

DATED

3rd October

2019

(1) TENDRING DISTRICT COUNCIL

(2) ESSEX COUNTY COUNCIL

(3) ROGER GORDON LORD

(4) HEYFORD DEVELOPMENTS LIMITED

(5) NATIONAL WESTMINSTER BANK PLC

**AGREEMENT
UNDER SECTION 106 OF THE TOWN AND
COUNTRY
PLANNING ACT 1990 (as amended)
relating to land south of Weeley Road, Great
Bentley Essex
Planning Ref: 17/01881/OUT**

THIS AGREEMENT is made on

3rd October

2019

BETWEEN:-

- (1) **TENDRING DISTRICT COUNCIL** of Council Offices Thorpe Road Weeley CO16 9AJ ("the Council");
- (2) **ESSEX COUNTY COUNCIL** of County Hall Market Road Chelmsford Essex CM1 1QH ("the County Council");
- (3) **ROGER GORDON LORD** of Pilgrims Barn Weeley Road Great Bentley Colchester Essex CO7 8QS ("the Owner");
- (4) **HEYFORD DEVELOPMENTS LIMITED** (company registration number 05310916) of 9 Welcombe Road Stratford-upon-Avon Warwickshire CV37 6UJ ("the Promoter"); and
- (5) **NATIONAL WESTMINSTER BANK PLC** whose registered office is at 250 Bishopsgate, London EC2M 4AA and whose address for service is Credit Documentation, PO Box 339, Manchester M60 2AH ("the Mortgagee")

INTRODUCTION:-

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the authority who is entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is the local authority for primary and secondary school education and the local highway authority for the area in which the Site is located.
- (C) The Owner is the freehold owner of that part of the Site which is registered at HM Land Registry under title number EX660753 free from encumbrances that would prevent the Owner entering into this Agreement but subject to the interest of the Promoter and the Mortgagee.
- (D) The Promoter has the benefit of a promotion agreement dated 23 September 2019 in relation to the planning promotion and disposal of the part of the Site that is registered under HM Land Registry under title number EX660753.
- (E) The Mortgagee has the benefit of a charge dated 9 January 2015 in relation to that part of the Site that is registered under HM Land Registry title number EX660753.
- (F) The Planning Application has been submitted to the Council and the Council has refused the Planning Application on 21 December 2018. Subsequently the Appeal was submitted for determination by the Secretary of State.
- (G) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the manner hereinafter appearing and is satisfied that if the Planning Permission is granted pursuant to the Appeal then it should be subject to the planning obligations in this Agreement.
- (H) The Council is satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms; are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.
- (I) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council against the Owner and its successors in title.

- (J) The Promoter enters into this Agreement to agree that its interest in the Site shall be bound by the covenants and obligations in this Agreement

NOW THIS AGREEMENT WITNESSES as follows:-

OPERATIVE PART

1. DEFINITIONS

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

"1990 Act"	means the Town and Country Planning Act 1990 (as amended)
"Appeal"	means the appeal to the Secretary of State following the refusal of the Application by the Council which has been given the Appeal Reference Number APP/P1560/W/19/3231554
"Charging Schedule"	means a charging schedule as detailed in Regulation 2(1) of the CIL Regulations
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended)
"Commencement Date"	means the date of Commencement of Development
"Commencement of Development"	subject to Clause 3.2 means the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56 of the 1990 Act and Commence the Development Commencement of Development and Commence Development shall be construed accordingly
"Contributions"	means the Education Contribution the Healthcare Contribution and the RAMS Contribution as set out in the Schedules
"Decision Letter"	means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
"Development"	means the residential development as described in the Planning Application on the Site pursuant to the Planning Permission
"Dwelling"	means a house or self contained flat or bungalow constructed as part of the Development
"Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as shall replace such index or as the Council reasonably requires

"Index Linked"	means increase(d) to reflect any increase in the Index during the period from and including the date of this Agreement to and including the date of actual payment
"Infrastructure"	has the meaning ascribed in Section 216(2) of the Planning Act 2008
"Market Dwellings"	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings as defined in Schedule 2 and "Market Dwelling" shall be construed accordingly
"the Notice of Commencement"	means the written notice advising of the proposed Commencement Date
"Occupation"	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly
"Plan"	means drawing number 30607-9000 Rev A dated 25-07-19 attached to this Agreement
"Planning Application"	means the application for outline planning permission with all matters reserved except for access carrying reference 17/01881/OUT for residential development for up to 136 dwellings, informal recreation space, a local area of play and associated development
"Planning Inspector"	means the inspector appointed by the Secretary of State to determine the Appeal
"Planning Permission"	means the planning permission which may be granted by the Secretary of State or its Planning Inspector in determining the Appeal
"Reserved Matters"	means the matters reserved for approval in relation to the Planning Permission
"Schedules"	means schedules 1-5 to this Agreement
"Secretary of State"	means the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 & 79 of the 1990 Act

"Seven Day LIBID Rate"	means an assessment of the rate of interest the County Council or the Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow eurocurrency deposits or such other rate as approved by the County Council or the Council
"Site"	means the freehold land south of Weeley Road Great Bentley Essex shown for identification purposes only edged red on the Plan
"Working Days"	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Agreement:-

1.2.1 the clause headings do not affect its interpretation:-

- (a) unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- (b) references to any statute or statutory provision include references to:-
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (c) references to the Site include any part of it;
- (d) references to any party in this Agreement include the successors in title of that party. In addition, references to the Council and the County Council include any successor to their respective statutory functions ;
- (e) "including" means "including, without limitation";
- (f) any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
- (g) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

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

2. EFFECT OF THIS AGREEMENT

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

The scaling of this drawing cannot be assured

Revision	Date	Drn	Ckd
A	02.09.19	KT	CDB

Additional land within ownership added to plan

Site Boundary

Additional land within ownership



Project
Great Bentley

Drawing Title
Site Location Plan

Date	Scale	Drawn by	Check by
25.07.19	1:2500@A3	KT	CDB
Project No	Drawing No	Revision	
30607	9000	A	

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106 of the 1990 Act and are enforceable by the Council and the County Council respectively as set out in this Agreement.

- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The obligations in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.6 Subject to the provisions of Schedule 2 insofar as they relate to a Chargee as defined in Schedule 2 a mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security and it will not be liable for any breach of the provisions of this Agreement after it has parted with or released its interest in the Site.
- 2.7 Other than in relation to paragraph 5 of Schedule 2 the obligations in this Agreement will not be enforceable against the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.
- 2.8 In the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment or variation to the Planning Permission and planning permission is granted pursuant to Section 73 of the 1990 Act then subject to the written confirmation of the Council to be given prior to the determination of any such planning applications which shall not increase the number of Dwellings and shall relate substantially to the same development of the Site as is proposed under the Planning Application this Agreement shall apply and remain in full force in respect of that subsequent application without the need for further agreement to be entered into pursuant to Section 106 of the 1990 Act

3. COMMENCEMENT DATE

- 3.1 Save in respect of Clause 7 which will become operative on the date of this Agreement and in respect of obligations expressly in this Agreement requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date.

- 3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:-
- 3.2.1 site investigations or surveys including for the avoidance of doubt archaeological and ecological investigations and surveys ;
 - 3.2.2 site decontamination;
 - 3.2.3 the clearance of the Site including demolition;
 - 3.2.4 works connected with infilling;
 - 3.2.5 works for the provision of drainage or mains services to prepare the Site for development together with access roads;
 - 3.2.6 erection of fencing or boarding;
 - 3.2.7 erection of boards advertising the development; or
 - 3.2.8 the construction of a temporary site compound or a temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Owner covenants with the Council to comply with the obligations set out in Schedules 1, 2, 4 and 5 to this Agreement and with the County Council to comply with the obligations set out in Schedule 3 to this Agreement.
- 4.2 The Owner covenants with the Council and the County Council to provide to the Council and the County Council
 - 4.2.1 (so far as practical) not less than two months' notice in writing of the anticipated date of Commencement of the Development and
 - 4.2.2 Notice of Commencement no later than five (5) Working Days prior to the Commencement Date.
 - 4.2.3 not less than five (5) Working Days' notice in writing of the intended first Occupation of a Dwelling on the Site
 - 4.2.4 not less than five (5) Working Days' notice in writing of the intended first Occupation of the last Dwelling to be Occupied on the Site
- 4.3 The Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.
- 4.4 The County Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.
- 4.5 The Council and the County Council covenant with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council and where appropriate the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation and where the Council fail to give

such notice consent, approval, authorisation, agreement or similar affirmation with reasons within 60 Working Days of being requested so to do the same shall be deemed approved (as appropriate). Provided Always that a new 30 Working Day approval period shall commence after each rejection of any relevant documents or submissions by the Council subject however to the Council giving reasons for such rejection and dealing with the any alterations that the Owner makes consequent upon such rejection as soon as reasonably practicable notwithstanding the 30 Working Day period specified and the right of any party to invoke the provisions of clause 8.

- 4.6 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of the terms of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause.
- 4.7 No compensation shall be payable by the Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council or the County Council.
- 4.8 Representatives of the Council and the County Council may enter upon the Site at any reasonable time and on reasonable prior written notice (giving at least 5 clear days before such entry (unless otherwise agreed with the Owner) to ascertain whether the terms of this Agreement are or have been complied with subject to complying with all health and safety and/or security requirements required by the Owner or by any developer carrying out the Development PROVIDED THAT this right shall cease and determine in relation to any Dwelling on the first Occupation of that Dwelling.
- 4.9 Any agreement obligation covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.10 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.11 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of the purchaser tenant or residential occupier of any Dwelling or their mortgagees shall not be required to vary any part of this Agreement nor shall any other party who has no liability under this Agreement.

- 4.12 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.13 If at any time Value Added Tax ("**VAT**") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.14 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.15 In the event that the Owner fails to serve on the Council and/or the County Council any of the notices that they are required by the provisions of this Agreement to serve then the Council and/or the County Council shall be entitled to payment of the various Contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of the relevant Contribution and the time period for the return of the relevant Contribution shall be extended accordingly.

5. TERMINATION OF THIS AGREEMENT

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

6. NOTICES

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following or to such other address as one party may notify in writing to the others at any time as its address for service:-
- 6.1.1 for the Owner as set out above;
- 6.1.2 for the Promoter as set out above;
- 6.1.3 for the Mortgagee as set out above;
- 6.1.4 for the Council it shall be marked for the attention of the Head of Planning at the Council address set out above with Ref: 17/01881/OUT;
- 6.1.5 for the County Council it shall be marked for the attention of the s106 Officer, Planning Service, Essex County Council Infrastructure Planning County Hall, Chelmsford CM1 1QH;

- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:-
- 6.2.1 if delivered by hand, at the time of delivery;
- 6.2.2 if sent by post, on the second Working Day after posting; or
- 6.2.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served at 9am on the next Working Day.
- 6.4 If a notice, demand or any other communication is served before 9am on a working day, it is to be treated as having been served at 9am on that Working Day.

7. COSTS OF THIS AGREEMENT

- 7.1 Upon completion of this agreement the Promoter covenants to pay to the Council its reasonable and proper legal costs in a sum not to exceed £2,600.00 (Two thousand six hundred pounds) (no VAT) and to the County Council its reasonable and proper legal costs in a sum not to exceed £2,500.00 (Two thousand five hundred pounds) (no VAT) in connection with the preparation, negotiation and completion of this Agreement.
- 7.2 The Owner covenants to pay to the Council its monitoring fee of One thousand two hundred Pounds (£1,200.00.) prior to Commencement of Development

8. DETERMINATION OF DISPUTES

- 8.1 Subject to Clause 8.7, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this Clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.2 For the purposes of this Clause 8 a "**Specialist**" is a person qualified to act as an expert in relation to the dispute having not less than ten (10) years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any party to the dispute to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute (or failing agreement as nominated by any such party in writing)) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under Clause 8.4.
- 8.4 Any dispute over the identity of the Specialist is to be referred at the request of any party to the dispute to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot

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

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

8.5.1 each party to the dispute may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

8.5.2 each party to the dispute is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

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

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

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

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist or failing such decision will be shared equally between the parties to the dispute.

8.7 This Clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

9. PROMOTER'S CONSENT

The Promoter agrees and acknowledges that its interest in the Site shall be bound by the covenants and provisions contained in this Agreement and agrees to comply with the provisions of this Agreement in the event that it becomes the freehold owner of the Site PROVIDED THAT for the avoidance of doubt it shall not be bound by any of the provisions of this Agreement (except clause 7.1) unless or until it becomes a successor in title to the Owner.

10. MORTGAGEE'S CONSENT

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under

this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

11. CIL REGULATIONS

11.1 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation contained in this Agreement (i) is not a material planning consideration; or (ii) can be given no weight in determining the Appeal; or (iii) does not constitute a reason for granting the Planning Permission in accordance with Regulation 122 of the CIL Regulations THEN such planning obligation shall not be enforceable pursuant to this Agreement and shall cease to have effect within this Agreement save as set out in the Decision Letter

11.2 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been adopted by the Council and has come into effect any contribution payable under the terms of this Agreement which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable

12. JURISDICTION

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

13. EXECUTION

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

SCHEDULE 1

OPEN SPACE AND AMENITY AREAS

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

"Play Area"	means a local area for play to be provided within the Open Space
"Land Plan"	means the plan attached to this Agreement marked with drawing number 30607-9600 Rev A dated 30-07-19
"Management Company"	means a management entity established for inter alia the purpose of managing and maintaining the Open Space and funded for that purpose by the Owner and its successors in title and the Occupiers of the Market Dwellings
"Open Space "	means the areas of land shown indicatively coloured green on the Land Plan with the precise location and boundaries of the Open Space to be as shown on the approved Open Space Plan which shall include the Play Area and which shall be laid out in accordance with the approved Open Space Specification
"Open Space Completion Certificate"	means a certificate or certificates in writing relating to the Open Space issued by the Council that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification
"Open Space Management Plan"	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to the Management Company
"Open Space Plan"	means a plan showing the exact location of the Open Space
"Open Space Specification"	means a specification to be approved in writing by the Council for the laying out of the Open Space
"Relevant Documents"	means the Open Space Plan, the Open Space Specification and the Open Space Management Plan

2. The Owner hereby covenants with the Council that at the time of submission of the first application for reserved matters approval to submit the Relevant Documents and details of the Management Company to the Council for approval.
3. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within 60 Working Days of receipt in full by the Council.
4. The Owner covenants not to permit the Occupation of any of the Dwellings unless and until the Relevant Documents have been approved by the Council.

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Revision	Date	Drm	Ckd
A	02.09.19	KT	CDB

Additional land within ownership added to plan

- | | |
|--|---|
| | Site Boundary |
| | Additional land within ownership |
| | Indicative vehicular access point (to be agreed through RM) |
| | Pedestrian access point |
| | Residential Development (including incidental green space, access roads, drainage and infrastructure) |
| | Primary Road (along alignment +/- 5m) |
| | Public Open Space (including drainage, existing and proposed structural planting, access roads, pedestrian and cycle routes, and informal and / or formal play and recreation facilities) |
| | Proposed planting |
| | Existing storm drainage |
| | Indicative proposed footpath link (to be agreed through RM) |
| | Proposed location of LAP |



Date	Scale	Drawn by	Check by
30.07.19	1:2500@A3	KT	CDB
Project No	Drawing No		Revision
30607	9600		A

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5. The Owner hereby covenants with the Council not to permit the Occupation of more than 50% of the Dwellings (or such later trigger as may be agreed with the Council having regard to the construction programme for the Development) unless and until all of the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification and the Council has issued the Open Space Completion Certificate.
6. The Owner hereby covenants with the Council to maintain the Open Space in accordance with the Open Space Management Plan following the issue of the relevant Open Space Completion Certificate as appropriate or until such time as the transfer(s) described in paragraph 8 has been completed.
7. The Owner covenants with the Council to transfer the Open Space to the Management Company for the consideration of One Pound (£1.00) who shall from that date manage and maintain the Open Space in perpetuity.
8. The Owner further covenants with the Council to include in the transfer of the Open Space to the Management Company:
 - 8.1 a covenant by the Management Company only to permit the Open Space to be utilised by the public as open areas for recreation and as a Play Area in accordance with this Agreement; and
 - 8.2 a covenant by the Management Company to maintain the Open Space in perpetuity in accordance with the Open Space Management Plan; and
 - 8.3 a covenant by the Management Company not to transfer the Open Space into the individual ownership of the owners of the Dwellings; and
 - 8.4 an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 8.1, 8.2 and 8.3 of this Schedule.
9. The Owner shall furnish a copy of the completed transfer (as referred to in paragraph 8) to the Council in relation to the Open Space and shall inform the Council in writing of the contact details of any Management Company.
10. The Owner shall include in each transfer or lease of a Market Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Market Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Open Space.

SCHEDULE 2

AFFORDABLE HOUSING

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:-

"Affordable Housing"	means housing provided to Persons in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices in accordance with the definition of "affordable housing" set out in Annex 2 of the NPPF and includes Affordable Housing For Rent and Other Tenures
"Affordable Housing Dwellings"	means 30% of the Dwellings (which shall unless otherwise agreed by the Council comprise 70% Affordable Housing for Rent and 30% Other Tenures) all provided in accordance with the Affordable Housing Scheme(s) without reliance on public subsidy
"Affordable Housing For Rent"	has the meaning ascribed to it in paragraph a) of the definition of affordable housing at Annex 2 of the NPPF
"Affordable Housing Scheme"	means a scheme(s) and plan(s) for the Affordable Housing Dwellings to: <ul style="list-style-type: none">a) identify the location of the Affordable Housing Dwellings within the Siteb) identify the exact Affordable Housing Tenure for the Affordable Housing Dwellings
"Affordable Housing Tenure"	means Affordable Rented Housing and/or Other Tenures
"Approved Body"	means a provider of social housing registered with Homes England under the provisions of the 2008 Act or any body organisation or company which is a registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association
"Chargee"	means any mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any administrator (howsoever appointed) or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any Housing Administrator of the whole or

any part of the Affordable Housing Dwellings that have been transferred to an Approved Body

“Discounted Market Sales”	has the meaning ascribed to it in paragraph c) of the definition of affordable housing in Annex 2 of NPPF and disposed of through a scheme operated by the Essex Help To Buy Agent with the local open market value of such units being certified by an independent valuer or surveyor who practices within a 15 mile radius of the Site
“Essex Help To Buy Agent”	means a body appointed by Homes England to assist buyers through the purchase of new homes within Essex
“Homes England”	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body and which for the purposes of this Schedule includes the Regulator of Social Housing
“Housing Administrator”	has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016
“Housing Needs Register”	means the register maintained by the Council or its nominee or an Approved Body for Persons in Housing Need
“Nomination Rights”	the ability for the Council to nominate 100% of the occupants on the first letting of the Affordable Housing For Rent and 100% of the occupants of subsequent lettings of Affordable Housing For Rent
“NPPF”	means the National Planning Policy Framework February 2019 issued by H M Government and any revision thereof
“Other Affordable Routes to Home Ownership”	has the meaning ascribed to it in paragraph d) of the definition of affordable housing at Annex 2 of the NPPF and for the avoidance of doubt includes Shared Ownership
“Other Tenures”	means Discounted Market Sales and/or Other Affordable Routes to Home Ownership and/or Starter Homes
“Persons In Housing Need”	means a person or persons registered on the Housing Needs Register or such other person considered by the Council or the Approved Body to be in housing need having regard to their income and local house prices and rents
“Protected Tenant”	means any tenant who: a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual

right) in respect of a particular Affordable Housing Dwelling

- b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling
- c) has been granted a shared ownership lease by the Approved Body and has become a 100% Staircaser

“Shared Ownership”

means Affordable Housing provided as shared ownership units for sale under a lease as regulated by Homes England

“Starter Homes”

has the meaning ascribed to it at paragraph b) of the definition of affordable housing at Annex 2 of the NPPF

“100% Staircaser”

means a lessee of an Affordable Housing Dwelling under a shared ownership or shared equity arrangement who has acquired 100% of the equity in the said Affordable Housing Dwelling

“2008 Act”

means the Housing and Regeneration Act 2008

The Owner hereby covenants with the Council as follows:

- 2. To submit an Affordable Housing Scheme to the Council with the first application for Reserved Matters approval and not to Commence Development unless and until the Affordable Housing Scheme has been approved by the Council taking account of the needs of Persons In Housing Need
- 3. To construct the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme and the details outlined in this schedule unless otherwise agreed by the Council in writing
- 4.1 Not to permit the Occupation of more than 50% of the Market Dwellings until such time as 50% of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and
 - 4.1.1 in relation to those Affordable Housing Dwellings provided as Affordable Housing For Rent or as Other Affordable Routes to Home Ownership of a type that would be provided through an Approved Body have been transferred to an Approved Body
 - 4.1.2 in relation to those Affordable Housing Dwellings provided as Discounted Market Sales and/or Starter Homes and/or Other Affordable Routes to Home Ownership of a type that would not be provided through an Approved Body the Council has been provided with such evidence as it shall reasonably require from the Owner or the Essex Help To Buy Agent to enable it to be satisfied that there has been or will be compliance with the regulations and criteria relating to Discounted Market Sales and/or Starter Homes and/or Other Affordable Routes to Home Ownership of a type that would not be provided through an Approved Body and in the disposal of those Dwellings

- 4.2 Not to permit the Occupation of more than 90% of the Market Dwellings in until such time as all of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and
- 4.2.1 in relation to those Affordable Housing Dwellings provided as Affordable Housing for Rent or as Other Affordable Routes to Home Ownership of a type that would be provided through an Approved Body have been transferred to an Approved Body and
 - 4.2.2 in relation to those Affordable Housing Dwellings provided as Discounted Market Sales and/or Starter Homes and/or Other Affordable Routes to Home Ownership of a type that would not be provided through an Approved Body the Council has been provided with such evidence as it shall require from the Owner or the Essex Help To Buy Agent to enable it to be satisfied that there has been or will be compliance with the regulations and criteria relating to Discounted Market Sales and/or Starter Homes and/or Other Affordable Routes to Home Ownership of a type that would not be provided through an Approved Body and in the disposal of those Dwellings
- 4.3 For the purposes of this Schedule 2 only the expression "transfer" or "transferred" shall mean a transfer of the freehold or grant of a lease with a term of not less than 125 years of the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner
- 4.4 The transfer of the Affordable Housing Dwellings to an Approved Body shall be subject to the provisions of Part 2 of this Schedule
5. That Affordable Housing Dwellings
- 5.1 provided as Affordable Housing For Rent or as Other Affordable Routes to Home Ownership of a type that would be provided through an Approved Body shall be Occupied for no other purpose than as Affordable Housing and additionally Affordable Housing For Rent shall be Occupied in accordance with the Nomination Rights (but subject to the provisions of paragraph 7 below).
 - 5.2 provided as Discounted Market Sales and/or Starter Homes and/or Other Affordable Routes to Home Ownership of a type that would not be provided through an Approved Body shall be subject to such eligibility for purchase criteria or regulations and/or occupancy criteria or regulations and/or subsequent disposal criteria or regulations as HM Government shall from time to time impose and such eligibility for purchase criteria or regulations and/or occupancy criteria or regulations and/or subsequent disposal criteria for such units of Affordable Housing shall be evidenced in any transfer or subsequent transfer of the said units of Affordable Housing and protected by way of a restriction on the registered titles of the said units of Affordable Housing
6. To serve on the Council notice in writing not less than 14 days after the first Occupation of respectively 50% and 90% of the Market Dwellings
7. It is Hereby Agreed and Declared
- 7.1 The obligations and restrictions contained in this Schedule shall not bind:
- 7.1.1 a Chargee (or a receiver appointed by such Chargee) of the whole or part of the Affordable Dwellings PROVIDED THAT such Chargee (or any receiver thereby appointed including an administrative receiver) acting

pursuant to any event of default has first complied with the provisions of paragraph 7.2 of this Schedule; or

7.1.2 a Protected Tenant; or

7.1.3 a 100% Staircaser; or

7.1.4 any mortgagee or chargee of a 100% Staircaser; or

7.1.5 any mortgagee or chargee of an occupier of an Affordable Housing Dwelling; or

7.1.6 any person or body deriving title through or from any of the parties mentioned in paragraphs 7.1.1 – 7.1.5 above.

7.2 Any Chargee claiming the protection granted by paragraph 7.1 above must first:

7.2.1 give written notice to the Council of its intention to dispose of the Affordable Dwelling,

7.2.2 use reasonable endeavours over a period of twelve weeks from the date of such written notice to dispose of the Affordable Housing Dwelling to another Approved Body or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge

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

7.3 If such disposal referred to in paragraph 7.2.2 above has not taken place within such twelve week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Agreement which shall determine absolutely.

Part Two

A The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession

B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner at no cost to the Approved Body and shall contain:

1. a grant by the Owner to the Approved Body of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings

2. a reservation of all rights of access and passage of services and all other rights reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Site

3. such other covenants as the Owner may reasonably require for the maintenance of the Development once it is completed and the preservation of the appearance thereof

SCHEDULE 3

EDUCATION CONTRIBUTION

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

"Early Years and Childcare Contribution"	means the Early Years Pupil Product multiplied by the cost generator of Fourteen Thousand Five Hundred and Nineteen Pounds (£14,519.00)
"Early Years and Childcare Pupil Product"	means the sum of the 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 education facilities for the education and/or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs within the Great Bentley Ward including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Primary Education Contribution
"Education Contribution"	means the sum of the Early Years and Childcare Contribution the Primary Education Contribution the Secondary Education Contribution and the Secondary School Transport Contribution to which sums the Relevant Education Indexation shall be added
"Education Index Point"	means a point on the most recently published edition of the Education Index at the time of use
"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 Purposes"	means the Early Years and Childcare Purposes Primary Education Purposes the Secondary Education Purposes and the Secondary School Transport 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
"General Index Point"	means a point on the most recently published edition of the General Index at the time of use
"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 and agreed in writing with the Owner
"House"	means a Dwelling that does not meet the definition of a Flat

"Primary Education Contribution"	means the Primary Pupil Product multiplied by the cost generator of Twelve Thousand Seven Hundred and Thirty Four Pounds (£12,734.00)
"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 Tendring primary planning group 3 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 as part of the Development 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 as part of the Development that have two or more rooms that may by design be used as bedrooms
"Relevant Education Indexation"	means the amount that the Owner shall pay with and in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change shown in the Education Index between the Education Index Point pertaining to April 2017 and the Education Index Point pertaining to the date the payment is due to be made to the County Council
"Relevant General Indexation"	means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out under paragraph 5.4 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 April 2017 and the date payment is due to be made to the County Council
"Secondary Pupil Product"	means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2
"Secondary Education Contribution"	means the Secondary Education Pupil Product multiplied by the cost generator of Nineteen Thousand Three Hundred and Forty Five Pounds (£19,345.00)

"Secondary Education Purposes"	means the use of the Secondary Education Contribution towards provision of facilities for the provision of additional places at Colne Community College or successor facilities including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Secondary Education Contribution
"Secondary School Transport Contribution"	means the Secondary Education Pupil Product multiplied by cost generator of £3.65 multiplied by one hundred and ninety (190) being the average days in the academic year and then multiplied by five (5)
"Secondary School Transport Purposes"	means the use of the Secondary School Transport Contribution for the provision of transport for eligible residents of the Site to secondary school
"Unit Mix"	means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Flats or Qualifying Houses

2. The Owner hereby covenants with the County Council:-

- 2.1 to notify the County Council of the Unit Mix of the Development prior to the Commencement Date 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 fourteen (14) days of the revised Unit Mix being approved pursuant to any relevant Reserved Matters approval.
- 2.2 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 the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served;
- 2.3 to pay fifty per cent (50%) of the Education Contribution to the County Council on Commencement of Development;
- 2.4 to pay the further and final fifty per cent (50%) of the Education Contribution to the County Council prior to first Occupation of more than 50% of the Dwellings.

3 The County Council hereby covenants with the Owner:-

- 3.1 within 20 Working days of receipt of the written notice pursuant to paragraph 2.1 above to inform the Owner of the amount of the Education Contribution due on the expected dates of payment under paragraph 2.3 to 2.4 above
- 3.2 to place the Education Contribution when received into an interest bearing account and to utilise the same solely for the Early Years and Childcare Purposes the Primary Education Purposes the Secondary Education Purposes and the Secondary School Transport Contribution as appropriate;

3.3 that upon receipt of a request in writing to do so to be received by the County Council no sooner than the tenth (10th) anniversary of the first Occupation of the first Dwelling and provided that the Owner has served notice(s) of first Occupation on the County Council in accordance with paragraph 2.2 above, to return to the party who deposited the Education Contribution any part of the Education Contribution that remains unexpended when such request in writing is received (together with interest accrued at the Seven Day LIBID Rate 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 the first Occupation of the first Dwelling to make a payment in respect of the Early Years and Childcare Purposes or Primary Education Purposes or the Secondary Education Purposes or the Secondary School Transport 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 (if any) shall not include such payment; and

3.4 that upon receipt of a written request from the Owner prior to the tenth (10th) anniversary of the first Occupation of the first Dwelling the County Council shall provide the Owner 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 Contribution has in whole or in part been spent.

4 In the event that the Owner notifies the County Council of a revised Unit Mix pursuant to paragraph 2.1:

4.1 the Owner shall recalculate the Education Contribution (or any part thereof) that has been paid prior to the notification of the revised Unit Mix and within 1 month of the notification pursuant to paragraph 2.1

4.1.1 if the revised Unit Mix results in a higher Education Contribution (or any part thereof) than has been paid prior to the notification of the revised Unit Mix the Owner shall pay to the County Council the difference between the Education Contribution (or any part thereof) paid prior to the notification of the revised Unit Mix and the Education Contribution (or any part thereof) required as a result of the revised Unit Mix; or

4.1.2 if the revised Unit Mix results in a lower Education Contribution (or any part thereof) than has been paid prior to the notification of the revised Unit Mix the County Council shall refund to the Owner the difference between the Education Contribution (or any part thereof) paid prior to the notification of the revised Unit Mix and the Education Contribution (or any part thereof) required as a result of the revised Unit Mix together with interest calculated at the Seven Day LIBID Rate;

4.2 any additional amount paid under paragraph 4.1 shall from the date payment is received by the County Council form part of the Education Contribution.

5. It is hereby agreed and declared:-

5.1 in the event that the Education Contribution or part thereof is paid later than the relevant date for payment then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include the greater of either:-

5.1.1 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 was due and the Education Index Point prevailing at the date of payment multiplied by the Education Contribution or part thereof due; or

- 5.1.2 an amount pertaining to interest on the Education Contribution or part thereof due to be paid such interest to be calculated at the Seven Day LIBID Rate from the date payment is due until the date payment of the amount due is received by the County Council.
- 5.2 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 two (2) months 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.
- 5.3 In the event that no written request is received by the County Council from the Owner pursuant to paragraph 3.3 or no valid dispute is raised by the Owner pursuant to paragraph 5.2 above the Owner shall accept that the Education Contribution has been spent in full on the Early Years and Childcare Purposes or Primary Education Purposes or the Secondary Education Purposes or the Secondary School Transport Purposes as appropriate.
- 5.4 The County Council may utilise up to two percent (2%) of the total amount of the Education Contribution received under this Agreement to a maximum of two thousand pounds sterling (£2,000) plus Relevant General Indexation for the purposes of monitoring and managing the administration of the Education Contribution and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Education Contribution.
- 5.5 Upon the Occupation of the final Dwelling constructed as part of the Development the County Council shall if so requested by the Owner in writing repay any overpaid sums (in excess of those sums calculated as due for payment under this Agreement) received by the County Council back to the party who deposited those overpaid sums together with interest calculated at the Seven Day LIBID Rate within twenty (20) Working Days of the County Council being informed by the Owner of the Occupation of the final Dwelling or at such earlier time as the County Council shall determine.

SCHEDULE 4

HEALTHCARE CONTRIBUTION

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

"Healthcare Contribution"	means the sum of Forty Seven Thousand One Hundred and Fifty Pounds (£47,150.00) Index Linked
"Healthcare Contribution Purposes"	means the use of the Healthcare Contribution towards the improvement of primary healthcare services currently provided at the Great Bentley Surgery The Hollies The Green Great Bentley CO7 8JP
"NHS England"	means the national commissioning authority for health services in England (or its successor body from time to time)

2. The Owner hereby covenants with the Council:

2.1 not to Occupy (or allow cause or permit the Occupation of) more than twenty five (25) Dwellings unless and until fifty per cent (50%) of the Healthcare Contribution has been paid to the Council

2.2 to pay fifty per cent (50%) of the Healthcare Contribution to the Council before any more than twenty five (25) Dwellings are Occupied

2.3 not to Occupy (or allow cause or permit the Occupation of) more than eighty (80) Dwellings unless and until the remaining fifty per cent (50%) of the Healthcare Contribution has been paid to the Council

2.4 to pay the remaining fifty per cent (50%) of the Healthcare Contribution to the Council before any more than eighty (80) Dwellings are Occupied

3. The Council hereby covenants with the Owner to:

3.1 provide a written form of receipt for payment of the Healthcare Contribution on receipt of the Healthcare Contribution;

3.2 pay the Healthcare Contribution to NHS England upon receipt of a document from NHS England:

3.2.1 confirming that they will apply the Healthcare Contribution solely for the Healthcare Contribution Purposes;

3.2.2 providing full details of the expenditure of the Healthcare Contribution which details shall comprise either a receipt for expenditure incurred or a contract committing such expenditure;

3.2.3 confirming that they will return any unspent part of the Healthcare Contribution together with interest accrued to the Council or the Owner after the expiry of five years from the date of receipt by the Council of the Healthcare Contribution.

3.3 keep an up to date record of all payments from the Healthcare Contribution transferred by the Council to NHS England;

3.4 following receipt of a written request not to be made prior to the expiration of five years from the date of receipt by the Council of the Healthcare Contribution to repay to the party who paid the Healthcare Contribution any unspent monies of the Healthcare Contribution held by the Council or received by the Council pursuant to paragraph 3.2.3 together with interest calculated at the Seven Day LIBID Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part within 28 Working Days of receipt of the aforementioned written request.

4. The Owner acknowledges that the Council shall not be responsible for how the Healthcare Contribution is utilised or in the event that NHS England does not comply with paragraph 3.2.3 above for its return under paragraph 3.4 above once it has transferred the Healthcare Contribution to NHS England but without prejudice to the rights of the Owner to seek to enforce the obligations in clause 3.2 directly against NHS England AND in which case the Council shall provide to the Owner such assistance as it reasonably can to enforce those obligations

SCHEDULE 5

ECOLOGICAL MITIGATION

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

“Natura 2000”	has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017
“Natura 2000 Mitigation Contribution”	means the sum of one hundred and twenty two pounds and thirty pence (£122.30) Index Linked per Dwelling towards the Natura 2000 Mitigation Contribution Purposes
“Natura 2000 Mitigation Contribution Purposes”	means the funding of additional visitor management measures identified within the draft RAMS to mitigate increased use as a result of new residential development relating to the Essex Coast Natura 2000 Designations (in particular Colne Estuary SPA/RAMSAR sites
"RAMS"	means a Recreation Avoidance and Mitigation Strategy formally adopted by the Council as at the date of Commencement of Development in relation to Essex Coast Natura 2000 Designations (in particular Hamford Water SAC/SPA/RAMSAR; Colne Estuary SPA/RAMSAR; Stour and Orwell Estuaries SPA/RAMSAR; Blackwater Estuary SPA/RAMSAR; Dengie SPA/RAMSAR and Essex Estuaries SAC)
“RAMS Contribution”	means the sum of one hundred and twenty two pounds and thirty pence (£122.30) Index Linked per Dwelling as set out in the RAMS towards the RAMS Contribution Purposes
“RAMS Contribution Purposes”	means the funding of works and improvements identified by the RAMS to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 Designations (in particular Colne Estuary SPA/RAMSAR sites

2. The Owner hereby covenants with the Council :-

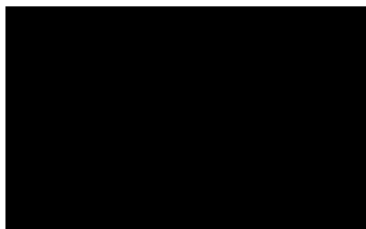
- 2.1 if at the date of the Commencement of Development a RAMS has been formally adopted by the Council the Owners shall pay to the Council the RAMS Contribution prior to Commencement of Development and the Owners shall not Commence Development nor permit the Commencement of Development until the RAMS Contribution has been paid to the Council and the obligation to pay the Natura 2000 Contribution pursuant to paragraph 2.2 below shall cease to apply
- 2.2 if at the date of the Commencement of Development a RAMS has not been formally adopted by the Council the Owners shall pay to the Council prior to Commencement of Development the Natura 2000 Contribution and the Owners shall not Commence Development nor permit the Commencement of Development until the Natura 2000 Contribution has been paid to the

Council and the obligation to pay the RAMS Contribution in accordance with paragraph 2.1 above shall cease to apply

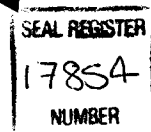
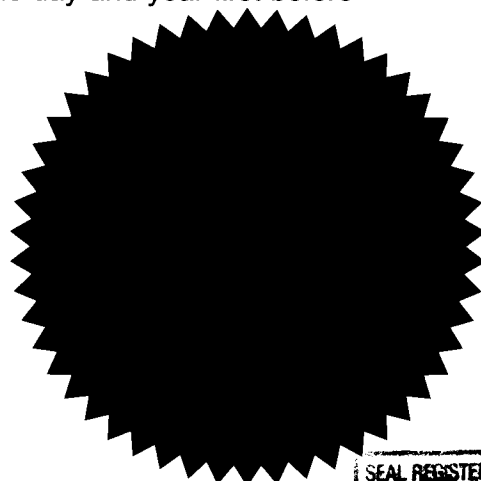
3. The Council hereby covenants with the Owner to:-
 - 3.1 provide a written form of receipt for payment of the Natura 2000 Mitigation Contribution or the RAMS Contribution as appropriate on receipt of the said contribution
 - 3.2 place the Natura 2000 Mitigation Contribution or the RAMS Contribution when received into an interest bearing account with a clearing bank and to utilise the same for the Natura 2000 Mitigation Contribution Purposes or the RAMS Contribution Purposes as appropriate and
 - 3.3 that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming whether the Natura 2000 Mitigation Contribution or the RAMS Contribution has been spent and if the Natura 2000 Mitigation Contribution or the RAMS Contribution has been spent in whole or in part outlining how the Natura 2000 Mitigation Contribution or the RAMS Contribution has in whole or in part been spent.

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

EXECUTED as a **DEED** by affixing
THE COMMON SEAL of
TENDRING DISTRICT COUNCIL
in the presence of:-



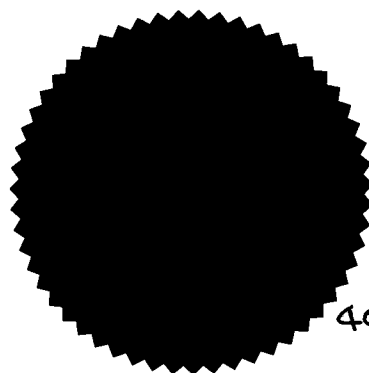
Authorised Signatory



THE COMMON SEAL of
ESSEX COUNTY COUNCIL
was affixed in the presence of:-

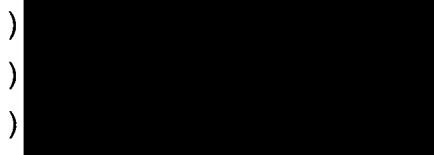


Attesting Officer



40209

SIGNED as a DEED by the said
ROGER GORDON LORD
in the presence of:-

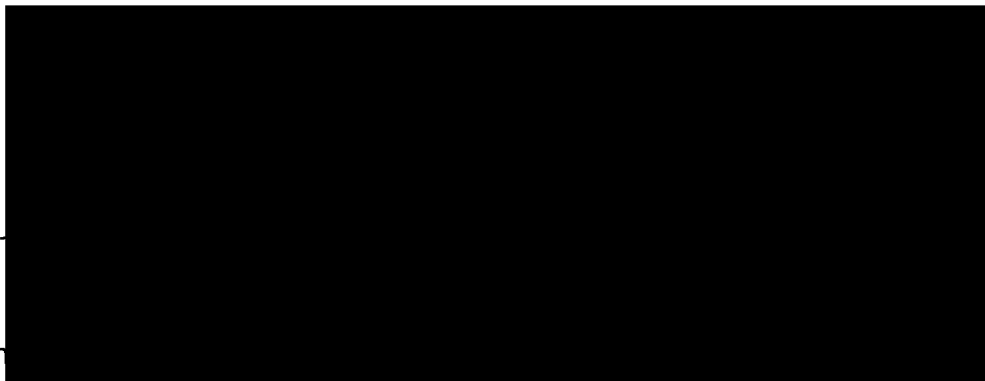


Witness Signature

Witness Name

Witness Address

Witness Occupation



EXECUTED as a DEED by)
HEYFORD DEVELOPMENTS LIMITED)
acting by a director in the presence of:)

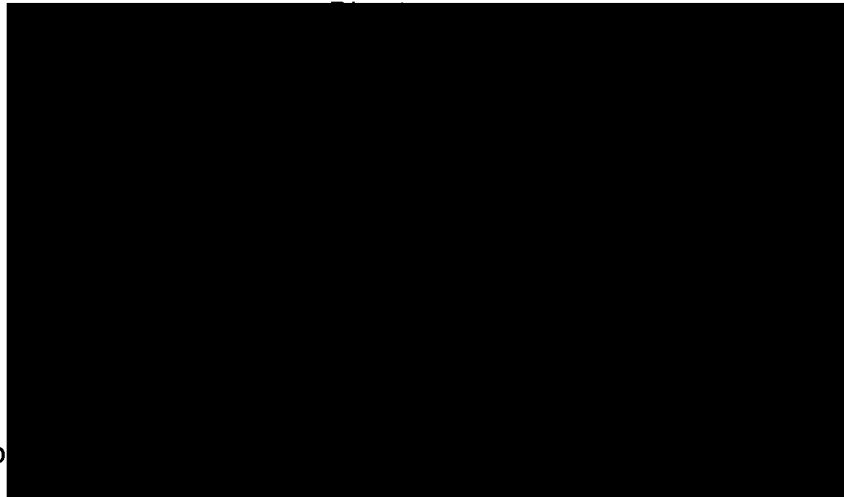


Witness Signature

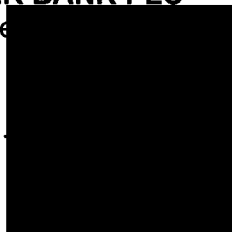
Witness Name

Witness Address

Witness Occupation



SIGNED and delivered as a DEED)
for and on behalf of)
NATIONAL WESTMINSTER BANK PLC)
By a duly authorised Attorney)



DOCUMENTOR
CREDIT DOCUMENTATION

REF ST70336 / MD6

in the presence of:

Witness Signature

Witness Name

Witness Address

Witness Occupation

