Transfer Terms in exchange for consideration not exceeding in total the sum of one pound sterling (£1) the form of transfer which shall be provided by the County Council and agreed by the parties acting reasonably;
 - 5.12.2 to pay the legal costs and disbursements incurred by the County Council for all aspects of the legal process to include but not limited to legal costs in connection with the preparation, negotiation and completion of the Collateral Warranties; and
 - 5.12.3 to pay the costs of the County Council's Surveyor including but not limited to all inspection fees.
- 6. The Owner hereby covenant to within eighteen (18) months of the date on which the Education Site Notice is served and prior to and or on the date of the Transfer of the Education Site to the County Council whichever is sooner

- 6.1 provide the Utilities as set out and agreed by the County Council in the Education Site Utility Plan;
- 6.2 provide the access as set out and agreed by the County Council in the Education Site Access Plan;
- 6.3 agree with the County Council and then provide and install including any necessary traffic regulation orders appropriate road signage pertaining to the Education Facility all at the Owner's expense; and
- 6.4 provide footways three (3) metres in width to all highways (excluding non-through-routes) within one hundred (100) metres of the Education Site.
7. The County Council hereby covenants with the Owner:
 - 7.1 to use the Education Site for the sole purpose of an Education Facility including any ancillary uses paid or otherwise that shall not detract from the primary function of the Education Facility; and
 - 7.2 that in the event that the whole or a substantial part of the Education Site is not being used as an Education Facility on the tenth (10th) anniversary of the Education Site being transferred to the County Council or the County Council's Nominee and it is not demonstrated that such lack of use is a temporary situation and/or there will be a need for such future use then in the absence of a legally binding contract or obligation requiring the construction or provision of facilities pertaining to an Education Facility the Owner may serve on the County Council or the County Council's Nominee as appropriate a notice requiring that the part or the parts of the Education Site that are not being used as an Education Facility shall be transferred to the Owner with vacant possession in consideration of the sum of one pound sterling (£1).
8. The Standard Commercial Property Conditions (Third Edition) ("the Standard Conditions") shall apply in so far as they are not inconsistent with the terms of this Agreement and for the avoidance of doubt in the event that there is an inconsistency with the Standard Conditions any term or terms of this Agreement or the County Council's requirements as set out in this Agreement then the terms of this Agreement shall prevail.

Appendix 1: Minimum Insurance Requirements

The Collateral Warranties shall meet the following minimum insurance requirements:

- a) Collateral Warranties from the Owner or Building Contractor - professional indemnity insurance of £10,000,000 (ten million pounds) on an each and every claim basis for a period of not less than twelve (12) years from the date of Practical Completion.
- b) Collateral Warranties from Sub Contractors - professional indemnity insurance of £10,000,000 (ten million pounds) on an each and every claim basis for a period of not less than twelve (12) years from the date of Practical Completion; and
- c) Collateral Warranties from the Professional Team - professional indemnity insurance of £1,000,000 (one million pounds) on an each and every claim basis for a period of not less than twelve (12) years from the date of Practical Completion.

Appendix 2: Education Site Specification

Subject to the express written agreement of the County Council (and unless otherwise agreed in writing with the County Council):

The Education Site shall be or have:-

Land suitable in size for the construction of high quality education buildings and outside spaces

Flat ground

Broadly level (a gradient of 1 in 70, across the width, is ideal to assist water run-off from most pitches)

Level with surrounding areas and in particular with suitable points of access (vehicular and pedestrian)

Suitable points of vehicular access for construction purposes

Suitable points of vehicular access to the playing fields

Suitable points of vehicular access for emergency purposes

Adjacent to suitable areas of public realm for congregation at ingress and egress

Roughly rectangular in shape

Sufficient width and length for size of an education facility

At least 30cm of clean free draining stone free topsoil (see note 1 below)

Free draining

Capable of accommodating standard trench fill / strip foundations

Suitably fenced including gates at all proposed access points (see note 2 below)

Compliant with the Site Utility Capacities set out at note 3 below

Accessible from suitable public highways (not a cul de sac) and safe direct walking & cycling routes

Centrally located to the overall development or area the school will serve

Well located in relation to other neighbourhood facilities and public realm

Well located in relation to the public transport network

Not crossed by any public rights of way or access wayleaves

Not liable to flooding

Not crossed by or bounded by any power-lines including underground power lines (other than those serving the Education Site)

Not crossed by and sufficiently distant from any gas mains (other than those serving the Education Site)

Outside the cordon sanitaire of any sewage plant

Free of items or structures of archaeological interest

Free from protected species or habitats of special interest

Not part of a conservation area or subject to any special planning authority restrictions

Free of pollution, contamination and other risk factors

Free of soil and water table contamination

Outside any current or proposed 55db LAeq (30min) noise source or contour

Free from radiation or potential sources thereof

Compliant with air quality standards

Free from invasive plants such as Japanese Knotweed

Not affected by ground gasses and vapours

Not affected by potential sources of light pollution e.g. major roads, car parks or industry

Sufficiently distant from any land use that could cause public anxiety such as:-

Chemical or petro-chemical production or storage

Establishments storing or handling live viruses

Facilities housing or treating people with a history of violence or a threat to children

Incinerators

Sites currently or previously used for land fill or rubbish disposal

Aviation or high speed transportation e.g. train lines or helipads

Major roads or traffic honeypots e.g. large retail outlets

Prisons or facilities for persons with a history of offending

Phone or radio masts and transmitters

High voltage power lines

Firing ranges, premises storing live ordnance / ammunition or UXB sites

Land or buildings with a use emitting a strong odour

Quarries or other major sources of dust

Premises housing dangerous animals, birds, reptiles or insects

Free from encumbrances that may need to be removed

Free of buildings and other surface structures

Free from trees on or abutting the site

Free of pipes, conduit chambers, cables and the like and within 10 metres of the site (other than those serving the Education Site)

Free of ponds, ditches or water courses

Free from foundations, fuel tanks and other buried structures

Free from spoil and fly tipping

Free from filled spaces including mineral workings and land fill

Free of void spaces including wells, sumps and pits

Compliant with the HSE PADHI assessment

Note 1 Soil Quality Requirement

The levels of any compound in the soil, to a depth of at least three metres below the final soil level, shall not exceed figures set for residential end use as defined by the Soil Guideline Values (SGV) derived using the Contaminated Land Exposure Assessment (CLEA) model and published by the Environment Agency and also the Generic Assessment Criteria values published by Land Quality Management and the Chartered Institute of Environmental Health at the time of the assessment. Any contaminants leaching from the site must not exceed the levels published in the United Kingdom Environmental Quality Standards (statutory and proposed).

Note 2 Fence Requirements

Prior to transfer to the County Council the Education Site must be fenced by a 2.4 metre high welded mesh polyester powder coated (conforming to BS1722-16:1992) fence with vertical wire diameter of at least 5mm and horizontal wire diameter of at least 7mm conforming to BS 1722 Part 14:2001 'specification for open mesh steel panel fences Category 1 (general purpose fences up to 2.4m high)' and gated at both highway access points.

Where congruent to vegetation or soft landscaping the fence must be supplemented by rabbit-proof fencing that shall be a minimum of 0.9m in height. The rabbit-proof fencing must be constructed with wire netting, to be 18-gauge (1.2mm diameter) with 31mm hexagonal mesh conforming to the appropriate British Standard and European DIN Standard. The base of the fence must be turned outwards from the school site by a minimum of 150mm and buried with clean topsoil. The specification for the rabbit fencing, including all posts, struts and stakes must also be in accordance with CIRIA report C645 'A Guide to Rabbit Management'.

Where appropriate, fencing should be supplemented by landscaping. New tree and shrub planting should also be protected with individual rabbit guards. Species should be considered carefully to ensure that plants will not prove a burden to the school either in terms of maintenance, safety and or security.

Note 3-- Minimum Education Site Utility Capacities

Essex County Council Developers' Guide to Infrastructure Contributions Revised Edition 2023 Utility Requirements/Capacities for Education Sites (unless otherwise agreed in writing with the County Council) –

| Pupil Places | 56 (Nursery) | 210 (1FE) | 315 (1.5FE) | 420 (2FE) | 630 (3FE) | 1260 (6FE) |
|----------------------------------|---|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---------------------------------------|
| Electrical (three phases) | 100Amp 72KV_a | 240Amps 173KV_a | 300Amps 215KV_a | 400Amps 290KV_a | 500Amps 360KV_a | 1100Amps 790KV_a |
| Gas (21mbar at meter) | N/A | N/A | N/A | N/A | N/A | 280KW/HR (Science areas only) |
| Water (domestic) | 50mm 1.5L/S | 50mm 1.5L/S | 65mm 2.0L/S | 65mm 3.0L/S | 65mm 4.2L/S | 65mm 6.5L/S |
| Water (sprinkler system) | A 100mm mains connection pressurised system is required, storage tank with pumps to fill the tank in 36 hours. | | | | | |
| Telecom ducts (90mm) | 2 | 2 | 2 | 2 | 3 | 4 |

SCHEDULE 4

THE COUNCIL'S COVENANTS WITH THE OWNER

The Council covenants with the Owner as follows unless otherwise agreed in writing:

1. At the written request of the Owner to provide written confirmation to the requesting party of the satisfaction of any obligations contained in this deed when satisfied that such obligations have been performed.
2. Following the performance and satisfaction of all the obligations contained in this deed over which the Council has direct control to forthwith on the written request of the Owner mark accordingly all entries made in the register of local land charges in respect of this deed.
3. Otherwise assist the Owner in the discharge of its obligations under this deed including dealing with any approvals or agreements sought in a timely and reasonable manner.
4. To use all sums received from the Owner under the terms of this deed for the purposes specified in this deed for which they are to be paid and for no other purpose.
5. Upon receipt of a request in writing to pay to the payer such amount of any payment made by it to the Council under this deed which has not been committed (by way of contract or expenditure of monies) within ten (10) years of the date of receipt by the Council of such payment together with Interest thereon from the date of payment to the date of refund.
6. If requested by the Owner/payer the Council shall use reasonable endeavours to provide to the requesting party as soon as practical such evidence as it shall reasonably require in order to confirm the expenditure of the sums paid or any part thereof applied under the terms of this deed.

The **COMMON SEAL** of **CASTLE POINT**)
BOROUGH COUNCIL was hereunto affixed)
in the presence of:-)

Director Legal / Chief Executive

The **COMMON SEAL** of **ESSEX**)
COUNTY COUNCIL was)
hereunto affixed in the presence of:-)

EXECUTED and **DELIVERED**)
as a Deed by **CLAYDONS FARM LIMITED**)
acting by a director in the presence of:)

.....

Director

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

SIGNED and DELIVERED)
as a Deed by **JANET PATRICIA COWELL**)
in the presence of:)

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

SIGNED and DELIVERED)
as a Deed by **SHIRLEY ANN MEE**)
in the presence of:)

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

SIGNED and DELIVERED)
as a Deed by **DEBORAH BARBARA PAGE**)
in the presence of:)

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

SIGNED and **DELIVERED**)
as a Deed by **NICHOLAS ROYSTON COOK**)
in the presence of:)

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

SIGNED and **DELIVERED**)
as a Deed by **VINCENT PETER COOK**)
in the presence of:)

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....

SIGNED and **DELIVERED**)
as a Deed by **ANGELA ALFREDA BYOTT**)
in the presence of:)

Signature of witness.....

Name of witness (block capitals).....

Witness address.....

.....

Witness occupation.....