

Dated

2023

CANELEIGH LIMITED

(1)

LEGAL AND GENERAL

AFFORDABLE HOMES (DEVELOPMENT) LIMITED

(2)

CASTLE POINT BOROUGH COUNCIL

(3)

ESSEX COUNTY COUNCIL

(4)

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

**relating to the development of land rear of
248 Hart Road, Thundersley, Benfleet,
Essex, SS7 3UQ**

Appeal reference: APP/M1520/W/22/3310483



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THIS DEED is made on

2023

BETWEEN

- (1) **CANELEIGH LIMITED** (company registration number 06838377) of 57a Broadway, Leigh-On-Sea, SS9 1PE (the "**Owner**");
- (2) **LEGAL AND GENERAL AFFORDABLE HOMES (DEVELOPMENT) LIMITED** (company registration number 11444313) of One Coleman Street, London, EC2R 5AA (the "**Developer**");
- (3) **CASTLE POINT BOROUGH COUNCIL** of Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF (the "**Council**"); and
- (4) **ESSEX COUNTY COUNCIL** of 19 Market Road, Chelmsford, CM1GG (the "**County Council**").

RECITALS

- (A) The Council and the County Council are the local planning authorities for the purposes of the Act for the area within which the Site is situated and accordingly is the person who is entitled to enforce the obligations of this Deed.
- (B) The County Council is also is also the local education authority for early years and childcare and statutory age education and the local highway authority for the area in which the Site is located.
- (C) The County Council is also the local library authority for the provision of library services under the 1964 Act and the County Council is required to provide a comprehensive and efficient service for all persons resident working or studying in in the area in which the Site is located.
- (D) The Owner is the freehold owner of that of the Site which is registered at HM Land Registry with other land under title numbers EX479147 and EX669660 free from encumbrances which would prevent the Owner from entering into this Deed.
- (E) On 19 April 2021, the Developer entered into a sale and purchase agreement with the Owner. The Developer has a legal interest in the Site by virtue of the sale and purchase agreement, which is registered at HM Land Registry with other land under title numbers EX479147 and EX669660.

- (F) The purpose of the planning obligations in this Deed is to avoid and mitigate any adverse impacts and to satisfy a specified planning need as a result of the Development.
- (G) On 13 December 2021, the Developer submitted the Application to the Council.
- (H) On 21 June 2022, the Council refused to grant the Planning Permission.
- (I) The Developer has since submitted the Appeal for determination by the Secretary of State.
- (J) This Deed is entered into by the Owner and the Developer in support of the Appeal per Recital (I);
- (K) On the 21 February 2023 the Council received a report on the examination of the Castle Point Council Community Infrastructure Levy Draft Charging Schedule (the "Draft Charging Schedule") which concluded that subject to specified modifications set out in Appendix A the Draft Charging Schedule satisfies the requirements of section 212 of the Planning Act 2008 and meets the criteria for viability. On this basis the examiner recommended the Draft Charging Schedule be approved with the specified modifications. Full Council will consider this at their next meeting on 22 March 2023.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 INTERPRETATION

In this Deed unless the context otherwise requires:

Act the Town and Country Planning Act 1990;

1964 Act the Public Libraries & Museums Act 1964;

Access Notice (East) the written notice served by the Council pursuant to paragraph 2.1 of Schedule 4 confirming that the Adjoining Development (East) has been or is nearing completion and requires the Pedestrian/Cyclist Access (East) in accordance with paragraph 2 of Schedule 4;

Access Works	such works as are necessary to construct the Pedestrian/Cyclist Access (East);
Adjoining Development (South)	any development of the land immediately to the south of the Site for residential purposes;
Adjoining Development (East)	any development of the land immediately to the east of the Site for residential purposes;
Affordable Housing Dwellings	the forty four (44) Dwellings (comprising the Shared Ownership Units and Affordable Rented Units) to be provided as Affordable Housing and references to " Affordable Housing Dwelling " shall be constructed accordingly;
Affordable Housing	the meaning ascribed to such term in annex 2 (<i>Glossary</i>) to the NPPF;
Affordable Housing Chargee	a mortgagee or chargee or any receiver (including 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) including a housing administrator (each a " Receiver ") of the whole or part of the Affordable Housing Dwellings or any person or bodies deriving title through such a mortgagee, or chargee or Receiver;
Affordable Housing Scheme	a scheme for the provision of the Affordable Housing Dwellings specifying (unless otherwise agreed with the Council) the location of the Affordable Rented Units and the Shared Ownership Units (i.e. the tenure of the Affordable Housing Dwellings), such scheme to be submitted and approved by the Council;
Affordable Rented Housing	rented housing let by a Registered Provider at a rent of no more than 80% of local market rent and falling within the definition of that term as set out in annex 2 (<i>Glossary</i>) to the NPPF;

Affordable Rented Units	those nine (9) Affordable Housing Dwellings to be used for Affordable Rented Housing and (unless otherwise agreed with the Council) provided in accordance with the following mix: <ul style="list-style-type: none"> (a) seven (7) x two (2) bed house; and (b) two (2) x three (3) bed house;
Appeal	the appeal lodged with the Secretary of State by the Developer against the Council's decision to refuse to grant the Planning Permission and allocated reference number APP/M1520/W/22/3310483;
Application	the application for planning permission for the Development submitted to the Council and allocated reference number 21/1137/FUL;
Biodiversity Net Gain	the biodiversity mitigation and enhancements of the Development as set out in the Ecological Impact Assessment;
Capital Receipts	proceeds from Staircasing less the Registered Provider's cost of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees;
CIL	the Community Infrastructure Levy charged pursuant to the CIL Regulations;
CIL Regulations	the Community Infrastructure Levy Regulations 2010 (as amended);
Commencement of Development	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun to be carried out save that 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, temporary access construction works, erection of any temporary means of enclosure, the

temporary display of site notices or advertisements shall not be considered to be Commencement of Development and **"Commence the Development"** and **"Commence Development"** shall be construed accordingly;

Contributions

each of the Healthcare Contribution, Indoor Sports Facilities Contribution, MUGA Contribution, RAMS Contribution, Education Contribution and Library Contribution (for the purposes of clause 14, the Education Contribution and RAMS Contribution shall be excluded from this definition);

**County Council
Monitoring Fee**

shall mean a fee of £550 (five hundred and fifty pounds) per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £1650 (one thousand six hundred and fifty pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner and Developer are required to observe and perform pursuant to the terms of this Deed;

Development

the demolition of existing building and stables and construction of 44 affordable dwellings including open space, playspace, landscaping and associated access, infrastructure and parking arrangements to be carried out pursuant to the Planning Permission or any subsequent planning permission (including any Section 73 Permission for the Development);

Dwelling

a dwelling including a house flat or maisonette to be constructed or otherwise provided pursuant to the Planning Permission and the term **"Dwellings"** shall be construed accordingly;

**Ecological Impact
Assessment**

the Ecological Impact Assessment (Reference: OS 2244-21 Doc 6 December 2021) submitted with the Application;

Healthcare Contribution

the sum of seventeen thousand, three hundred pounds (£17,300) to be paid to the Council to be used towards the

provision of additional floorspace at the Hart Road and Hollies surgeries in order to meet the needs of the Development;

Homes England

Homes England or any successor in function to it;

Index Linked

the index-linking of the sums owed to the Council specified in this Deed to be increased where appropriate from the date of this Deed to the date of payment by reference to any increase in the RPI Index and sums as appropriate by applying the following formula:

$D = A \times B/C$ where:

A = the sum specified in this Deed in pounds sterling;

B = the RPI Index at the date on which the sum is due to be paid under this Deed;

C = the RPI Index at the date of this Deed; and

D = the sum in pounds sterling required to be paid

PROVIDED THAT if the RPI becomes no longer maintained by the Office for National Statistics the said formula shall be applied *mutatis mutandis* (so far as it concerns periods after it has ceased to be maintained) by reference to such other index or publication as may be agreed from time to time with the Council and references to "**Indexed**" shall be construed accordingly;

**Indoor Sports Facilities
Contribution**

the sum of forty three thousand, seven hundred and ninety two pounds (£43,792) to be paid to the Council towards indoor sports facilities, swimming pool provision, indoor bowls, sports/community hall provision to include improvements to public indoor sports provision at the Runnymede Sports Facility, Kiln Road in each case to mitigate the needs arising out of the Development;

Infrastructure	shall mean those classes of infrastructure set out in section 216(2) of the Planning Act 2008;
Management Company	a company or body (or more than one) established or engaged for the purposes of managing and maintaining the Open Space Land and Play Space Land;
Monitoring Fee	the sum of one thousand pounds (£1,000) for the Council's costs of checking compliance with the provisions of this Deed;
MUGA Contribution	the sum of twenty six thousand, eight hundred and thirty eight pounds (£26,838) to be paid to the Council for the purposes of delivering the Castle Point Football Facilities Plan 2018 proposal at the Deanes School (being the provision of football facilities (including changing facilities) in relation to playing pitches, in order to mitigate the needs arising out of the Development;
Nomination Agreement	an agreement setting out the arrangements for the selection and prioritisation of tenants/lessees of the Affordable Rented Units from the Council's housing register;
NPPF	the National Planning Policy Framework (July 2021) or any successor document thereto;
Occupy	occupation for any purpose other than occupation by personnel engaged in construction, fitting out or decoration in connection with the carrying out of the Development occupation for marketing or display of the Development or occupation in connection with security operations during the carrying out of the Development and the expressions " Occupation " " Occupiers " and " Occupied " shall be construed accordingly;
Open Space Land	the formal and informal open space (including the land on which it is provided) provided for ecological purposes and recreational activities for use by the public to be provided on the Site in accordance with the Planning Permission and as shown shade yellow on Plan 3;

Open Space Management Plan the management plan to be submitted to the Council for approval in accordance with paragraph 1 of Schedule 5 to be prepared in accordance with the provision of the Biodiversity Management Plan (Reference: OS 2244-21-Doc 3 December 2021) and the Ecological Impact Assessment to include details of how ongoing maintenance and management of the Open Space Land for recreational and, in the interests of securing the proposed Biodiversity Net Gain, ecological purposes will be undertaken and secured for the lifetime of the Development and to include:

- (a) a programme for the review of the Biodiversity Management Plan every ten (10) years and mechanism to agree with the Council any amendments to the same as part of the Open Space Management Plan;
- (b) details of, and funding for the Management Company; and
- (c) a programme for future disposal of the Open Space Land to the Management Company);

Parties the Owner, the Developer, the Council and the County Council and their respective successors and those deriving title under them and, in the case of the Council, any successor to its statutory functions and any body to which all or part of its functions may lawfully have been transferred;

Pedestrian/Cyclist Access (East) access suitable for pedestrians and cyclists from the Adjoining Development (East) to be constructed (subject to the provisions of this Deed) on those parts of the Site shaded blue on Plan 2 with drawing number 519/19/FUL/PL004 Rev B being an area from the edge of the proposed road network within the Site to abut the Site's eastern boundary;

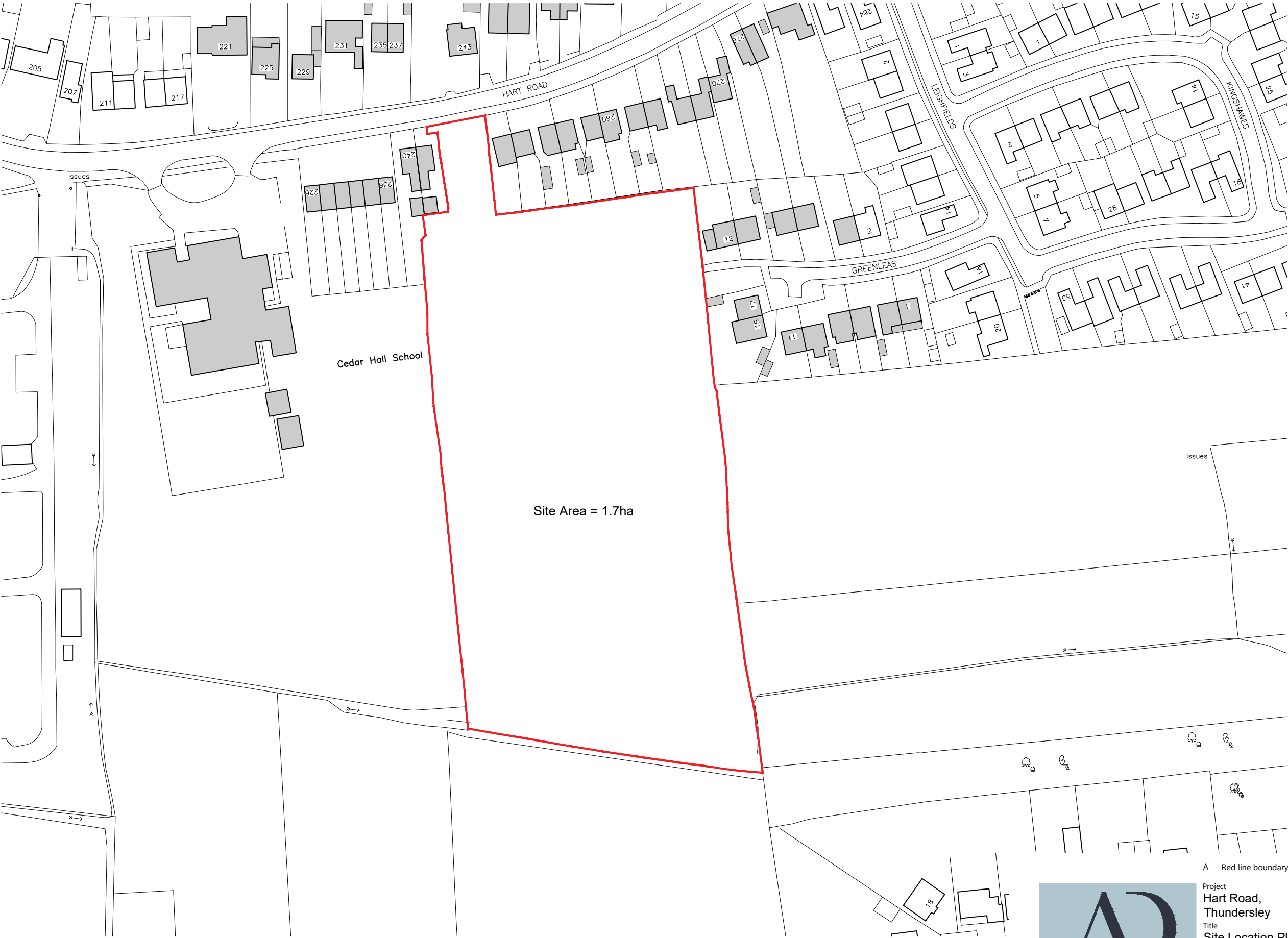
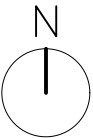
Plan 1 the plan annexed to this Deed labelled 'Plan 1' with drawing number 519/19/FUL/PL1010 Rev A showing the Site edged in red and that being the land against which this Deed is enforceable;

Hart Road, Thundersley

0m 20m 40m 60m
SCALE 1:1250

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PLANNING



Site Area = 1.7ha

A Red line boundary amended.

16/03/23 LS



Project
Hart Road,
Thundersley
Title
Site Location Plan
Scale
1:1250 @ A3

Date
February 2022

Drawn
LS
Checked
LS

Drawing No.
519/19/FUL/PL1010

Revision

A

Site Location Plan

PLAN 1

Plan 2	the plan annexed to this Deed and labelled 'Plan 2';
Plan 3	the plan annexed to this Deed and labelled 'Plan 3';
Planning Permission	the full planning permission for the Development;
Play Space Land	that part of the Site as shown shaded purple on Plan 3;
Play Space Management Plan	<p>the management plan to be submitted to the Council for approval in accordance with paragraph 2.1 of Schedule 5 setting how the long term management of the Play Space Land for recreational purposes will be undertaken and secured for the lifetime of the Development to include:</p> <p>(a) details of, and funding for the Management Company; and</p> <p>(b) a programme for future disposal of the Open Space Land to the Management Company);</p>
Practical Completion	in the case of the Open Space Land and Play Space Land, fit for its intended purpose and available for use;
Public Access Path	the path shown shaded yellow on Plan 2 with drawing number 519/19/FUL/PL004 Rev B that shall be laid out and constructed on the Site as part of the Development but which shall not be adopted as highway maintainable at the public expense;
Public Access Path Notice	the written notice served by the Council pursuant to paragraph 1.1 of Schedule 4 confirming that the Adjoining Development (South) has been or is nearing completion and requires access to be facilitated to the Public Access Path in accordance with paragraph 1 of Schedule 4;
RAMS Contribution	the sum of five thousand nine hundred and twenty one pounds and fifty three pence (£5,921.53) (or such other sum as may be calculated in accordance with any subsequent tariff that may be adopted by the Council prior to the date on which such sum falls due) to be paid to the Council to be used towards the mitigation



Cedar Hall School

Public Access Path

Play Area

Tiny Forest

Attenuation pond

B PV panels updated to suit latest SAPs calcs. 20/09/22 LS
A Amendments to suit Planning Officer comments and removal of 2no. dwellings. 07/02/22 LS



Project
Hart Road,
Thundersley
Title
Proposed Site Layout Plan
Scale 1:500 @ A2 Date December '21

Drawn LS/CP
Checked LS

Drawing No.
519/19/FUL/PL1004

PLAN 2

Revision
B



HART ROAD



0 5m 10m 15m 20m 25m 30m 35m 40m
SCALE 1:500

Cedar Hall School

Play Area

Tiny Forest

Attenuation pond

PLAN 3

of recreational disturbance on the European designated sites to mitigate any increased use as a result of the Development;

Registered Provider a provider of social housing (as defined in the Housing and Regeneration Act 2008) registered pursuant to Part 2 of the said Act (or any succeeding amending or replacement statutory provision) and which shall include the Developer;

Regulator of Social Housing the public body set up to fund and regulate the provision of Affordable Housing in England and any successor to its functions;

RPI the All Items Retail Prices Index published by the Office of National Statistics contained in the monthly digest of statistics (or any official publication in substitution thereof) or such other index as may be published from time to time in substitution thereof;

Section 73 Permission any permission granted pursuant to Section 73 of the Act for the removal or variation of any of the conditions imposed on the Planning Permission;

Secretary of State the Secretary of State for Levelling Up, Housing and Communities from time to time and which term shall include any inspector appointed on his or her behalf to determine the Appeal;

Shared Ownership Housing Affordable Housing let by a Registered Provider on a Shared Ownership Lease:

- (a) by which the lessee obtains a shared of the equity ranging between 10% and 75% from the Registered Provider who retains any remainder and in respect of which rent is payable on the remaining equity and which allows the lessee to purchase all of the remaining equity; and
- (b) to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in

accordance with terms in the Regulator of Social Housing capital funding guide;

Shared Ownership Lease a lease in the form or substantially in the form of the Homes England model from time to time or in such other form as shall be approved by the Council (such approval not to be unreasonably withheld or delayed) to dispose of the Shared Ownership Housing on "Shared Ownership Arrangements" within the meaning of section 70(4) of the Housing and Regeneration Act 2008;

Shared Ownership Units those thirty five (35) of the Affordable Housing Dwellings to be provided for Shared Ownership Housing and (unless otherwise agreed with the Council) provided in accordance with the following mix:

(a) twelve (12) x two (2) bed house; and

(b) twenty three (23) x three (3) bed house;

Site the land shown edged in red on Plan 1 against which the obligations in this Deed can be enforced;

Sterling Overnight Index Average (SONIA) Rate 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 or such other rate as the County Council considers appropriate and SONIA Rate shall be construed accordingly;

Working Day a day other than a Saturday or Sunday or public holiday in England.

2 CONSTRUCTION OF THIS DEED

2.1 Where the context so requires:

- (a) the singular includes the plural;
- (b) references to a recital, clause, sub-clause, paragraph number, schedule, appendix or plan is a reference to a recital, clause or sub-clause of, paragraph number of, schedule to, appendix to or plan annexed to this Deed;
- (c) any reference to an Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it;
- (d) words importing gender shall include the masculine, feminine and neuter genders;
- (e) words importing persons shall include firms, companies and corporations and vice versa;
- (f) "including" means "including, without limitation".

2.2 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Deed.

2.3 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.

2.4 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council successors to their respective statutory functions.

2.5 A reference to this Deed or to any other deed or document referred to in this Deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

2.6 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

2.7 Where in this Deed there is reference to an approval or consent or agreement being given by the Council, it shall not be unreasonably withheld or delay and such approval or consent or agreement shall be deemed to have been given if no response is received from the Council within 28 (twenty eight) days of notice being served or details being provided to the Council.

3 LEGAL BASIS

3.1 This Deed is made pursuant to:

- (a) Section 106 of the Act;
- (b) Section 111 Local Government Act 1972;
- (c) Section 1 of the Localism Act 2011 (only in respect of any provision of this Deed which does not constitute a planning obligation under Section 106 of the Act) and all other powers so enabling.

3.2 Clause 5 (*Owner's and Developer's Covenants*) and each and every covenant set out in Schedules 1 – 5 and 7 – 9 are planning obligations for the purpose of Section 106 of the Act and shall be enforceable by the Council and the County Council (as applicable).

4 CONDITIONALITY

With the exception of clauses 1 - 4 and 8 - 17, which shall come into effect immediately upon completion of this Deed and clauses 5 - 7 and paragraph 1.1 of Schedule 1, paragraphs 1 and 5 of Schedule 2, paragraphs 1.1 and 2.1 of Schedule 5, paragraphs 1 - 4 of Schedule 6 and paragraphs 2.1, 2.2, 2.4, 3.1, 4.1, 4.2 and 4.3 of Schedule 7, which shall come into effect upon the grant of Planning Permission. This Deed is conditional upon:

- (a) the grant of Planning Permission; and
- (b) the Commencement of the Development.

5 THE OWNER'S AND DEVELOPER'S COVENANTS

5.1 Subject to clause 8.3, the Owner and Developer covenant with the Council so as to bind their interest in the Site as set out in this Deed and in Schedules 1 – 5 to this Deed.

5.2 Subject to clause 8.3, the Owner and the Developer covenant with the County Council so as to bind their interest in the Site as set out in this Deed and in Schedules 7 – 9 to this Deed.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner and the Developer as set out in Schedule 6 to this Deed.

7 THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner and the Developer as set out in Schedules 7 -9 to this Deed.

8 AGREEMENTS AND DECLARATIONS

8.1 Local Land Charge

This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such by the Council.

8.2 Discharge by Performance

(a) Following the performance and satisfaction of the obligations contained in this Deed (or any of them) such obligation shall absolutely cease and determine save in respect of any antecedent breach.

(b) Following the performance and satisfaction of all of the obligations contained within this Deed the Council shall effect the cancellation of all entries made in its Register of Local Land Charges in respect of this Deed.

8.3 Release

No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it has parted with its entire interest in the Site (or part of the Site to which the

breach relates) but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED ALWAYS THAT it is acknowledged and agreed that any party whose interest in the Site is limited to an easement or reservation of rights shall not be liable for the performance of the obligations in this Deed.

8.4 Individual Owner-Occupiers

Subject always to clause 12, save for the provisions of paragraph 2.2 of Schedule 3 (which shall apply to individual owners, occupiers or tenants of the Affordable Housing Dwellings)), this Deed will not be binding upon or enforceable against any individual owner, tenant or occupier of any such individual Dwelling and their successors in title nor against their mortgagee (or any receiver appointed by such mortgagee) or any person deriving title from them nor will it be binding upon or enforceable against any person who has an interest in the Site only by way of an easement.

8.5 Statutory Undertakers

This Deed shall not be enforceable against any statutory undertaker or service provider who acquires any part of the Site or interest therein for the purposes of their undertaking.

8.6 Contracts (Rights of Third Parties) Act 1999

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

8.7 Lapse

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be finally quashed, finally revoked or otherwise withdrawn (without the consent of the Owner and the Developer) or it is modified by any statutory procedure or expires prior to the Commencement of Development PROVIDED THAT:

- (a) the Planning Permission shall not be deemed to be "finally quashed" unless the period for appealing against any judgment to quash the Planning Permission has expired without an appeal being made or an appeal has been made and the appeal has either been withdrawn or the appellate court has confirmed the quashing of the Planning Permission; and

- (b) the Planning Permission shall not be deemed to be "revoked" unless either the period for applying for judicial review of the decision to revoke has expired or any application for judicial review has been finally disposed of the outcome of which is that the decision to revoke has not been quashed.

8.8 Future Development

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 and any other planning permission authorising the carrying out of the Development) granted (whether or not on appeal) after the date of this Deed.

8.9 No Fetter on Discretion

Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes bylaws statutory instruments orders and regulations in the exercise of their functions as a local authority.

8.10 Waiver

No waiver (whether expressed or implied) by the Council or County Council of any breach or default in performing or observing any of the obligations covenants undertakings terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or County Council from enforcing any of the relevant obligations covenants undertakings terms or conditions or from acting upon any subsequent breach or default of the same.

8.11 Severance

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.

8.12 Section 73 Permissions

Unless otherwise agreed between the Parties, if a Section 73 Permission is granted by the Council in relation to the Development then with effect from the date that each such Section 73 Permission is granted:

- (a) the obligations in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind each such Section 73 Permission and the Site itself without any further act by the Parties;
- (b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include references to any applications under Section 73 of the Act, the Section 73 Permission granted pursuant to any such application and the development permitted by such Section 73 Permission.

PROVIDED THAT

- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act; and
- (ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 Permission is granted they shall remain discharged for the purposes of the Section 73 Permission.

8.13 Blue Pencil Test

- (a) In the event that a Court or the Secretary of State determines:
 - (i) that any of the planning obligations contained in this Deed (or any part of the said planning obligations) do not meet the statutory tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010; and/or
 - (ii) to impose a condition upon the Planning Permission instead of one or more of the planning obligations in this Deed,

then such planning obligation(s) or part of such planning obligation(s) shall cease to have effect within this Deed (without further act by the Parties).

- (b) The release set out at clause 8.13(a) shall not affect the remaining obligations within this Deed which shall continue in full force and effect.

8.14 Late Payment

Where any sum falls due to the Council hereunder interest shall be payable on the amount of such sums from the due date of payment of the sums until the date of actual payment of the sums at the rate of 2% per annum over the base lending rate of the Bank of England applying during such period.

8.15 Indexation

Any sum stated as being payable to the Council in this Deed will be Index Linked and shall be payable by the Owner or the Developer and any obligation in this Deed to pay a sum shall be construed as an obligation to pay the Index Linked sum.

8.16 Notices

Unless otherwise agreed in writing, any notice given to any Party pursuant to this Deed shall be deemed to be sufficiently served if delivered personally or sent by first class post to the Parties at the respective addresses specified above or as otherwise notified in writing by one Party to the other except for the County Council which shall be marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH AND sent to development.enquiry@essex.gov.uk.

8.17 VAT

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

9 MORTGAGEES

It is agreed that no mortgagee, chargee or receiver from time to time of all or any part of the Site shall have any liability under this Deed unless the mortgagee, chargee or receiver enters into possession of the Site or part of the Site to which the obligation relates in which case it too will (in respect of the Site or that part of the Site) be bound by the obligations as if it were a person deriving title from the Owner.

10 APPLICATION OF CONTRIBUTIONS

The Council may either spend a contribution or sum it has received under this Deed itself for the purpose for which it was paid or pass it to a third party to spend on its behalf PROVIDED THAT such contribution or sum may only be applied by the third party for the purpose for which it was paid to the Council and the Council shall procure that the third party complies with the relevant terms of this Deed in relation to such sum or contribution.

11 CHANGE IN OWNERSHIP

The Owner and the Developer undertake to give to the Council and the County Council as soon as practicably possible written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged (other than the sale of individual Dwellings to owner-occupiers) such notice 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 unit of occupation purchased by reference to a plan or plans.

12 ENFORCEABILITY

12.1 The planning obligations in this Deed shall not be binding on or enforceable against:

- (a) an Affordable Housing Chargee of land owned by a Registered Provider which exercises its power of sale or successors in title or persons deriving title under it PROVIDED THAT:
 - (i) the Affordable Housing Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling(s), and
 - (ii) the Affordable Housing Chargee shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwelling(s) 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
 - (iii) if such disposal has not completed within the three month period, the Affordable Housing Chargee shall be entitled to dispose of the Affordable Housing

Dwelling(s) free from the affordable housing provisions in Schedule 3 to this Deed which provisions shall determine absolutely;

- (b) a person who has exercised any form of statutory right to acquire or right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling or their mortgagee;
- (c) the owner, tenant or occupier of a Shared Ownership Unit, such that the tenant owns all of the equity in the Shared Ownership Unit ("**Staircasing**") or their mortgagee;
- (d) any successor in title or persons deriving title through or under persons specified within clauses 12.1(a) to 12.1(c) above (unless they have any further interest in the Site).

13 DISPUTES

13.1 In the event of any dispute or difference arising touching or concerning any matter arising out of this Deed (other than a dispute or difference touching or concerning the meaning or construction of this Deed) such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualification to be appointed (in the absence of an agreement by the parties to the dispute or difference) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute (and in the absence of agreement as to the appropriate body the President of the Law Society) and such person shall act as an expert (the "**Expert**") whose decision shall be final and binding on the parties to the dispute or difference in the absence of manifest error or fraud and any costs shall be payable by the parties to the dispute or difference in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal share.

13.2 The Expert is to act as an independent expert and:

- (a) Each party may make written representations within fifteen (15) Working Days of their appointment and will copy the written representations to the other party;
- (b) Each party is to have a further fifteen (15) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- (c) The Expert is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as they may reasonable require;

- (d) The Expert is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- (e) The Expert is to have regard to all representations and evidence before them when making their decision which is to be in writing, and is to give reasons for their decision;
- (f) The Expert shall seek to publish their decision within thirty (30) Working Days following the date of their appointment to act.

13.3 The provisions of this clause 13 shall not affect rights to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

14 CIL

In the event that the Secretary of State grants Planning Permission for the Development then if at the date of the Planning Permission the Council has adopted CIL any Contribution payable which is for Infrastructure which is within the same class as that identified to be funded wholly or partly by CIL shall cease to be payable.

15 COSTS OF THE AGREEMENT

- 15.1 The Developer covenants to pay prior to or upon completion of this Deed to the County Council and the Council their reasonable and proper costs in connection with the preparation, negotiation and completion of this Deed.
- 15.2 The Owner and/or Developer covenants to pay to the County Council, the County Council Monitoring Fee on or before Commencement of Development.

16 JURISDICTION

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

17 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.

SCHEDULE 1

General

1 NOTICE

To provide the Head of Place and Policy at the Council with no less than five (5) Working Days prior written notice of each of the following:

- 1.1 Commencement of the Development;
- 1.2 Occupation of the Development.

SCHEDULE 2

Council Contributions

1 MONITORING FEE

Not to Commence or permit the Commencement of the Development unless and until the Monitoring Fee has been paid to the Council.

2 INDOOR SPORTS FACILITIES CONTRIBUTION

Not to Occupy or permit the Occupation of any Dwelling unless and until the Indoor Sports Facilities Contribution has been paid to the Council.

3 MUGA CONTRIBUTION

Not to Occupy or permit the Occupation of any Dwelling unless and until the MUGA Contribution has been paid to the Council.

4 HEALTH CONTRIBUTION

Not to Occupy or permit the Occupation of any Dwellings unless and until the Health Contribution has been paid to the Council.

5 RAMS CONTRIBUTION

Not to Commence or permit the Commencement of the Development unless and until the RAMS Contribution has been paid to the Council.

SCHEDULE 3

Affordable Housing

1 AFFORDABLE HOUSING SCHEME

- 1.1 Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to, and approved by, the Council.
- 1.2 Not to amend the Affordable Housing Scheme without the further approval of the Council.
- 1.3 Unless otherwise agreed in writing with the Council, not to provide the Affordable Housing Dwellings otherwise than in accordance with the approved Affordable Housing Scheme (as may be amended in accordance with this Deed).

2 AFFORDABLE HOUSING

- 2.1 Not to use or Occupy or permit the use or Occupation of the Dwellings other than as Affordable Housing Dwellings (subject to the provisions of this Deed) in accordance with requirements set out in this Schedule 3.
- 2.2 Subject to the terms of the Nominations Agreement (if applicable) unless otherwise agreed with the Council:
 - (a) no Affordable Rented Dwelling shall be Occupied other than as Affordable Rented Housing; and
 - (b) no Shared Ownership Unit shall be Occupied other than as Shared Ownership Housing.

3 RESTRICTION ON USE

The Affordable Housing Dwellings shall (save in the case of any Affordable Housing Dwellings being disposed of direct) be owned and managed by a Registered Provider and, subject to clause 12 of this Deed, shall be retained for use as Affordable Housing in perpetuity.

4 OCCUPATION OF THE AFFORDABLE HOUSING

4.1 Not to Occupy or permit the Occupation of any Affordable Housing Dwelling until:

- (a) where the Owner is not a Registered Provider at the date of Occupation of an Affordable Housing Dwelling it has entered into an agreement with a Registered Provider for either the transfer of the freehold or the grant of a lease of (a minimum) 125 years of the Affordable Housing Dwelling; and
- (b) where the Owner is a Registered Provider at the date of Occupation of an Affordable Rented Unit (or is the Registered Provider referred to in paragraph 4.1(a) it has entered into a Nominations Agreement with the Council in respect of the Affordable Rented Unit.

4.2 The transfer or lease of the Affordable Housing Dwellings shall be:

- (a) with vacant possession and full title guarantee and shall include the grant of all rights of access and passage of services and other rights reasonably required for the beneficial enjoyment of the Affordable Housing Dwellings and shall be free of all charges leases and any other encumbrances which would materially impede the use of the land for residential purposes but subject to the provisions of this Deed insofar as they will continue to apply to the Affordable Housing Dwelling(s); and
- (b) subject to a provision whereby Capital Receipt received from Staircasing is to be retained by the Registered Provider and the Registered Provider shall use reasonable endeavours to re-invest such Capital Receipt in Affordable Housing (in order of priority):
 - (i) within the borough of Castle Point;
 - (ii) within the neighbouring councils' areas within the county of Essex; and
 - (iii) within the rest of England,

within the period of two (2) years from the point of the Capital Receipt being realised, after which this obligation shall be of no further legal effect and SUBJECT ALWAYS TO any contrary requirements within the Regulator of Social Housing capital funding guide.

4.3 It is acknowledged and agreed that, if the Owner of the Affordable Housing Dwellings is a Registered Provider at the date on which the Capital Receipt from Staircasing is received, it

shall be bound by the obligation at paragraph 4.2(b) (as limited) notwithstanding that the obligation is not contained within a transfer or lease of the Affordable Housing Dwellings.

5 AFFORDABLE RENTED HOUSING

The Affordable Rented Units shall be offered to potential occupiers in accordance with the Nominations Agreement on first and all subsequent disposals.

SCHEDULE 4

Access

1 PUBLIC ACCESS PATH

- 1.1 If, at any time following Commencement of Development, the Owner and/or the Developer is in receipt of the Public Access Path Notice, the Owner and Developer shall permit access from any residential uses adjacent to the southern boundary of the Site to the Public Access Path PROVIDED THAT such access is restricted to pedestrians, cyclists and wheelchair users.
- 1.2 The rights granted pursuant to paragraph 1.1 above do not communicate an intention on behalf of the Owner to create any formal public rights of way over the Public Access Path and nothing shall prevent temporary closures of the Public Access Path for the purposes of carrying out the Development or managing and maintaining the Public Access Path.
- 1.3 The Owner and/or the Developer may, by agreement with the Council, make and enforce (without prejudice to the generality of the foregoing) such reasonable rules and regulations governing access to the Public Access Path as it may from time to time consider necessary and appropriate to control the use of the Public Access Path.

2 PEDESTRIAN/CYCLIST ACCESS (EAST)

- 2.1 If, at any time following Commencement of Development, the Owner and/or the Developer is in receipt of the Access Notice (East), the Owner and Developer shall grant to the owner (and its contractors) of the Adjoining Development (East) a licence to enter and remain on so much of the Site as is necessary for the purposes of carrying out (at all reasonable times) the Access Works and to bring onto the Site vehicles, equipment, plant and materials reasonably required in connection with the Access Works PROVIDED THAT such licence shall be granted subject to:
- (a) the owners (and those acting in their behalf) of the Adjoining Development (East) carrying out the Access Works in a good and workmanlike manner, in accordance with any health and safety or site working conditions notified in advance by the Owner and/or Developer;
 - (b) the Owner/Developer providing the licence subject to reasonable conditions necessary to protect its interests and the quiet enjoyment and occupation of the Development;

- (c) the owner of the Adjoining Development (East) (or those instructed on its behalf) making good to the Owner and/or Developer's reasonable satisfaction any physical damage caused to the Site; and
- (d) such other reasonable terms as may be agreed between the parties to the licence,

AND PROVIDED FURTHER THAT the Owner and/or Developer shall be permitted to end the licence in the event that the Access Works are not commenced within one (1) month of the date of the licence.

- 2.2 Upon completion of the Access Works, the Owner and Developer shall permit (in common with the public) pedestrian and cyclist access from the Adjoining Development (East) PROVIDED THAT nothing shall prevent temporary closures of the Pedestrian/Cyclist Access (East) for the purposes of carrying out the Development or managing and maintaining the Pedestrian/Cyclist Access (East).

SCHEDULE 5

Public Realm

1 OPEN SPACE MANAGEMENT PLAN

- 1.1 Not to Commence or permit the Commencement of the Development unless and until the Open Space Management Plan has been submitted to, and approved by, the Council.
- 1.2 Not to amend the Open Space Management Plan without the approval of the Council.
- 1.3 On the laying out and Practical Completion of the Open Space Land, until such time as the transfer described in paragraph 1.4 has been completed, not to manage and maintain the Open Space Land otherwise than in accordance with the approved Open Space Management Plan (as may be amended in accordance with this Deed).
- 1.4 To transfer the Open Space Land to the Management Company in accordance with programme set out in the Open Space Management Plan subject to:
 - (a) the grant of such rights of access and as to services (if any) to the transferee as may reasonably be required for the satisfactory use and beneficial enjoyment of the land being transferred as Open Space Land;
 - (b) an exception and reservation of such easements and rights and privileges to the transferor and its successors in title and assigns as may reasonably be required for the satisfactory development or redevelopment of the Site;
 - (c) covenants in favour of the transferor not to: (i) use and retain the Open Space Land otherwise than for use by the public as public open space; and (ii) manage and maintain the Open Space Land otherwise than in accordance with the approved Open Space Management Plan (as may be amended from time to time in accordance with this Deed); and
 - (d) such other terms as agreed with the Management Company.
- 1.5 To furnish a copy of the transfer referred to in paragraph 1.4 above to the Council.

2 PLAY SPACE MANAGEMENT PLAN

- 2.1 Not to Commence or permit the Commencement of the Development unless and until the Play Space Management Plan has been submitted to, and approved by, the Council.
- 2.2 Not to amend the Play Space Management Plan without the approval of the Council.
- 2.3 On Practical Completion of the Play Space Land until such time as the transfer described in paragraph 2.4 has been completed, not to manage and maintain the Play Space Land otherwise than in accordance with the approved Play Space Management Plan (as may be amended in accordance with this Deed).
- 2.4 To transfer the Play Space Land to the Management Company in accordance with programme set out in the Play Space Management Plan subject to:
- (a) the grant of such rights of access and as to services (if any) to the transferee as may reasonably be required for the satisfactory use and beneficial enjoyment of the land being transferred as Play Space Land;
 - (b) an exception and reservation of such easements and rights and privileges to the transferor and its successors in title and assigns as may reasonably be required for the satisfactory development or redevelopment of the Site;
 - (c) covenants in favour of the transferor not to: (i) use and retain the Play Space Land otherwise than for play by members of the public; and (ii) manage and maintain the Play Space Land otherwise than in accordance with the approved Play Space Management Plan (as may be amended from time to time in accordance with this Deed); and
 - (d) such other terms as agreed with the Management Company.
- 2.5 To furnish a copy of the transfer referred to in paragraph 2.4 above to the Council.

3 MANAGEMENT COMPANY

- 3.1 In the event the established or appointed Management Company for the Open Space Land, and/or Play Space Land ceases to operate to immediately establish or procure the appointment of a replacement Management Company for the Open Space Land and/or Play Space Land undertake to notify the Council as soon as possible in writing of the appointment.

4 RESTRICTIONS ON ACCESS TO THE PUBLIC REALM

4.1 Notwithstanding the provisions of this Schedule, the Owner and/or Developer and/or Management Company may close and/or prevent public use or access to the land forming the Open Space Land and/or Play Space Land for reasons including:

- (a) the maintenance, repair, renewal, cleaning or other required works;
- (b) the laying, construction, inspection, maintenance, repair or renewal of or cleaning of any building or buildings or any services or service media serving such building or buildings now or hereafter on the land adjoining the Open Space Land and/or Play Space Land or any part thereof (including the erection of scaffolding);
- (c) the rebuilding or redevelopment of any part or parts of the land adjoining the Open Space Land and/or Play Space Land including the Development;
- (d) in cases of emergency or danger to the public;
- (e) in the interests of security;
- (f) any other sufficient cause approved by the Council.

4.2 It is acknowledged and agreed that with the agreement of the Council, the Owner and/or Developer and/or Management Company shall be permitted to make and enforce such reasonable rules and regulations governing access to the Open Space Land and/or Play Space Land as they may from time to time consider necessary and appropriate to control the use of the Open Space Land and/or Play Space Land.

4.3 It is acknowledged that there is no intention to create any public rights of way over the Open Space Land and Play Space Land and access of the public to the Open Space Land and Play Space Land shall be in common with the rights of all persons having rights over the same for the purposes of access to the Development or parts or part thereof.

SCHEDULE 6

Council Covenants

- 1 To use all sums received from the Owner and/or Developer pursuant to this Deed for the purpose for which they are paid as specified in this Deed.
- 2 Immediately upon receipt, to deposit all sums received from the Owner and/or Developer pursuant to this Deed into an interest bearing account.
- 3 Within twenty eight (28) days of receipt of a request in writing from the Owner or the Developer to provide the Owner or Developer with an audit account as to how the sums received pursuant to the Deed have been spent PROVIDED THAT no more than one (1) request shall be made in any six (6) month period.
- 4 To repay (together with all accrued interest calculated from the date on which such payment or instalment was paid until the date on which it is repaid) to the payee any sums not expended within five (5) years of receipt pursuant to this Deed.

SCHEDULE 7

Education Contribution

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

"Completion Notice" means the written notice served by the Owner on the County Council pursuant to paragraph 2.6 and which shall contain the final Unit Mix;

"Education Contribution" means the sum of the Primary Education Contribution to which sum the Relevant Education Indexation shall be added;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 2 The Owner and the Developer hereby covenants with the County Council:
 - 2.1 to serve on the County Council not less than three (3) months prior to the Commencement of Development the Education Notice of Commencement stating the expected date of Commencement of Development and the proposed Unit Mix of the Development and the estimated Trigger Dates and in the event that the Unit Mix constructed or to be constructed as the Development should at any time differ from the Unit Mix notified to the County Council then the Owner and the Developer shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the event that the Owner and the Developer fails to serve notice as set out in this paragraph then the County Council may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably;
 - 2.2 to serve on the County Council the Payment Notice between 60 (sixty) Working Days and thirty (30) Working Days prior to each of the proposed Trigger Dates and the calculation setting out the amount of the Education Contribution due at that Trigger Date;
 - 2.3 to serve on the County Council notice of first Occupation of the first Dwelling within one (1) month thereof and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings;
 - 2.4 to pay fifty percent (50%) of the Education Contribution to the County Council prior Commencement of Development and not to Commence cause allow or permit Commencement of any part of the Development unless and until the Owner and the Developer has deposited fifty percent (50%) of the Education Contribution with the County Council;
 - 2.5 to pay a further and final fifty percent (50%) of the Education Contribution to the County Council prior to the first Occupation of any of the Dwellings and not to cause allow or permit Occupation of any of the Dwellings unless and until the Owner and the Developer has deposited the

remaining balance of the Education Contribution being a further fifty per cent (50%) of the Education Contribution with the County Council and thus one hundred percent (100%) of the Education contribution has thereby been paid;

2.6 to serve on the County Council the Completion Notice within thirty (30) Working Days of all Dwellings being first Occupied stating the date that occurred and any further information stipulated in this Schedule.

3 The County Council hereby covenants with the Owner and the Developer:

3.1 to place the Education Contribution and each and any part of it when received into an interest bearing account and to utilise the same solely for the Primary Education Purposes;

3.2 if requested in writing by the Owner and the Developer no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the relevant Education Contribution any part of the relevant Education Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment;

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

4 It is hereby agreed and declared:

4.1 In the event that the Education Contribution is paid later than dates set out in paragraph 2.4 and 2.5 then the amount of the Education Contribution or part thereof payable by the Owner and the Developer 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 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 the part thereof) due calculated at the SONIA Rate from the date that the

payment is due until the date payment of the Education Contribution is received by the County Council.

- 4.2 In addition to the requirement of paragraph 4.1 above in the event that any sum due to be paid by the Owner and the Developer 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 and the Developer 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) plus the Relevant General Indexation for each and every letter sent to the Owner and the Developer pursuant to the debt.
- 4.3 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owner and the Developer hereby covenants to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution.
- 4.4 In the event that no written request is received by the County Council from the Owner and the Developer pursuant to paragraph 3.3 above or no valid dispute is raised by the Owner and the Developer pursuant to paragraph 4.6 below the Owner and the Developer shall accept the Education Contribution has been spent in full on the Education Purposes as appropriate.
- 4.5 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and the Developer and received by the County Council within twenty (20) Working Days of receipt by the Owner and the Developer of the County Council's statement referred to in paragraph 3.3 and shall clearly state the grounds on which the expenditure is disputed. Such dispute shall be resolved in accordance with clause 13 of this Deed.
- 4.6 In the event that the Education Contribution is overpaid by the Owner and the Developer 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 and the Developer (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 and the Developer of such overpayment.

SCHEDULE 8

Library Contribution

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

"Library Index" means the General Index as defined in Schedule 7;

"Library Contribution" means the sum of seventy seven pounds and eighty pence (£77.80) per Dwelling to which sum the Relevant Library Indexation shall be added;

"Library Contribution Purposes" means the use of the Library Contribution towards the upgrading of existing facilities at Great Tarpots Library and/or Benfleet High Road Library and/or Benfleet Library and/or other local libraries serving the Site, to include, but not limited to, additional furniture, technology and stock;

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

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

2 The Owner and the Developer hereby covenant with the County Council:

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

2.2 in the event that the Library Contribution is paid later than date set out in paragraph 2.1 of this Schedule then the amount of the Library Contribution or part thereof payable by the Owner and the Developer 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 2.2 above in the event that any sum due to be paid by the Owner and the Developer 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 and the Developer 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) plus the Relevant Library Indexation for each and every letter sent to the Owner and the Developer pursuant to the debt.

- 3 The County Council hereby covenants with the Owner and the Developer as follows:

- 3.1 to use the Library Contribution towards the Library Contribution Purposes;

- 3.2 if requested in writing by the Owner and the Developer 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 relevant Library Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of 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 and the Developer prior to the eleventh (11th) anniversary of receipt of the Library Contribution in full the County Council shall provide the Owner and the Developer 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 and the Developer pursuant to paragraph 3.3 above or no valid dispute is raised by the Owner and the

Developer pursuant to paragraph 4.2 below the Owner and the Developer 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 the Developer and received by the County Council within twenty (20) Working Days of receipt by the Owner and the Developer of the County Council's statement referred to in paragraph 3.3 and shall clearly state the grounds on which the expenditure is disputed;
- 4.3 in the event that the Library Contribution is overpaid by the Owner and the Developer then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Library Contribution or have entered into a legally binding contract or obligation to spend the Library Contribution otherwise the County Council shall upon the Occupation of the final Dwelling on the Site or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owner and the Developer (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 and the Developer of such overpayment.

SCHEDULE 9

Residential Travel Information Pack

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

"Residential Travel Information Pack" means a specific district or 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 Travel Vouchers for use with the relevant local public transport operator;

"Travel Vouchers" shall mean tickets/passes/ vouchers or other means of accessing transport or journey planning information as agreed with the County Council 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 and the Developer hereby covenant with the County Council:

2.1 to submit a draft Residential Travel Information Pack (including Travel Vouchers) to the County Council 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; and

2.2 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 and the Developer have provided the first occupiers with an approved Residential Travel Information Pack and Travel Voucher at the expense of the Owner and the Developer.

IN WITNESS whereof the Owner, the Developer, the Council and the County Council have executed this instrument as a Deed on the date first above written

EXECUTED as a **DEED** by
LEGAL AND GENERAL AFFORDABLE HOMES LIMITED
acting by a director
in the presence of:

Director

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation

EXECUTED as a **DEED** by

CANELEIGH LIMITED

acting by a director

in the presence of:

Director

Signature of witness

Name (in BLOCK CAPITALS)

Address

Occupation

THE COMMON SEAL of

CASTLE POINT BOROUGH COUNCIL

was hereunto affixed by

in the presence of:

Authorised Signatory

**THE COMMON SEAL of
ESSEX COUNTY COUNCIL**

was hereunto affixed by

in the presence of:

Attesting Officer